SJA e-NEWSLETTER

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

Volume 2 | Monthly | March 2019

Contents

From the Editor's Desk

It is a common experience that the quality of assistance rendered by the counsel appearing for the parties has direct impact on the quality of judgement. All the inputs provided by the advocates, be it on facts or on proposition of law, impact the output in the shape of judgement of the court. Better the quality of assistant rendered by the advocates, better would be the quality of Judgement. A lawyer's personal calibre and legal acumen is no doubt immensely useful for providing good assistance to the court. For professional excellence, role of legal education is of considerable importance. Standard of legal education shapes the career of Law Graduates and lays foundation for the practice of law. Now, of course, option is available to the fresh Law Graduates also to enter Judiciary without having joined bar, however experiential learning at Bar plays a vital role in shaping the outlook of a lawyer. Therefore, a concerted effort is required to be made to improve the standard of legal education across board. Apparently, there is great variation in the standard of legal education provided by the top rated Law Institutes and Prof. (Dr.) Mohan Gopal, former Director, National Judicial Academy, having worked for five years with all ranks of Judges, had realized the need to raise the standard of Legal Education alongside improving the standards of Judicial Institutions. In his discourses on Judicial Education he would stress on making constant efforts in the direction of improving the standards of Legal Education. The standard of Legal Education would thus be complimentary to the standard of Judicial Education, which would translate into enhancing the excellence of Judicial Institutions.

Judicial Officers while performing their judicial functions can work for improving the quality of legal assistance rendered by the advocates appearing before them. There is absolutely no doubt that most of the lawyers can be encouraged to enhance their professional excellence. Judicial Officers while performing their judicial functions, can also work for improving the quality of legal assistance rendered by the advocates appearing before them. There is absolutely no doubt that most of the lawyers can be encouraged to enhance their professional excellence. Ultimately it is for their personal professional benefit as well. Thus better results can be achieved by adopting such methods. Right advice and guidance from the Judicial Officers can act as catalyst for bringing about a desired change.

LEGAL JOTTINGS

"It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law."

P.N. Bhagwati, J. in Sunil Kumar Pal v. Phota Sk., (1984) 4 SCC 533, para 9

Criminal

Criminal Appeal No.148 of 2019
Brig. Sukhjeet Singh (Retd.) MVC v. The State of Uttar Pradesh & others
Decided on January 24, 2019

The Supreme Court held that the object of power to take additional evidence under Section 391 Cr.P.C is to appropriately decide the appeal, to secure the ends of justice. Hon'ble Court held as under:

"14. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the Appellate Court to secure ends of justice. The scope and ambit of Section 391 Cr.P.C. has come up for consideration before this Court in Rajeswar Prasad Misra Vs. State of West Bengal and Another, AIR 1965 SC 1887. Justice Hidayatullah, speaking for the Bench held that a wide discretion is conferred on the Appellate Courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it……"

Hon'ble Court further held as under:

"there are no fetters on the power under Section 391 Cr.P.C. of the Appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people."

Criminal Appeal No. 1465 of 2009
Himanshu v. B. Shivamurthy & another
Decided on January 17, 2019

Hon'ble Supreme Court reiterated the law that the prosecution of its officers can not be maintained for on offence under section 138 NI Act, without the arraigning of a company as an accused. The Court also reiterated the conditions which must be fulfilled to make out an offence under the provision.

Hon'ble Court also relied on a three Judge Bench judgment by itself in Aneeta Hada vs. Godfather Travels and Tours Private Limited (2012) 5 SCC 661, and noted the observations made therefrom as under:

"In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself...."

Criminal Appeal No. 87 OF 2019
Duvvu Raja Sejhar @ Raju & another v. The State of Andhra Pradesh
Decided on January 15, 2019

The parties were are permitted to enter into compromise in view of section 320 (4) (b) Cr.P.C which stipulates that the legal representative, as defined in the Code of Civil Procedure, of such person may, with the consent of the Court compound the offence when the person who would otherwise be competent to compound an offence under this Section is dead.

Special Leave to Appeal (Crl.) No(s). 8935/2018
Rajesh Ponnada v. Satyanarayana

Srirangam and another
Decided on January 29, 2019

It is held that section 363(1) of Cr.P.C. entitling the accused for free copy of the judgment has to be read harmoniously with Section 353(6) which provides that the accused has to be present on the date of judgment.

Hon'ble Court held that the present petitioner having not appeared before the Court on the date of judgment, could not, as of right, seek for supply of the copy of the judgment.

Criminal Appeal Nos.230-231 of 2019
Bir Singh v. Mukesh Kumar
Decided on February 6, 2019

It is held that a meaningful reading of the provisions of the Negotiable Instruments Act, in particular, Sections 20, 87 and 139, made it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability.

Hon'ble Court also held that presumptions are rules of evidence, and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. (para 23)

It is immaterial that the cheque may have been filled in by any person other than the drawer, if it is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

A prosecution based on a second or successive default in payment of the cheque amount is not impermissible simply because no statutory notice had been issued after the first default and no proceeding for prosecution had been initiated. Hon'ble Court also referred the law laid in MSR Leathers vs. S. Palaniappan & Another (2013) 1 SCC 177, that there is no real or qualitative difference between a case where default is committed and prosecution immediately launched, and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second time or successive times.

It is also held that the High Court does not, in the absence of perversity, upset concurrent factual findings, in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, and that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. It is a well established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error.

Criminal Appeal No. 224 of 2019
State of Gujarat v. Afroz Mohammed Hasanfatta
Decided on February 05, 2019

While noting the distinction between a case based on a police report, and a complaint case, and also while observing that the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation, having been laid before him, it is held that the Magistrate is not required to record reasons for issuing the process, in a case of taking cognizance of an offence based upon the police report. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused.

For issuance of process against the accused, Court has only whether there is sufficient ground for proceeding against the accused. And it is not required to weigh the evidentiary value of the materials on record, at the stage of issuance of process.

Hon'ble Supreme Court held as under:

"..... In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing

summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason……'' (para 22)

Also, various judgments wherein it has been held that the aggrieved party has the right to challenge the order of Magistrate directing issuance of summons, have been relied in this case.

It is also held in this case that the revision court does not sit as an appellate court, and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity. The revision court, High Court in this case, was held not justified in examining the merits and demerits of the case and substitute its own view, when the Magistrate had recorded satisfaction that there were sufficient grounds for proceeding.

Criminal Appeal No 15 of 2019
Swapan Kumar Chatterjee v. Central Bureau of Investigation
Decided on January 4, 2019

Hon'ble Supreme Court held the power under section 311 Cr.P.C (corresponding to section 540 Cr.P.C) shall not be exercised if the Court is of the view that the application has been filed as an abuse of the process of law. Where the prosecution evidence has been closed long back, and the reasons for non-examination of the witness earlier is not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused, and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.

It is held that that the power conferred under Section 311 is to be exercised only for strong and valid reasons, and with great caution and circumspection, and should be invoked by the court only to meet the ends of justice. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

Criminal Appeal Nos. 2450-2451 of 2010
Varinder Kumar v. State of Himachal Pradesh
Decided on February 11, 2019

It has been held that a proper administration of the criminal justice delivery system requires the balancing of rights of the accused and the prosecution, so that the law laid down in Mohan Lal (supra) is not allowed to become a spring board for acquittal in prosecutions prior tothe same, irrespective of all other c onsiderations. It is therefore held that all pendingcriminal prosecutions, trial s and appeal prior to the law laid down in Mohan Lal (supra), shall continue to be governed by the individual facts of the case.

It is noted that the law has been laid in Mohan Lal v. State of Punjab, AIR 2018 SC 3853, that a fair investigation, which is the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person.

Criminal Appeal No. 1842 of 2012
The State of Uttar Pradesh v. Faquirey
Decided on February 11, 2019

It is held that the exception of grave and sudden provocation as may convert the offence from the one under section 302 RPC to the one under section 304 RPC, must not be voluntary on the part of accused.

Hon'ble Supreme Court held as under:

''According to Exception I to Section 300 IPC, culpable homicide is not murder if the offender causes the death of the person who gave the provocation, whilst deprived of the power of self-control by grave and sudden provocation ……. No overt act is alleged against the deceased by which it can be stated that the Respondent was provoked. From the proved facts of this case it appears that the provocation was voluntary on the part of the offender. Such provocation cannot come to the rescue of

the Respondent to claim that he is not liable to be convicted under Section 302 IPC."

Criminal Appeal No. 1144 of 2009
Mala Singh & Others v. State of Haryana
Decided on February 12, 2019

It is held that an alteration of charge where no prejudice is caused to the accused or the prosecution, is well within the powers and the jurisdiction of the Court including the Appellate Court. It is only when any omission to frame the charge initially or till culmination of the proceedings or at the appellate stage results in failure of justice or causes prejudice, the same may result in vitiating the trial in appropriate case.

It is also laid that that when there is a charge under section 302 of the Indian Penal Code read with section 149, and the charge under section 149 disappears because of the acquittal of some of the accused, a conviction under section 302 of the Indian Penal Code read with section 34 is good even though there is no separate charge under section 302 read with section 34, provided that the accused could have been so charged on the facts of the case.

Criminal Appeal No. 1104 of 2011
Mahesh Dube v. Shivbodh and others
Decided on February 12, 2019

While noting that sub-Section 1 of Section 456 Cr.P.C clearly indicates that the trial court can pass an order for restoration of the possession of the property to the person who was forcibly dispossessed, and that the proviso no doubt lays down that no such order shall be passed after one month of the date of conviction, **Hon'ble Supreme Court held** that the limitation period of 30 days provided in the section 456, would not apply in a case where the trial court had already passed an order directing restoration of the property to the complainant, while convicting the accused.

Criminal Appeal No.1697 of 2009
Sukhpal Singh v. State of Punjab
Decided on February 12, 2019

It is true that it will undoubtedly strengthen the prosecution version based on circumstantial evidence, if the prosecution establishes a motive for the accused to commit a crime, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will, irrespective of other material available before the court by way of circumstantial evidence, be fatal to the prosecution.

Criminal Appeal No.319 of 2019
The State of Madhya Pradesh v. Suresh
Decided on 20th February, 2019.

It is held that the punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances, and the task is of striking a delicate balance between the mitigating and aggravating circumstances, and that any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter.

Hon'ble Supreme Court also referred the observations from the case of State of M.P. v. Ganshyam : (2003) 8 SCC 13, some of which are as under:

- *undue sympathy to impose inadequate sentence would do more harm to the justice system, to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats;*
- *it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc;*
- *the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court.*
- *Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest*

Hon'ble Court further noted the observations from Alister Anthony Pareira v.

State of Maharashtra: (2012) 2 SCC 648, that the twin objectives of the sentencing policy are deterrence and correction.

Criminal Appeal No. 1115 of 2010
Baivir Singh v. State of Madhya Pradesh
Decided on February 19, 2019

It is held that merely because the FIR contains inquest number, it cannot be said that the FIR was registered subsequent to the inquest. In this regard, reference to State of Uttar Pradesh v. Ram Kumar and others (2017) 14 SCC 614, was also made.

It is further held that the indecisive opinion given by the experts would not affect the prosecution case, when the case of the prosecution is based on the eye-witnesses

It is further held that the essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result, and minds regarding sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan.

Hon'ble Supreme Court also reiterated the law that the oral evidence has to get primacy since medical evidence is basically opinionative, and also that minor contradictions and discrepancies do not shake the prosecution case.

Criminal Appeal no. 1266 of 2010
Mahendran v. The State of Tamil Nadu
February 21, 2019

Hon'ble Supreme Court held that the entire testimony of the witnesses cannot be discarded only because, in certain aspects, omnibus" (false in one thing, false in everything), has no application in India.

The judgment Gangadhar Behera's (2002) 8 SCC 381 was also relied case, wherein the Court held as under:-

"15. To the same effect is the decision in State of Punjab v. Jagir Singh and Lehna v. State of Haryana. …. In essence prayer is to apply the principle of "falsus in uno, falsus part of the statement has not been believed, and the maxim "falsus in uno, falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable.

Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. ….''.

Criminal Appeal No.21/2014
Kulvinder Kour v. Daljeet Singh & Ors
Decided on February 01, 2019
High Court of J&K

The instant criminal revision has been against order paved by learned Principal Session Judge, Samba in File No. 18/Session in case titled 'State v. Daljeet Singh & another'.

The Hon'ble High Court held that criminal court not to cut as post office or mouth piece of prosecution at time of charge framing. Calling a person to face charge without any sufficient evidence amounts to isolation of fundamental right. Court can discharge v/s 268 CrPC, a person if no chance of conviction even if all evidence is considered as it is without cross -examination.

Criminal Appeal No. 50/2016
Kali Das v. State of J&K & Ors
Decided on February 01, 2019
High Court of J&K

Criminal appeal was filed by the appellant Kali Das against judgement of conviction passed by Additional Session Judge (Special Court under NDPS Act) whereby appellant was convicted and sentenced to imprisonment for the period of four (4) year and a fine of Rs 40000/- under Section 21 of NDPS Act 1985 and in case of default of payment of fine he shall undergo further imprisonment for the period of one-fourth of the substantive sentence of imprisonment.

The said judgement was challenged on the ground that Section 50 of NDPS Act has not been complied with and therein no

clinching evidence against revised and pro-reaction has failed to prove the case before reasonable doubt.

The Hon'ble High Court has held:

"22. The courts while appreciating the evidence in criminal cases have to see the degree of proof in maxim than that of civil case. The evidence produced by prosecution should be legally admissible if there comes the slightest doubts regarding involvement of accused then the court should not go on convicting accused."

"23. In arriving of conclusion about guilt of accused charged with heinous crime, the court has to judge the evidence by yardstick of probabilities. Every case has its own facts. The law doesn't permit the court to punish the accused on basis of moral conviction or suspicion. The burden of proof never shifts, it is always on prosecution."

Criminal Appeal No. 189/2015
Jagjeet Singh and anr. v. State of J&K & Ors
Decided on February 01, 2019
High Court of J&K

The instant petition was filed under Section 561-A CrPC seeking quashment of FIR No. 87/2013 dated 02/07/2013 registered with Police Station Gangyal against petitioners at the instance of respondent No. 2 for offences under Sections 447,451,323,380, & 506 RPC.

The Hon'ble High Court allowed the petition under Section 561-A CrPC and quashed the FIR No. 87/2013 dated 02/07/2013 on the ground that the petitioners are in the legal possession of the property, question of lodging FIR doesn't arise at all. FIR in question is manifestly attended with malafide intention and insisted maliciously with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to personal grudge.

Criminal Appeal No. 21/2014 & IA No. 17/2014
Kulvinder Kour v. Daljeet Singh and ors.
Decided on February 01, 2019
High Court of J&K

The above titled criminal revision was preferred against order dated 07/02/14 in ease titled State v/s Daljeet Singh & another whereby the trial court has discharged the accused No. 1(respondent) from the offenses under Section 419/420/465/467/468/ 471 RPC leveled against him.

The Hon'ble High Court Of J&K, Jammu after appreciating the facts of the above titled case has been pleased to held that :

"For charging the accused under any penal Section, there should be some material on record for presuming that the accused has committed an offence for which he used to be charged. Criminal Court has not to act as post office & become mouth piece of prosecution & frame charge at the wish of prosecution calling a person to face charges without any sufficient evidence would amount to violation of fundamental rights. When court is fully certain that there is no chance of conviction even if all the evidence is considered as it is without cross-examination then court can certainly discharge the accused under Section 268 CrPC."

CRA No. 57/2018
State through SHO P/S Hiranagar Vs. Rajinder Paul Singh and Anr.
Date of order : - 30-01-2019
High Court of J&K.

It is well settled in law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the Trial Court is a reasonable view of the evidence on record and the findings recorded by the Trial Court are not manifestly erroneous, contrary to the evidence on record or perverse.

Reliance has been placed on the judicial pronouncements, Ram Swaroop and other Vs State of Rajasthan, AIR 2004 SC 2943. Upendia Pradhan Vs. State of Orrisa, (2015) 11 Sec 124.

CRAA No. 08/2007
State of J&K Vs. Bhag Kour
Date of order: 01-02-02019.

High Court of J&K.

The instant acquittal appeal has been filed by State against impugned judgment dated 27-10-2006 passed by learned 2nd Additional Sessions Judge, Jammu wherein Respondent, Bhag Kour has been acquitted for offence under section 304 (11) RPC.

The Hon'ble Court upheld the Judgment of the trial court and observed that the weakness in defence established by the accused person is of no help to the prosecution, because the prosecution has to prove its case beyond all reasonable doubts. The burden of proof never shifts, it is always on the prosecution.

CRMC No. 620/2018
D.B Singh Vs State of J&K & anr.
Date of Order – 01-02-2019
High Court of J&K.

Hon'ble High Court dismissed the instant petition under session 561-A of CrPC seeking quashing of FIR No. 27/2018 dated 17-09-2019 on the ground that provision of Sexual Harassment of women at workplace (Prevention, Prohibition & Redressal) Act 2013 shall be in addition to and not in derogation of any other law in force. There is no conflict between this Act & RPC. Hence FIR under Section 354 D, 506, 500-II or 509 RPC against the petitioner need not be quashed even if proceedings under Sexual harassment of women at workplace (Prevention, Prohibition & Redressal) Act 2013 are initiated.

CRMC No. 96/2009
Sachin Sharma Vs. Pawan Gupta
Coram (Hon'ble Justice Sanjay Kumar Gupta, Judge)
Date of Order 01-02-2019.
High Court of J&K.

Petition under 561-A CrPC for seeking quashment of order dated 30-05-2009 passed by the learned Principal Sessions Judge, Jammu in revision file No. 36 titled as Pawan Gupta Vs. Sachin Gupta wherein order passed on 27-11-2008 passed by the Ex. Additional Munsiff, Forest Magistrate, Jammu has been set aside, also for quashment of proceedings directed to be initiated against the petitioner by virtue of impugned order dated 30-05-2009.

Section 438 (2) and Section 439(2) to (5) of CrPC were perused and it was observed by the Hon'ble High Court that on the conjoint reading of these provisions it is evident that whereunder this code an appeal lies and no appeal is brought by the aggrieved party, no proceeding by way of revision shall be entertained.

Accordingly it was held: - That the revisional Court ought to have summarily rejected the revision application directing the petitioner to prefer an appeal against the order passed by the Magistrate in terms of Section 247 CrPC.

CRMC No. 91/2018 decided on February 01, 2019.
Raj Kumar & Others Vs. Smt. Nirjala Kumari
High Court of J&K.

The instant petition was filed under Section 561-A CrPC seeking quashment of order passed by Magistrate under Section 23 of J&K Protection of Women from Domestic Violence Act, 2010 in complaint under Section 12 of the Act, on the ground that maintenance can not be granted in favour of the respondent in 2 cases in two different proceedings.

Hon'ble High Court held that relief available under the provisions of Domestic Violence Act is in addition to relief granted under any other law in force. The Act is in addition to other laws and not in derogation of any other law for the time being in force.

"There is, and can be, no disagreement with the principle that even the humblest citizen of the land, irrespective of his station in life, is entitled to present his case with dignity and is entitled to be heard with courtesy and sympathy. Courts are meant for, and are sustained by, the people and no litigant can be allowed to be looked upon as a supplicant or importuner."

M.N. Venkatachaliah, J.
in Sheela Barse v. Union of India, (1988) 4 SCC 226, para 27

Civil

Civil Appeal No. 4527 OF 2009 (Supreme Court)
Poona Ram v. Moti Ram (D) TH. LRS. & others
Decided on January 29, 2019

Supreme Court has reiterated that settled possession means such possession as has existed for a long duration of time, and which has been acquiesced by the owner.

Court held as under:

"13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of *animus possidendi*. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case."

Civil Appeal Nos. 1237-1238 OF 2019
Dr. H.K. Sharma v. Shri Ram Lal
Decided on January 28, 2019

While noting clauses (e) and (f) section 111 Transfer Of Property Act relating to determination of Lease by express or implied surrender, Supreme Court held that mere agreement to sell does not amount to termination of landlord tenant relationship unless the same is terminated expressly or impliedly by the said agreement.

Civil Appeal No. 1301 of 2019
Sreedevi and Others v. Sarojam and others
Decided on January 30, 2019

It is held that it is obligatory, to first formulate the appropriate substantial question of law, and then deal with the same, after giving an opportunity of hearing to both sides, even if the High Court holds that the findings recorded by the Trial Court and affirmed by the First Appellate Court, are per se perverse.

Civil Appeal No.7092 of 2010
Radhamma and others v. H.N. Muddukrishna & others
Decided on January 23, 2019

Supreme Court has held that a coparcener has a right under section 30 Hindu Succession Act, to dispose of his undivided share in Mitakshara joint family property by Will or any testamentary disposition i.e. by virtue of law.

Hon'ble Court held as under:

"Section 30 of the Act, the extract of which has been referred to above, permits the disposition by way of Will of a male Hindu in a Mitakshara coparcenary property…. Therefore, the law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the Hindu Succession Act, 1956 leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary. An exception is contained in the explanation to Section 30 of the Act making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property can be disposed of by him by Will or any other testamentary disposition….."

Hon'ble Court further held as under:

"…….the appellants have no

independent share in the joint family properties and their share could be devolved in the undivided share of the testator in the joint family properties and since the testator has bequeathed his share/ his undivided coparcenary interest by Will dated 16.6.1962, no further independent share could be claimed by the appellants in the ancestral properties as a member of the family as prayed for.''

Civil Appeal No. 1510 of 2019
ER. K. Arumugam v. V. Balakrishanan and others
Decided on February 6, 2019

It is held that while considering the issue of contempt, the court has to confine itself to the four corners of the order alleged to have been disobeyed.

Hon'ble Court referred the following observations from Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekaran and others (2014) 3 SCC 373, as under:-

"19. ..... The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are 11 explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above....."

Hon'ble Court also held that the proceeding of the District Collector dated 30.11.2016 fixing the land value at the rate of Rs.500/- per sq. ft., passed under the fear of contempt of court was liable to be quashed, and also that the first respondent could not claim that compensation be paid to him on the value of the land fixed in the year 2016, when the entry into land was way back in 1990-91. (para 15).

Civil Appeal No. 1500 of 2019
Asgar & others v. Mohan Varma & others
Decided on February 5, 2019

It has been held that the observations that the appellants were free to pursue an appropriate remedy for the redressal of their grievances in accordance with law contained in the order of Court cannot be construed to mean that the respondents would be deprived of their right to set up a plea of constructive res judicata if the appellants were to raise such a claim. This must necessarily be construed to mean that all defences of the respondents upon the invocation of a remedy by the appellants, were kept open for decision. The liberty granted by this Court was not one-sided. It encompasses both the ability of the appellants to take recourse and of the respondents to raise necessary defences to the invocation of the remedy.

Hon'ble Court held that constructive res judicata, in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril.

In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings, and the nexus which the matter bears to the nature of the controversy. (See para 32)

Civil Appeal No. 1509 of 2019
Balkrishna Dattatraya Galande v. Balkrishna Rambharose Gupta and another
Decided on February 06, 2019

It is held that, in a suit filed under Section 38 of the Specific Relief Act, permanent injunction can be granted only to a person who is in actual possession of the property, and that the burden of proof lies upon the first respondent-plaintiff to prove that he was in actual and physical possession of the property on the date of suit.

Civil Appeal No. 1052 of 2019
Shivnarayan (D) BY LRS v. Maniklal (D) THR. LRS. & others
Decided on February 6, 2019

It is held that the portion of property postulated in section 17 CPC, for the purpose of territorial jurisdiction, does not just mean the portion of one property falling in the jurisdiction of two territorial courts, and means the portion of several properties falling in different territorial divisions. That means that if one or more of the several properties fall in the territorial jurisdiction of different courts, the suit involving the properties as a whole, may be filed in any of the territorial courts. One property out of a number of several properties can be treated as portion of the property as occurring in Section 17 CPC. Interpretation of word "portion of the property" cannot be understood only in a limited and restrictive sense of being portion of one property situated in jurisdiction of two courts.

It is also held that, what is required by Order II Rule 2 sub-clause (1) is that every suit shall include the whole of the claim on the basis of a cause of action, and cannot be read in a manner as to permit clubbing of different causes of action in a suit.

Also, joining of causes of action under sub-clause (1) of Order II Rule 3, can be done only when the defendant or defendants jointly, are the same.

Hon'ble Supreme Court held as under:

'' 28. …….

(ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

(iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.''

Civil Appeal Nos. 9142-9144 of 2010
Ram Siromani Tripathi and others v. State of UP and others
Decided on February 7, 2019

It is held that the counsel being out of station, is not a ground to seek adjournment.

Earlier, in Special Leave Petition (C) No. of 2016 (CC NO.14061 of 2016) titled Gayathri v. M. Girish, Hon'ble Supreme Court referred the following from the case of Bagai Construction through its proprietor Lalit Bagai v. Gupta Building Material Store(2013) 14 SCC 1:

''9. In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the Courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated.''

Civil Appeal No. 1638 of 2019
M/S SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & others
Decided on February 12, 2019

Hon'ble Supreme Court has held that a perusal of Order V Rule 1 sub-rule (1) and Order VIII Rules 1 and 10 CPC, would show that ordinarily a written statement is to be filed within a period of 30 days, grace period of a further 90 days may be granted

which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit. Hon'ble Court also observed that the defendant shall forfeit the right to file the written statement beyond 120 days from the date of service of summons, and the Court shall not allow the written statement to be taken on record, and that the same is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

It is also held that the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.

While referring the judgment in R.K. Roja vs. U.S. Rayudu and Another, it has been held that the judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order VII Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed, and noted the following from the said judgment:

"However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement".

It is further held that res judicata cannot stand in the way of an erroneous interpretation of a statutory prohibition.

Writ Petition [C] No. 612 of 2016
R. Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras
Decided on January 28, 2019

"Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/advocates. Such acts are nothing, but an act of denigrating the judiciary itself and destroys the faith of the common man which he reposes in the judicial system." The Supreme Court, in its judgment quashing Rules 14A to 14D of the Rules of High Court of Madras, 1970, observed that attributing political colours to the judgments is nothing less than an act of contempt of gravest form. Justice Arun Mishra, who authored the judgment for the bench also comprising of Justice Vineet Saran, observed that it has become very common to the members of the Bar to go to the press/media to criticize the judges in person and to attribute political colours to the judgments.

The bench said: "Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/ advocates. Such acts are nothing, but an act of denigrating the judiciary itself and destroys the faith of the common man which he reposes in the judicial system. In case of genuine grievance against any judge, the appropriate process is to lodge a complaint to the concerned higher authorities who can take care of the situation and it is impermissible to malign the system itself by attributing political motives and by making false allegations against the judicial system and its functionaries. Judges who are attacked are not supposed to go to press or media to ventilate their point of view."

Some Advocate Feel They Are The Only Champion Of The Causes. Justice Mishra further observed that some advocates feel that they are above the Bar Council due to its inaction and they are the only champion of the causes. "The hunger for cheap publicity is increasing which is not permitted by the noble ideals cherished by the great doyens of the bar, they have set by their conduct what should be in fact the professional etiquettes and ethics which are not capable of being defined in a narrow compass. The statutory rules prohibit advocates from advertising and in fact to cater to the press/media, distorted versions of the court proceedings is sheer misconduct and contempt of court which has become very common. It is making it more difficult to render justice in a fair, impartial and fearless manner though the situation is demoralizing that something has to be done by all concerned to revamp

the image of Bar. It is not open to wash dirty linen in public and enter in accusation/ debates, which tactics are being adopted by unscrupulous elements to influence the judgments and even to deny justice with ulterior motives.", the bench said.

Absolutely Necessary To Remove Black Sheeps From The Profession The bench added that it is for the Bar Council and the senior members of the Bar to rise to the occasion to maintain the independence of the Bar. It added: " The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheeps from the profession to preserve the rich ideals of Bar and on which it struggled for the values of freedom."

Civil Appeal No. 1782 of 2019
Murugan & ors. v. Kesava Gounder(Dead) through LRs & ors.
Decided on February 25, 2019

The Supreme Court has held that a sale of minor's property by guardian can be avoided only by filling a suite to set aside the deed within the period of limitation prescribed under Article 60 of the Limitation Act, which is 3 years from the date of attaining majority by the minor. In case the minor has died before attaining majority, the legal representatives of the minor should bring the suite within three years from the date on which the minor would have attained majority. The court also noted that permission of the court was necessary for the guardian to sell minor's property. Sale in violation of Section 8 (2) of the Hindu Minority & Guardianship Act, 1956 is voidable. Therefore, the sale remains valid until set aside by the court.

SLA No. 108/2017
State of J&K Vs. Sher Mohd
Date of order – 29-01-2019.
High Court of J&K.

In the instant application petitioner seeks condonation of 361 days delay in filing the Criminal Acquittal Appeal against the judgment dated 30-07-2016 passed by the learned Principal Sessions Judge, Rajouri.

The Hon'ble High Court in this Court laid down that rules of limitation are prima facie rules of procedure and donot create any rights in favour of any person nor do they defined or create cause of action but simply prescribe that the remedy could be exercised only upto a certain period and not beyond it. The expression 'sufficient cause' is construed in such a way that the rules are not rendered only as 'dead provision'.

Time is precious and it should not be followed. Law is also clear that each day after limitation time, is required to be explained by cogent means. It cannot be set aside on flimsy grounds and at the wish of applicant who remained all along negligent. In the present case there is sufficient reason for condonation of delay.

Relying upon judgment of Hon'ble the Supreme Court in case titled office of the Chief Post Master General & Others. V/s Living Media India Ltd. & another, AIR 2012 SC 1506, it is held that no sufficient grounds have been shown for condoning the delay, as the State remained silent for a long time.

Civil Revision No. 32/2018
Ashok Singh v. Veena Gupta
Decided on February 01, 2019
High Court of J&K

This civil revision is against the order dated 31.07.2018 passed by court below in execution petition, whereby application by petitioner in the execution were dismissed.

The Hon'ble High Court held that it is settled principal of law that executive court must not put to trial every objections which are filed in execution proceedings even if prima facie appears frivolous or to delay execution or to abuse the process of law. If permitted, they prolong the delivery of possession to decree holder in accordance with law, it would certainly amount to putting a premium on abuse of process of law.

Two Day Training Programme On "Sensitizing Judges on Family Court Matters"

Jammu & Kashmir State Judicial Academy organised Two Day Training Programme on "Sensitizing Judges on Family Court Matters" on 09th of February, 2019 in the J&K State Judicial Academy, at High Court Complex, Jammu.

The training programme commenced with introductory address by Hon'ble Mr. Justice Tashi Rabstan, Chairman, High Court Committee on Family Matters and opening address by Hon'ble the Chief Justice, Ms. Justice Gita Mittal. The District Judges and the Senior Sub-Judges of the State participated in the programme.

Hon'ble Ms. Justice Gita Mittal, Chief Justice, High Court of J&K, (Chief-Patron, J&K State Judicial Academy) in her inaugural address said that sensitisation of all the stakeholders on Family Court matters is the Call of the Hour and that holding of such training programmes will help in creating an atmosphere where family disputes may be dealt with utmost sensitivity. Further elaborating on the subject of the training programme, Ms. Justice Gita Mittal emphasised that family harmony provides a sense of belonging and a feeling of security unlike many other types of relationships. When conflict arises, it threatens that security. Whether the disharmony emanates from within the family unit or from external sources, individual family member and the family as a whole can experience a range of negative emotions and consequences. Unresolved conflict may irreparably damage a marriage and even the entire family. She wished that the Family Courts which would become operational shortly would deal with the Family Court Matters with much more sensitivity, giving appropriate priority to resolving the disputes in a humane manner.

Hon'ble Mr. Justice Rajesh Bindal interacted with the participants during the training sessions and told the Judges that it is imperative to be innovative in approach while dealing with sensitive matters of family and incidental matters like child custody. Justice Bindal advised the participants to take cue from the life experiences and try to resolve the family dispute coming to the Courts on negotiated settlement, and in this process to inspire the parties to choose alternative modes of dispute resolution rather than involving themselves in procedural wrangling in the regular trial proceeding.

Hon'ble Mr. Justice Tashi Rabstan earlier in his introductory address highlighted that it is the first training programme of Judges after enactment of Family Courts Act, 2018. State of J&K has travelled a long journey to put in place the legislation exclusively dealing with the family matters and creation of special courts for the purpose, as the Family Courts Act came into operation in rest of India in the year 1984. Justice Tashi Rabstan spoke about the need for having specialised courts and sensitive atmosphere for resolving the disputes pertaining to the marriage and the incidental matters. Mr Justice, Tashi Rabstan, also gave an overview of the training programme and said that a Family Court Judge has multiple roles of a mediator, a conciliator and a settler in handling the sensitive matters.

Resource Person Hon'ble Ms. Justice Manju Goel, Judge (Retd.) and Hon'ble Ms. Justice Roshan Dalvi, Judge (Retd.) deliberated upon the Gender Sensitization, Gender Perspectives and Matrimonial Mediation. Ms. Justice Roshan Dalvi highlighted the need of sensitisation among the Judges, Conciliators and other persons who are essential to constitute a Family Court. She presented gender perspective which a presiding Judge has to be aware about while discharging the functions of the Court. She said that in our common behaviour we have developed in our minds some stereotypes about the role, status and the responsibilities of a woman, and it is commonly believed that a woman has the role of home maker only which is not a fact in the present scenario. It is requisite to shun such rigid ideas and to accept the reality that a woman is also an equal

partner in the family and she has right of equality granted under the Constitution.

Ms Justice Manju Goel in her discourse talked about mediation and conciliation as best suited mode for arriving at resolution of family disputes. She said that mainly the disputes in a family arise out of petty matters and ego, and such matters if come to Court have to be handled with utmost sensitivity. The presiding Judges are required under the law to make all efforts for mutually satisfactory disposition of the case, taking into confidence the parties concerned and understanding the real nature of dispute. She shared her personal experiences in resolving the family disputes while heading the Family Court Benches.

The programme continued on the second day with discourses of Ms. Aruna Farswani and Ms. Swati Chauhan, Principal Judges of the Family Courts in Maharastra, on Working of Family Courts and the issues related to child custody, access and visitation rights.

Ms. Swati Chauhan apprised the participants about her personal experiences on working of the Family Court. She elaborated upon the procedural aspects and practical difficulties faced while working in the Family Court. The inputs given by the speaker would be extremely beneficial for the participants while dealing with the cases related to Family. Ms. Aruna Farswani dealt with the aspects pertaining to child custody, and she gave detailed analysis of her own experiences in conducting Family Court and dealing with such matters. She also highlighted the special features of the custody matters and cited numerous practical instances where the paramount consideration of welfare of the child was upheld. Her discourse on the subject would also be great practical utility for the officers attending the programme.

OATH CEREMONY

J&K State Judicial Academy organized Oath Taking Ceremony for the advocates who have been granted absolute licenses to practice law on 27th February, 2019. Hon'ble Mr Justice Rajesh Bindal, Chairman Governing Committee of State Judicial Academy, in a function organized at District Court Complex, Jammu, administered Oath to the newly enrolled 140 advocates from different districts of Jammu province. Advocates took Oath to uphold the Constitutional values and rule of law, and to work for enhancing the excellence of profession and of Judicial institutions. After administering Oath to the advocates, Hon'ble Mr Justice Rajesh Bindal advised the newly enrolled advocates to work with honesty, dedication and hard work, and put in best endeavors to enhance the dignity of profession. Lordship also highlighted that in the initial stage of the career, lawyers have to strive hard to gain knowledge and experience. In the process they have to engage more with seniors who already have attained status in the profession. Respect to the seniors and colleagues is imperative for experiential learning. They were also told that they are required not just to work for the client with full dedication but they owe duty towards the court, law and the society. They have to conduct themselves in court and outside with utmost dignity and respect. Mahatma Gandhi was quoted by Lordship, who being a lawyer had worked for the community while he was practicing law in South Africa, and then lead the nation in freedom struggle. Lawyers were told to get inspiration from the life and work of Mahatma Gandhi.

Justice Bindal told the newly enrolled advocates that pure professional approach is required to succeed in the profession, and casual approach has to be shunned. They were told to adopt Information technology advances in the field of law and remain updated in knowledge of law. Mr Vinod Chatterji Koul, Principal District Judge Jammu, Officers of the High Court registry, Mr B.S. Salathia, President J&K High Court Bar Association along with office bearers and senior members of the bar participated in the programme. Rajeev Gupta, Director State Judicial Academy conducted the proceedings and on culmination thanked the dignitaries and newly enrolled advocates for their participation.

Special Programme on "Judgement Writing Core Skills"

At the invitation of Hon'ble the Chief Justice, Ms. Justice Gita Mittal, in a special programme on Judgement Writing Core Skills, Hon'ble Mr. Justice R.K. Gauba, Judge Delhi High Court delivered lecture, which was telecast through video conferencing. Judicial Officers at all the District Headquarters in the state of J&K were benefitted from the discourse of Justice Gauba. The participants were told by the speaker that judgement writing and basing the judgement on reasons is the salient feature of the Judges, which distinguishes them from the administrative officers. Reason being the soul of judgement, is imperative to be recorded. It infuses life into the judgement. Hon'ble Speaker elaborated upon the special features of judgement writing and the structure of judgement in criminal cases and civil cases. Dealing with the relevant provisions of Law, Hon'ble Speaker stated that law requires concise statement of facts, points for determination, reasons for determination of such points and the conclusion to be recorded in brief, precise and intelligible manner. It was told that Judgement is required to be written in such a language as would be understandable without any difficulty, and there is hardly any need for writing hard, tough and intricate words in the judgement. As far a practicable, a simple language should be employed. The participants were also guided to adopt various techniques for effective communication through the judgement and also different styles of writing judgement.

Hon'ble the Chief Justice and Hon'ble Mr. Justice Rajesh Bindal also made their interjections and gave many useful inputs which would be of great benefit for the Judicial Officers in effective Judgement Writing.

The participants interacted with the resource person and clarified their doubts and felt immensely benefitted.

This was the unique programme where Video Conferencing mode of interaction was used in conducting the training programme. This initiative of Hon'ble the Chief Justice has received lots of accolades.

Legislative Update

The Union Cabinet, on Thursday approved the proposal of Jammu & Kashmir Government regarding amendment to the Constitution (Application to Jammu & Kashmir) Order, 1954 by way of the Constitution (Application to Jammu & Kashmir) Amendment Order, 2019. As per the Government press release, it will serve the purpose of application of relevant provisions of the Constitution of India, as amended through the Constitution (Seventy Seventh Amendment) Act, 1995 and Constitution (One Hundred arid third Amendment) Act, 2019 for Jammu and Kashmir, by issuing the Constitution (Application to Jammu and Kashmir) Amendment Order, 2019 by the President under clause (1) of Article 370.

Constitution (Seventy Seventh Amendment) Act, 1995 was enacted thereby inserting clause (4A) after clause 4 of Article 16 of Constitution of India. Clause (4A) provides for giving benefit of promotion in service to the Scheduled Castes and the Scheduled Tribes. The Constitution (One Hundred and Third Amendment) Act, 2019 has been applied in the country except Jammu and Kashmir and with extension of Act to Jammu and Kashmir economically weaker sections of State would also avail the benefit of reservation.

The Union Cabinet also approved enactment of J&K Reservation (Amendment) Ordinance, 2019, which provides amendments in the J&K Reservation Act, 2004.

(As reported by www.livelaw.in)

Report of Trainee Munsiffs regarding Visit to Inaccessible Areas in Tehsil Akhnoor, Distt. Jammu.

A two days programme was organized by the J&K State Judicial Academy on 10th & 11th of January, 2019 for Trainee Officers for visiting backward areas of Akhnoor Tehsil and interacting with the people living there. The main purpose of the programme was to understand the difficulties faced by the people of these areas in approaching the Courts and having access to justice. The object to be achieved was to sensitise the Trainee Judges in dealing with the cases coming up before them when they shall formally conduct the courts.

The programme was coordinated by Ms. Pooja Raina, the learned Munsiff Akhnoor under the supervision of Mr. Vinod Chatterji Koul, worthy Principal District and Sessions Judge Jammu.

During the programme the Trainee Officers visited different remote and border villages of Akhnoor Tehsil, namely, Gurha Brahamna, Daksal, Chak Malal and Gardh and interacted with the inhabitants of the villages.

Following was the schedule and structure of the programme:

Date	Event/Venue
10/1/2019	Ist Session: Interaction session with local people and village panchayat at K.R. Resorts Gura Brahamna, Akhnoor. 2nd Session of interaction with people of village Daskal at Panchayat Gorh Daskal
11/1/2019	First Session: Intraction with local people at the community Hall of village Chak Malal. 2nd Session: Visit to the border area of village Goradh including door to door survey of the said village.

During these two days visit the trainee officers not only interacted with the inhabitants of the above said villages to gather experience but also made endeavor to impart awareness among the people of these villages, including to making the aware about different Constitutional and other legal rights, as also about different legal welfare schemes formulated by the Central and State Government. The people were also inspired to make share their experiences with the democratic institutions and to give suggestions and recommendations for making a sound legal system.

During the visit to the said villages in Akhnoor Tehsil, the most important experience the officers have gathered is "lack of legal awareness" among the common masses. Though there are several impediments which people face in seeking justice in approaching to the Judicial Institutions but among these, lack of legal awareness is the biggest hurdle which prevents them from approaching the sacred institution for vindication of their rights. Though our Constitution guarantees "Right to Education" as a Fundamental Right, imparting legal knowledge apart from the basic education should be considered as part and parcel of this right. As we all know, among other reasons the most important factor for a country for its development, is that its people are fully aware of their legal rights and corresponding duties. It shall be possible only when people or the citizens of the country are imparted Legal Education, supplementing to their mainstream education system.

While interacting with the people of these areas the trainee officers have experienced that the inhabitants of these areas do not know even about their basic rights which are otherwise indispensible for a human being, as are enshrined in Part-III of our Constitution. Moreover, they have least idea about the Legal Welfare Schemes already framed since decades by the Central and Local Government. Though the Legal Service Authorities Act framed in the year 1997 with the aim of upliftment of socially

and economically downtrodden people and paving a way for them to seek justice by granting free legal aid and other legal services, but it was an astonishing to know that it is for the first time that they have heard about any such statutory framework.

Constitution being the sacred document and the grundnorm for all laws guaranteeing to the citizens of our Country, justice (social, economic and political) and equality, liberty and dignity of the people, but all these facets are impossible to achieve unless the ordinary people of the Country are aware about their basic rights. So apart from the basic education which is being imparted in our schools and colleges, legal education should also be introduced as an important subject. This all will help us in different ways; firstly, by making people more vigilant, responsible and faithful to their Country, secondly, by eradicating injustice and restoring faith in the sacred institution of Judiciary, and most importantly ensuring dignity of the people and promoting a sense of fraternity among them.

Another prominently noticeable facet is the dwindling faith of the people in efficacy of the judicial institution in ensuring a fair and swift delivery of justice. Judicial System is by and large trusted as most viable institution but this trust is at the verge of facing deficit. It is general belief that judicial system has become out of reach for the ordinary citizens and it requires lot of resources to afford justice in the courts of law. Most of the people believe that hiring the services of a good lawyer is not within the competence of ordinary citizens. It was also learnt during the interaction with people that the grievance is not only against courts of law but more against other administrative institutions of the Government.

Inaccessibility to the courts is one of the biggest challenges faced by the residents of far flung areas e.g. village Garadh is approx. 40 kms away from Akhnoor Tehsil Head Quarter, where the nearest court is located. This makes access to justice for the people living in the area very difficult. It has been observed that some people have no access at all to the courts/justice system due to multiple reasons, viz:

- lack of legal awareness;
- lack of resources to avail legal services;
- Distance – as the courts are not situated within the reachable zone of the residents, especially those residing in the border area, it leads to inaccessibility to the judicial system.

People in their interactions talked about their not so good experiences with the judicial institutions. Some of their prominent grievances have been:

1. Not having direct access to judicial officers: - People were aggrieved by the fact that they don't have any direct access or communication with the Judicial Officer. They urged that judicial officer must listen to them and have a direct interaction with the litigants instead of the advocates and pleaders, for the reasons; firstly, that the litigants are best person in knowledge of their cases and secondly, in a better position to speak about their case. So the general approached to be adopted by the judicial officers should be to at least give a patient hearing to the litigant in person for once, so that they can make put forth their grievances more clearly to the judicial officers, which their counsel may not be able to do. This also infuses a sense of satisfaction among the aggrieved persons that the presiding officer is really concerned about their problem.
2. Long adjournments without any effective hearing;
3. Delay in deciding cases;
4. Non-Execution of orders or decrees within time;
5. Corruption at the clerical level.
6. When asked about their experiences with advocates, people suggested different ideas about effective functioning of the advocates. They suggested fixing some norms for nominal fee charging, giving patient hearing to the litigants, representing in

the courts of law with honesty and full dedication and making real efforts in getting their cases disposed of in timely manner.

Most of the people are having bad experience in dealing with the Police agency. There appears to be a complete disconnect of the ordinary citizens with the law enforcement agency. They have lost faith in the functioning of Police. There is lack of mutual trust and understanding between the Police and public, apparently owing to the misuse of power and misbehavior by the police personnel. People specifically leveled allegations against the police that when they go to Police Stations for lodging FIR they are treated like criminals and filthy and abusive language is used by the police officials. Prevalence of corruption in the police administration is considered to be the greatest menace.

Prevalence of corruption not only adversely affects the economy of the whole country but it in turn results in social injustice. The government has enacted Prevention of Corruption Act and other rules and regulations to curb the menace but the problem has not been addressed so far. The most common issue which people raised during interaction was regarding the corruptibility of different government departments and Officials. There common grievance that there is no work done without bribe. A strong and effective judicial system is still considered to be an effective tool to addressing the problem of corruption. But allegations were leveled against the people attached with the judicial system, especially against the court staff, as to corruptibility. This shows that enactment of law in itself is not sufficient unless the laws are properly applied. The irony is that a citizen has to pay bribe for getting benefits of the schemes formulated by Government for the poor and economically distressed people.

Sometimes the words are not sufficient to express the feelings. People are getting disappointed with the systems in place and want to see a tangible change. The notion that justice is only for rich and powerful destroys the very concept of justice enshrined in the Constitution. We need to build a system where a common man can feel that the whole system is working for the welfare and betterment of the society, of which he is also a part.

One cannot visualize the real life problems while sitting in a closed room and the purpose of this programme was to sensitise the trainee officers about the real life issues. This infact is a life time experience for all of us. People too overwhelmingly supported and appreciated the concept of justice at door-step. Trainee officers have tried to assuage their dwindling faith in the system and encouraged them to have recourse to the judicial system/courts by availing the facility of free legal aid provided by the Government through Legal Services Institutions.

Contributed by:
Trainee Munsiffs
(Civil Judges, Junior Division)

Awarding Interest on the Future Income

This has been a vexed question as to awarding interest on the future income/ earnings. It is commonly understood that no interest should be imposed on that part of the awarded amount which is granted as compensation under the head: 'loss of future earnings/income due to permanent disability'. Emphasis is laid on the fact that interest can be allowed only on the expenses incurred or losses up to the date of trail such as medical expenses, loss of earning etc. but not on future earnings. The legal position on the point appears to have been settled and, therefore, is no more res integra. Hon'ble Supreme Court of India in 'R.D. Hattangadi v. Pest Control (India) Pvt. & others', as reported in 1995 ACJ 366, has ruled that no interest should be allowed on 'future expenditures'. Needless to mention that there is a world of difference between the words-'future expenditures' and 'loss of future earnings'. Future expenses, in a given fact situation, would mean future medical expenses etc. but not-'loss of future income'.

In the said context, it is apt to reproduce Para 18 of the ruling as under:

> "18. So far the direction of the High Court regarding payment of interest at the rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditure under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount."

Any doubt on that behalf is removed after going through the ruling handed down by the Hon'ble Full Bench comprising of as many as five Learned Judges, of the Hon'ble High Court Andhra Pradesh in: 'Andhra Pradesh State Road Transport Corporation and another v/s V. Vijaya and Others' as reported in 2002 ACJ 1846 and it is profitable to reproduce what has been observed in the concluding part of Para No. 63 of a ruling, as under:

> " 63. …. In a suit for compensation for death in accident the court has discretion to grant interest on the amount of compensation. In a fatal accident there are economic losses and non- economic losses, which form the component parts of compensation. Interest must be allowed on sums actually spent or lost upto the date of trial such as medical charges, loss of earnings and out of pocket expenses. Future earnings and loss of dependency are paid in advance and do not qualify for interest. The Court shall fix a composite rate of interest keeping in view the size of each of the two components."

It, therefore, manifests that the Hon'ble Full Bench has not ruled that no interest, at all, should be granted on the future loss of earning but the ratio of the ruling is that a composite rate of interest should be fixed after taking into account the two components, i.e. the losses already incurred and the loss of future earnings.

c) Even in one of its latest rulings in: 'V. Mekala v. M. Malathi & Anr.'(Civil Appeal No. 4880/2014 arising out of SLP (C) No. 16561 of 2013, decided on 25.04.2014, the Hon'ble Supreme Court granted interest on the entire awarded compensation of Rs. 30,93,000, including a sum of Rs. 22,68,000/- granted as compensation on account of loss of income, in a case of personal injuries.

Contributed by:
Mr. Jatinder Singh Jamwal
Presiding Officer,
Motor Accident Claim Tribunal, Jammu

It is fervent request to all the learned Judicial Officers to take keen interest in contributing any write up of legal interest which may benefit others. The officers may also suggest other improvements which they desire to have in this Newsletter. The officers may suggest the topics on which they would like to have training programmes organized by the J&K State Judicial Academy. Concerted efforts of the Judicial Officers in collaboration with J&K State Judicial Academy is sure to bring about excellence in judicial dispensation.

(Editor)