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From the Editor's Desk

Judiciary in the changing world is confronted with many critical issues having the potential of laying down new jurisprudential foundations. The Information and Communication Technology (ICT) is fast changing in its dimensions. The Artificial Intelligence (AI) and Machine Learning (ML) are fast emerging as new frontiers which would change the very dynamics of the machine and human interface. The changing dynamics of ICT has threatened the very idea of privacy of the individuals, which now has been recognized as an important component of fundamental rights. Then the issue of privacy is also pitted against the issue of safety and security of State and in that context the right of the State to collect information necessary for securing the internal landscape and external borders.

In the recently concluded International Judicial Conference on "The Judiciary and the Changing World", organized by the Supreme Court of India on 22nd & 23rd of February, 2020, at Delhi, some of these new challenges faced by the Judiciary world over were flagged. The discussions in the conference were directed at trying to understand the possible challenges and the probable judicial responses in the context of existing Legal Frameworks and the dynamic changes that would require to be worked out to resolve the complicated issues. The need was also emphasised to learn from the work done in various jurisdictions across the world and to devise commonly accepted strategies. The developing jurisprudence in this regard needs the best brains to gather on a common platform and think together to come out with viable solutions to the difficult questions posed by the changing world dynamics. It is obvious that all the future questions cannot be answered in anticipation but at least a common thinking would create a robust platform for jurisprudential development.

In an era of Big Data, the global commercial entities are collecting a large volume of personal data of almost every individual that has made the individual privacy quite insignificant. This situation in the backdrop of the Right of Privacy being recognized as one of the fundamental rights, needs to be tackled with utmost sensitivity. Another related issue is the legal liability of these global entities in the jurisdictions across the world, though these may be localised in some specific countries. It poses a big challenge for the judiciary to confront theses global entities in the wake of law enforcement against them.

LEGAL JOTTINGS

"Human rights are individual and have a definite linkage to human development, both sharing common vision and with a common purpose. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. Empowerment of the people through human development is the aim of human rights."

Dr A.K. Sikri,J.* in *Jeeja Ghosh v. Union of India, (2016) 7 SCC 760, para 39

Criminal

Criminal Appeal No. 250 of 2020
Arun Singh & Others v. State of U.P. through its Secretary & Another
Decided on: 10th February, 2020

Hon'ble Supreme Court held that the offences for which the appellants have been charged are infact offences against society and not private in nature. Such offences have serious impact upon society and continuance of trial of such cases is founded on the overridding effect of public interests in punishing persons for such serious offences. It is neither an offence arising out of commercial, financial, mercantile, partnership nor such similar transactions or has any element of civil dispute, thus it stands on a distinct footing. In such cases, settlement even if arrived at between the complainant and the accused, the same cannot constitute a valid ground to quash the F.I.R. or the charge sheet.

Hon'ble Court also held that the essence of an offence under Section 493 IPC is the practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.

Civil Original Jurisdiction
Prathvi Raj Chauhan v. Union of India and others
Decided on: February 10, 2020

Hon'ble Supreme Court held as under:

"10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under the Act of 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions."

It is noted that the Act of 1989 mentioned herein means the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Also, the review petitions referred herein are the petitions for review of judgment in the case of Dr. Subhash Kashinath Mahajan v. The State of Maharashtra & Another, (2018) 6 SCC 454, wherein certain directions relating to arrests etc. in cases under the said Act, had been issued.

Criminal Appeal No. 770 of 2009
Anjana Agnihotri & Another v. The State of Haryana & Another
Decided on: February 6, 2020

Hon'ble Supreme Court held as under:

"In Jacob Mathew's Case this Court clearly held that in criminal law medical professionals are placed on a pedestal different from ordinary mortals. It was further held that to prosecute the medical professionals for negligence under criminal law, something more than mere negligence had to be proved. Medical professionals deal with patients and they are expected to take the best decisions in the circumstances of the case. Sometimes, the decision may not be correct, and that would not mean that the medical professional is guilty of criminal negligence. Such a medical profession may be liable to pay damages

but unless negligence of a high order is shown the medical professionals should not be dragged into criminal proceedings. That is why in Jacob Mathew's case (supra) this Court held that in case of criminal negligence against a medical professional it must be shown that the accused did something or failed to do something in the given facts and circumstances of the case which no medical professional in his ordinary senses and prudence would have done or failed to do. Therefore, this Court also directed in such cases an independent opinion of a medical professional should be obtained in this regard. We may make reference to the following observations in Jacob Mathew's case (supra). While concluding the judgment this Court gave certain guidelines. We need not refer to all, however Para 48(7)which is relevant is as under:

"(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent."

Further this Court held in para 52 as under:

"The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation."

Criminal Appeal Nos. 251-252 of 2020
Rajeshbhai Mulibhai Patel and others etc. v. State of Gujarat and another etc.
Decided on: February 10, 2020

Hon'ble Supreme Court held, that in terms of Section 45 of the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to adduce appropriate evidence to disprove the opinion of the handwriting expert.

Hon'ble Court held that When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit. (see para 18)

Hon'ble Court further held that once the issuance of cheque is admitted/ established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque. The nature of presumptions under Section 139 of the N.I. Act and Section 118(a) of the Indian Evidence Act are rebuttable. The burden lies upon the accused to rebut the presumption by adducing evidence. Until the accused discharges his burden, the presumption under Section 139 of N.I. Act will continue to remain. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed.

Writ Petition(Criminal) No s). 102/2007
Re exploitation of Children in Orphanages in the State of Tamilnadu v. Union of India & others
Decided on: February 10, 2020

Hon'ble Supreme Court held that sub-section (1) Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, makes it absolutely clear that a child alleged to be in conflict with law should be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only embargo created is that in case the release of the child is likely bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not

granted, the child cannot be kept in jail or police lockup and has to be kept in an observation home or place of safety. All JJBs in the country must follow the letter and spirit of the provisions of the Act. The JJBs are not meant to be silent spectators and pass orders only when a matter comes before them. They can take note of the factual situation if it comes to the knowledge of the JJBs that a child has been detailed in prison or police lock up. It is the duty of the JJBs to ensure that the child is immediately granted bail or sent to an observation home or a place of safety. The Act cannot be flouted by anybody, least of all the police.

Criminal Appeal No(s). 246-247/2020
Rakesh Malhotra v. Krishna Malhotra
Decided on: February 7, 2020

Hon'ble Supreme Court held that a petition under section 125 Cr.P.C is not maintainable in a case where permanent alimony stands granted to a wife under section 25 Hindu Marriage Act.

Hon'ble Court held as under:

"Ms. Shakil, amicus curiae invited our attention to some decisions including the decision of this Court in Sudeep Chaudhary vs. Radha Chaudhary (1997) 11 SCC 286. This decision was relied upon by the High Court while passing the order under appeal. In Sudeep Chaudhary, the initial order was passed by the Magistrate under Section 125 of the Code and subsequently in proceedings under the Act, interim maintenance was granted while exercising power under Section 24. It was in the context of these facts, this Court observed that despite the award of maintenance under Section 125 of the Code, the wife was competent to maintain the proceedings under Section 24 of the Act. But the present case is completely to the contrary.

Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequittor would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm."

Criminal Appeal No. 1753/2019
Shaik Mukhtar and another v. The State of Andhra Pradesh
(now State of Telangana)
Decided on: February 04, 2020

Hon'ble Supreme Court held that it is by now well settled by a catena of judgments such as the decision of this Court in Rakesh & Another V. State of Madhya Pradesh, 2011(12) SCC 512, that it is in the interest of justice to appoint an amicus curiae to assist the court where the accused is unrepresented, and that the Court may also refer the matter to the Legal Services Committee, which may appoint an advocate to represent the accused.

Hon'ble Court also reiterated that that the evidence of a minor, particularly when he is the sole witness, has to be scrutinized by the Court very carefully.

Criminal Appeal No. 271 of 2020
APS Forex Services Ltd. v. Shakti International Fashion Linkers & others
Decided on: February 14, 2020

Hon'ble Supreme Court reiterated that once the accused has admitted the issuance of cheque which bears his signature, there is presumption that there exists a legally enforceable debt or liability under Section 139 of the N.I. Act. However, such a presumption is rebuttable in nature, and the accused is required to lead the evidence to rebut such presumption.

Hon'ble Court further held that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the

presumption under Section 139 of the N.I. Act about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter the onus shifts again on the complainant to prove his financial capacity and at that stage the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of a cheque.

With respect to the facts involved herein, Hon'ble Court held that, considering the fact that the accused had admitted the issuance of the cheques and his signature on the cheque, and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there was a presumption under Section 139 of the N.I. Act that there existed a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant had been paid. No such evidence had been led by the accused, in the present case.

Criminal Appeal No. 264 of 2020
Santosh Prasad @ Santosh Kumar v. The State of Bihar
Decided on: February 14, 2020

Hon'ble Supreme Court reiterated that it cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy.

Hon'ble Court reproduced the following from the judgment in the case of *Rai Sandeep alias Deepu v. State (NCT of Delhi) (2012) 8 SCC 21*

"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

Criminal Appeal No. 286 of 2020
Sanjeev Kapoor v. Chandana Kapoor

and others
Decided on: February 19, 2020

Hon'ble Supreme Court observed that a closer look of section 125 Cr.P.C. itself indicates that the Court after passing judgment or final order in the proceeding under section 125 Cr.P.C. does not become *functus officio.* The section itself contains express provisions where order passed under section 125 Cr.P.C. can be cancelled or altered which is noticeable from section 125(1), section 125(5) and section 127 of Cr.P.C.

The Legislative Scheme as delineated by sections 125 and 127 Cr.P.C. clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in proceeding under section 125 Cr.P.C.

Section 125 Cr.P.C. has to be interpreted in a manner as to advance justice and to protect a woman for whose benefit the provisions have been engrafted.

Hon'ble Court also observed as under:

"30. We have noticed the judgment of this Court in *Mahua Biswas (Smt)(supra)* where this Court had activated the wife's claim of maintenance to put her at same position before parties compromised in proceeding under Section 125 Cr.P.C. Although learned counsel for the appellant submits that the judgment of this Court in Mahua Biswa (Smt) is not applicable, we do not agree with the submission. In the above case, order was passed by the Magistrate giving maintenance of token amount against which she moved to the High Court for revision where it was noticed that matrimonial case between the parties had stood compromised and one of the terms was that wife would go and live with her husband. The wife went to live with husband but later the spouse fell apart. Husband contended that the orders of maintenance could not be revived as there had arisen a fresh cause of action. The High Court had set aside the order of maintenance leaving the wife to approach again the Criminal Court for appropriate relief. This Court allowing the appeal had activated the wife's claim of maintenance and put her in the same position as before. The above judgment clearly indicates that this Court adopted the Course which avoided injustice to the wife."

Criminal Appeal No. 1674/2015
Assistant Director, Enforcement Directorate v. Ashok Ramchander Chugani and another
Decided on: February 18, 2020

Hon'ble Supreme Court reiterated the law laid in Suresh Nanda v. Central Bureau of Investigation, (2008) 3 SCC 674, that the Enforcement Directorate has no right to impound the passport, it can only be impounded by the concerned Passport Authorities.

In Suresh Nanda Case, it was held that the Passport Act being a specific Act whereas section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that section in the Cr.P.C as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.

While the police may have power to seize a passport under Section 102 Cr.P.C. if permissible within the authority given under the said section, it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport in exercise of power under Section 102 Cr.P.C., thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not.

Hon'ble Court observed that a seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. However, if after seizure of a property or document the said property or document is retained

for some period of time, then such retention amounts to impounding of the property/or document.

Even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, yet this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law. Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

CRR No. 9900005/2012
Joginder Singh v. State of J&K & Anr.
Decided on: February 28, 2020

Hon'ble High Court while considering the challenge against order of the trial court of framing charges against the accused, and taking note of the case law R. Kalyani Vs. Janak C. Mehta & Ors., reported in 2009 (1) SCC 516; State of Madhya Pradesh Vs. Yogendra Singh Jadon & Anr., Criminal Appeal No. 175 of 2020 decided on 31.01.2020, and Umesh Kumar Vs. State of AP, AIR 2014 SC 1106, made the following observations:

"Keeping the aforementioned principles of law in mind and applying the same to the facts of the case in hand, I am of considered opinion that Sessions Judge, while framing charge under section 269 of Cr.P.C. is obliged to scan the evidence collected during investigation for limited purpose in order to satisfy himself as to whether there are sufficient grounds to presume that accused has committed offence as is alleged. For the purpose of framing of charge, therefore, the Judge has to consider judicially whether on consideration of the materials on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed and that on the basis of said materials there is a reasonable probability of chance of accused being found guilty of the offence alleged. If the answer is in the affirmative, the judge will be at liberty to presume "that the accused has committed an offence". Charge is first notice to the accused of an accusation made against him. It should be conveyed to him in sufficient clearness and certainty what the prosecution intends to prove and which case the accused is to meet.

Section 4 (c) of Code of Criminal Procedure defines a "charge". Charge includes any head of charge when the charge contains more heads than one. As per Law, a charge may be precise formulation of a specific accusation made against a person of offence alleged to have been committed by him. The main purpose of framing charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.

At the time of framing charge, the Court has to prima facie consider whether there is sufficient ground to proceed against the accused and Court is not required to appreciate whether the material produced is sufficient or not for convicting the accused."

CRR No. 49/2008
Vinod Bhat and another v. State of J&K and Anr.
Decided on: February 28, 2020

While considering framing of charge, the trial court found infirmities in the investigation and directed further investigation to be carried out-Order Challenged in revision-Hon'ble High Court taking note of case law reported as Vinubhai Haribhai Malaviya vs The State Of Gujarat decided on 16 October, 2019 Criminal Appeal Nos. 478-479 OF 2017 and Minu Kumari v. State of Bihar (2006) 4 SCC 359, made the following observations:

"Further, courts are meant to do substantial justice to both complainant and accused. If prosecution agency deliberately leaves certain lacuna in final report and does not comply with the provisions of section 173(2) Cr.P.C., the

Magistrate has to interfere and pass appropriate orders.

In view of the settled position of law as cited above, the magistrate may direct for further investigation; and for that purpose the magistrate can also return the challan. Therefore, this petition is found to be devoid of merit and is, accordingly, dismissed."

CR No. 22/2020
M/s Amar Rice Mills & another v. Union Bank of India
Decided on: February 28, 2020

While hearing the challenge against the order of trial court, closing the right of defendant in filling written statement, Hon'ble High Court has made the following observations:

"As far as the period prescribed for filing the written statement under Order 8 Rule 1 CPC, is concerned, the same has been held to be directory in nature by judgments of Hon'ble the Supreme Court in Kailash v. Nanhku and others, 2005(2) RCR(C) 379 and Surender Singh and others v. Omvati and others, 2005(3) RCR(C) 786. It is further held therein that in exceptional circumstances the Court can extend time beyond 90 days for filing written statement so as to avoid injustice being caused to the parties.

In M/s R. N. Jadi & Brothers & others v. Subhashchandra, 2007(2) RCR(C) 139, Hon'ble the Supreme Court considered the issue. Trial Court in R. N. Jadi's case (supra) had granted time till a date which was beyond 90 days, however, written statement filed on that date was not accepted. Hon'ble the Supreme Court, while accepting the plea of the defendant in that case directed the trial court to take note of the written statement already filed by the defendant therein. The relevant observations of Hon'ble the Supreme Court are extracted below:-

8. Order VIII Rule 1 after the amendment casts an obligation on the defendant to file the written statement within days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

In the circumstances of the case, the time is extended and one opportunity is granted to the defendant to file return statement."

CRM(M) No.30/2020
Mohammad Maqbool Chopan/Pohloo v. Haji Ghulam Mohammad Mathanji
Decided on: February 10, 2020

The petitioner seeks quashment of complaint under section 138 NI Act on the ground that the cheque upon which complaint is based had already been cancelled, notice of which was given to

public through newspaper publication and there was no amount outstanding payable to the complaint-Hon'ble High Court taking note of the facts and law held as under:

On a bare perusal of the complaint it can be seen that there is a clear averment made by the complainant that the petitioner herein had issued a cheque for an amount of Rs. 21,50,000/- under his signatures drawn on J&K Bank Branch Bandipora in discharge of his liability towards the complainant which bounced with a noting from the concerned branch that the funds were „insufficient". The complainant has alleged in the complaint that a legal notice was served upon the petitioner requesting him to discharge his liability, which was not done leading to the filing of complaint. It is not the case of the petitioner that he had responded to the legal notice or that the legal notice had never been received by him. The defence set up by the petitioner is that the cheque had already been got cancelled by the petitioner and information published in the newspaper. This, by itself, may not be a good ground for quashing the complaint while the same may be a matter of defence for the petitioner before the court below.

Having gone through the complaint and the documents placed on record and having heard counsel for the petitioner at length, in my opinion this is not a fit case for quashing the complaint on the touchstone of the judgments discussed hereinabove.

SLA No.94/2018
State through Police Station, SHO Billawar District Kathua v. Sumashwar Kumar and another
Decided on: February 04, 2020

In a Criminal Acquittal Appeal, the application for condonation of delay filed by the State for condoning the delay of 297 days. It was contended on behalf of the State that delay was occasioned by inter-departmental consultations and exegesis involved in the process of communication between the officials at different levels. Held that: "Rules of limitation are prima facie rules of procedure and do not create any rights in favour of any person nor do they define 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 not to be liberally construed to such an extent that the rules are rendered inconsequential and reduced to a 'dead provision' on the Statute book. The Rules of Limitation are not superfluous or vestigial but are to be interpreted in a meaningful manner so as to save the system from anarchy. Why should there be a time frame prescribed under law for a legal remedy? Law of Limitation fixes a life span for every legal remedy. Time is precious and the wasted time would never resist. So, a life span must be fixed for each remedy. Unending period for launching the remedy may lead to an unending uncertainty and consequential anarchy. It is enshrined in maxim, "Interest reipublicae ut sit finis litium (It is for the general welfare that there should be an end to litigation). Every legal remedy must be kept alive for legislatively fixed period of time. 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, so far as the averments made in the application are concerned, it may be said that there is a gross negligence on the part of the applicant as no valid ground has been given for the reason as to why a delay of 297 days had occurred. There is so much of gross negligence on the part of the applicant that even the word 'sufficient cause' has not been used by him in the application. After the expiry of period of limitation a vested right is created in a party which cannot be defeated easily. The delay of 297 days (approximately one year) has occurred and applicant has miserably failed to satisfy the court with regard to delay in filing the acquittal appeal. The grounds mentioned are self created, in order to create illusion of facts that applicant has sufficient grounds for condoning the delay. No sufficient grounds have been shown for condoning the delay."

"The history of mankind has been one of conquests over the inevitable. The resignation to fate has never been the accepted philosophy of human life. Challenges have to be met to make human life more meaningful. This is how the constitutional philosophy behind Article 21 has been evolved by the Indian courts over a long period of time."

Ranjan Gogoi, J.* in *S. Rajaseekaran v. Union of India, (2014) 6 SCC 36, para 23

CIVIL

Special Leave Petition (C) No. 27598 of 2016
Atma Ram v. Charanjit Singh
Decided on: February 10, 2020

Hon'ble Supreme Court held that Section 149 CPC confers a discretion upon the Court to allow a person, at any stage, to pay the whole or part of the court fee actually payable on the document, but which has not been paid. Once the Court exercises such a discretion and payment of court fee is made in accordance with the said decision, the document, under section 149, shall have the same force and effect as if such fee had been paid in the first instance.

Hon'ble Court also held as under:

"7. As a matter of fact, if the suit was actually one for specific performance, the petitioner ought to have at least valued the suit on the basis of the sale consideration mentioned in the agreement. But he did not. If the suit was only for mandatory injunction (which it actually was), the only recourse open to the petitioner was to seek an amendment under Order VI, Rule 17 CPC. If such an application had been filed, it would have either been dismissed on the ground of limitation (K.Raheja Constructions Ltd., vs. Alliance Ministries) or even if allowed, the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the plaint (Tarlok Singh vs. Vijay Kumar, Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit vs. Ramesh Chander). Therefore, a short-cut was found by the petitioner/plaintiff to retain the plaint as such, but to seek permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance. Such a dubious approach should not be allowed especially in a suit for specific performance, as the relief of specific performance is discretionary under Section 20 of the Specific Relief Act, 1963."

Hon'ble Court also observed as under:

"....But we would not allow the petitioner to take advantage of the same by taking shelter under Section 149 CPC, especially when he filed the suit (after more than three years of the date fixed under the agreement of sale) only as one for mandatory injunction, valued the same as such and paid court fee accordingly, but chose to pay proper court fee after being confronted with an application for the dismissal of the suit. Clever ploys cannot always pay dividends."

Hon'ble Court further held that a person who issued a legal notice on 12-11-1996 claiming readiness and willingness, but who instituted a suit only on 13-10-1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance.

Civil Appeal No. 1209 of 2020
Sridhar and another v. N. Revanna and others
Decided on: February 11, 2020

Hon'ble Supreme Court held that section 10 of the Transfer of Property Act expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void.

Hon'ble Court also held as under:

"21. A perusal of the gift deed as noted above indicates that Muniswamappa gifted the immovable

property to his grandson, N. Revanna. Gift was not in favour of any unborn person rather gift was in favour of N. Revanna who was a minor, five years old. The reference of donee and his younger brothers or their male children was made while enumerating the conditions as contained in the gift deed. The condition was put on the donee and his younger brothers who may be born after the execution of the gift deed. The condition put on person unborn is entirely different from execution of gift deed in favour of a person who is not born. Thus, the gift was clearly a gift in favour of defendant No.1 and not in favour of unborn person, thus, Section 13 has no application in the facts of the present case."

Hon'ble Court also reproduced inter alia the following from the judgment in the case of Smt.Prem Kali vs. Deputy Director of Consolidation, Sitapur and others, 2016 (116) ALR 794, followed the earlier judgment of the High Court. In paragraph 15 following was laid down:

"15. A bare reading of Sections 10 and 126 of Act, 1882, shows that Section 10 lays down that in a transfer, the condition restraining alienation, cannot be inserted. Section 126 of Act, 1882 lays down that on happening of certain condition, not depended on the will of the donor, the gift can be suspended or revoked. Present case is not covered under Section 126. According to the respondent, gift can be conditional. But there is no question as to whether a gift can be conditional but the real question is that condition, which has been specifically prohibited under Section 10 of Act, 1882 can be imposed in the gift or not. There is no reason to hold that the condition which is specifically prohibited under Section 10 of Act, 1882 is not applicable to gift."

Civil Appeal No. 800 of 2020
Mohammade Yusuf and others v. Rajkumar and others
Decided on: February 05, 2020

Hon'ble Supreme Court held that by conjoint reading of section 17(1)(b) and Section 17(2)(vi) of Registration Act, it is clear that a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration, although any decree or order of a Court is exempted from registration by virtue of Section 17(2)(vi).

With respect to adverse possession being used as a cause of action or a defence, the Hon'ble Court also held as under:

"9. The judgment of Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and Another (supra) has now been expressly overruled by a Three Judge Bench judgment in Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others, (2019) 8 SCC 729. …. In paragraph 62, following has been laid down:

"62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title

by adverse possession, can sue and maintain a suit."

Civil Appeal No. 1485 of 2020
Malluru Mallappa (D) Thr. LRS v. Kuruvathappa and others
Decided on: February 12, 2020

Hon'ble Supreme Court held that is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and laws decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions

Hon'ble Court also held that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31, and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

Civil Appeal No. 9046 of 2019
K Sivaraman & ors v. P Sathishkumar & Anr.
Decided on: February 13, 2020

Hon'ble Supreme Court held that the Employee's Compensation Act 1923 is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. The amendments to the 1923 Act have been enacted to further this salient purpose by either streamlining the compensation process or enhancing the amount of compensation payable to the employee.

Hon'ble Court held as under:

"Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs 4000 even where an employee was able to prove the payment of a monthly wage in excess of Rs 4,000. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all employees compensation for accidents which occur in the course of and arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the Legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment."

Civil Appeal No. 1599 of 2020
M/S Dharmara Tnakara Rai Bahadur Arcot Narainswamy v. Mudaliar Chattram & other charities & ors.
Decided on: February 14, 2020

While relying on the judgment in the case of SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited, Hon'ble Supreme Court held that the Hon'ble Court had in unequivocal terms held that when a lease

deed or any other instrument is relied upon as containing the arbitration agreement, the Court is required to consider at the outset, whether the document is properly stamped or not. It has been held, that even when an objection in that behalf is not raised, it is the duty of the Court to consider the issue. It has further been held, that if the Court comes to the conclusion, that the instrument is not properly stamped, it should be impounded and dealt with, in the manner specified in Section 38 of the Stamp Act, 1899. It has also been held, that the Court cannot act upon such a document or the arbitration clause therein. However, if the deficit duty and penalty is paid in the manner set out in Section 35 or Section 40 of the Stamp Act, 1899, the document can be acted upon or admitted in evidence. The provisions that fell for consideration before the Court were analogous with the provisions of Sections 33 and 34 of the Karnataka Stamp Act, 1957.

Civil Appeal No. 1118 of 2016
Sobha Hibiscus Condominium v. Managing Director, M/s. Sobha Developers Ltd. & Anr
Decided on: February 14, 2020

Hon'ble Supreme Court held that the complainant must be either a 'consumer' within the meaning of Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act, to maintain a complaint under the provisions of the Act.

Civil Appeal No. 1670 of 2020
Soumitra Kumar Nahar v. Parul Nahar
Decided on: February 18, 2020

Hon'ble Supreme Court reiterated that it is undisputed that the rights of the child need to be respected as he/she is entitled to the love of both the parents. Even if there is a breakdown of marriage, it does not signify the end of parental responsibility. It is the child who suffers the most in a matrimonial dispute. It is also well settled by the catena of judgments of this Court that while deciding the matters of custody of the child, primary and paramount consideration is always the welfare of the child. If the welfare of the child so demands, then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The Courts should decide the issue of custody on a paramount consideration which is in the best interest of the child who is the victim in the custody battle.

Hon'ble Court also observed that all the endeavor is to be made to resolve the matrimonial disputes in the first instance through the process of mediation which is one of the effective mode of alternative mechanism in resolving the personal disputes but if it could not make possible in resolving through the process of mediation, further endeavor must be made by the Court through its judicial process to resolve such personal disputes as expeditiously as possible. Delay in decision certainly causes a great loss to the individual and deprive him/her of their rights which are protected under the Constitution and with every passing day, the child pays heavy price of being deprived of the love and affection of their parents for which they were never at fault but are always the loser which at no stage could be compensated monetarily or otherwise.

Petition for Special Leave to Appeal (C) No. 23599/2018
Ashok Kumar Kalra v. Wing Commander Surendra Agnihotri and others
Decided on: November 19, 2019

Hon'ble Supreme Court reiterated that the procedural justice is imbibed to provide further impetus to the substantive justice.

Hon'ble Court, however, also held that providing unlimited and unrestricted rights in the name of substantive justice, in itself will be detrimental to certainty, and would lead to the state of lawlessness.

Hon'ble Court held as under:

"....Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give

absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

i. Period of delay.
ii. Prescribed limitation period for the cause of action pleaded.
iii. Reason for the delay.
iv. Defendant's assertion of his right.
v. Similarity of cause of action between the main suit and the counter-claim.
vi. Cost of fresh litigation.
vii. Injustice and abuse of process.
viii. Prejudice to the opposite party.
ix. and facts and circumstances of each case.
x. In any case, not after framing of the issues."

MA No.257/2018
United India Insurance Company v. Zahoora Begum and others
Decided on: February 02, 2020

In a Motor Accident Claim, the claims Tribunal passed an award for an amount of Rs. 2262166/- on account of death of a person engaged for loading & unloading of luggage from the vehicles at Sabzi Mandi, New Delhi.-Appeal against-Hon'ble High Court repelled the contention of the Appellant Insurance Company that the deceased had fallen down from the roof of the bus of his own and there was no negligence of the driver.-Held that: The tribunal has based its decision on the evidence led by the claimants to prove that the driver had moved the bus without noticing the deceased unloading the luggage, and the owner and driver had only given shaky and unconvincing evidence, as also the insurance company didn't lead any evidence. Therefore, no error has been committed by the Tribunal in appreciating evidence.

WP (C) No. 438/2020 (O & M)
Shakuntla Devi and Another v. Union Territory of J&K and Others
Decided on: February 14, 2020

Hon'ble High Court while considering the claim in respect of compassionate appointment made the following observations:

"Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by Hon'ble the Supreme Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.

The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

In Umesh Kumar Nagpal v State of Haryana & Ors, (1994) 4 SCC 138, Hon'ble the Supreme Court considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:–

"The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden

crisis. The object is not to give a member of such family a post much less a post for post held by the deceased..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned..... The only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis." (Emphasis added)

An "ameliorating relief" should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

Considering the fact that the policy for providing employment on compassionate basis is to take care of immediate need of the family of the deceased employee on account of loss of the bread earner and the same is not an additional source of recruitment, the claim made for appointment more than a decade after the death of the deceased employee deserves to be rejected."

CM (M) No. 10/2020
Rafiq Ahmad Wani & Ors v. The Jammu and Kashmir Bank Ltd. & Ors.
Decided on: February 06, 2020

Order passed by Chief Judicial Magistrate in application moved under section 14 of SARFAESI Act challenged on the grounds that Chief Judicial Magistrate is not authorized to pass such order, the petitioner hasn't been given opportunity of being heard before passing the order and that the satisfaction drawn by the magistrate is based on insufficient material- Held that:

Section 14 (1) of the Act of 2002 not only gives powers to the District Magistrate, but also to the Chief Metropolitan Magistrate to assist the secured creditor in taking possession of the secured asset. Section 1 (a) provides that the District Magistrate or the Chief Metropolitan Magistrate/ for the purpose of Chief Judicial Magistrate, may authorize any officer subordinate to him to take possession of such assets relating thereto and forward the said assets to the secured creditor. The learned Magistrate, in his order, impugned in the instant petition, has held that the nomenclature; Chief Metropolitan Magistrate used in Section 14 of the Act of 2002, is inclusive of Chief Judicial Magistrate functioning in non-metropolitan areas and that the Chief Judicial Magistrate shall have jurisdiction to entertain an application made by a secured creditor under Section 14 of the Act of 2002. In order to support this view, the learned Magistrate, has placed reliance on the law laid down by Hon'ble the Supreme Court in case titled 'The Authorized Officer, Indian Bank v. D. Visalakshi & Anr.' rendered in 'Civil Appeal No.6295/2015'. We have gone through the judgment aforesaid passed by the Hon'ble Apex Court and find that the Chief Judicial Magistrate has been declared as equally competent to deal with an application moved by the secured creditor under Section 14 of the Act of 2002 in non-metropolitan areas. That being so, we are of the view that the submission of the learned counsel for the petitioners that the Chief Judicial Magistrate could not proceed ahead in the application filed by the respondent Bank for taking possession of such secured assets to the secured creditor is not tenable and, as such, shall stand rejected.

The next contention raised by the learned counsel for the petitioners that the information, in tune with Section 14 of the Act of 2002, has not been accompanied by the Affidavit of the authorized officer of the Bank which has a direct bearing on the decision of the learned Magistrate and, thus, renders the same bad in law is also unsustainable. This is so because in terms of Section 14 of the Act of 2002, the Magistrate is required to satisfy itself as regards the contents of the Affidavit and pass suitable orders for the purpose of taking possession

of the secured assets. The said satisfaction of the Magistrate, contemplated under the second proviso to Section 14(1) of the Act of 2002, does not require the Magistrate to examine the legal niceties of the transaction. In the case on hand, the learned Chief Judicial Magistrate has examined this issue in detail and has recorded satisfaction qua the contents of the Affidavit strictly in tune with Section 14 of the Act of 2002 and, thus, we do not find any illegality or perversity in the order impugned passed by the learned Magistrate in this regard.

It was also the case of the learned counsel for the petitioners before us that no opportunity of being heard was provided to the petitioners by the Chief Judicial Magistrate before passing the order impugned. The law is that there is no requirement of providing any opportunity of being heard to the borrower before passing any order on the application filed by the secured creditor before the Magistrate under Section 14 of the Act of 2002. The Magistrate, after satisfying itself in tune with the mandate of Section 14 of the Act of 2002, is empowered to proceed ahead with the said application moved by the secured creditor and pass appropriate orders thereon. It is apposite to mention here that the Bank has the option either to take possession of the secured asset(s) by having recourse to Rule 8(1) of the Rules of 2002 or then may approach the Chief Metropolitan Magistrate/ District Magistrate/ Chief Judicial Magistrate, as the case may be, for seeking such possession. Admittedly, all the safeguards and the procedures provided in Section 13 of the Act of 2002 have been complied with by the secured creditor before initiating proceedings in terms of Section 14(1) of the Act of 2002. This submission, thus, being without any merit, is also not accepted by us.

CM(M) No.02/2020
Altaf Ahmad Bhat v. Vice Chairman, SDA and ors.
Decided on: January 28, 2020

Hon'ble High Court while considering the power of appellate court to stay the impugned order where the appeal is delayed and application is moved for condonation of delay in filling appeal, observed as under:

"In the aforesaid milieu, it would be apt to have glimpse of Rule 3-A of Order XLI of the Code of Civil Procedure. It provides:

"3-A. Applications for condonation of delay. —

(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2)If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal."

"It is pertinent to mention here that Rule 3-A of Order XLI CPC, comprising of sub-rules (1) and (2), was inserted to secure determination of question as to the limitation at the stage of admission of appeal. Sub-rule (3) has been inserted so that the Court shall not make an order of stay till Application for condonation of delay is decided. In this regard I am fortified by judgements rendered in the cases of S.M. Iqbal (supra) and S. M. Chopra (supra). It has been held that an appeal filed beyond limitation period must not only be accompanied by an application setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within limitation period, but even no stay should be granted by the Appellate Court unless application for condonation of delay is allowed. Having said that, the order impugned could not stand the legal scrutiny and is, thus, liable to be set-aside."

ACTIVITIES OF THE ACADEMY

SPECIAL TRAINING PROGRAMME ON GENDER JUSTICE, JUVENILE JUSTICE AND JUDICIAL ETHICS

Prof. Ved Kumari from Law Campus, Delhi University continued her deliberations on POCSO Act and Juvenile Justice Act in the Special Workshop organized for Trainee Munsiffs of 2019-20 Batch. She talked about the broader overview of the two legislations and apprised the participants about the need for special enactment of these laws. Talking about the issues relating to children either as victims or as juveniles in conflict with law, she highlighted that the issues have to been seen from the perspective of child as a special person and his rights recognized under UN Conventions and National Policy Framework for the Children. She also drew distinction in the social and psychological construct of the child and that of adults. She also talked about the salutary provisions of the two legislations in tune with special welfare requirements of the children and also highlighted the gaps in the legal framework.

The resource person engaged the participants in the deliberations through case study and the discussions based on evaluation of the case study. The participating Trainee Officers got sufficient exposure to the special requirements of the two legislations that would be helpful for them to deal with children brought to the courts in connection with the legal processes under the two Acts.

WORKSHOP ON REPRODUCTIVE RIGHTS AND THE CONSTITUTION OF INDIA AND SENTENCING POLICY IN INDIA

J&K Judicial Academy organized two days workshop on 10th & 11th Feb. 2020 on two subjects namely "The Reproductive Rights and the Constitution Of India , and Sentencing Policy in India" , for the Trainee Munsiffs of Batch 2019-20. Prof. Mirnal Satish from National Law University, Delhi and Former Chairperson, Delhi Judicial Academy was the resource person. Prof. Mirnal holds the rare distinction of working as Academician and Judicial Education and in that he has been involved in working on the two subjects extensively at the level of research as well as in teaching. He was also a member in the Justice Verma Commission constituted by the Government of India post Nirbhaya episode to suggest the requisite changes required in the legal framework involving Sexual Offences.

Prof. Mirnal discussed the scheme of constitution of India and other legislations like Medical Termination of Pregnancy Act, PNDT Act and POCSO Act recognizing the right of a female to carry pregnancy and to terminate it in appropriate circumstances. He highlighted the competing Right to Privacy, Right to Life and Liberty and legal recognition of Rights of unborn Child, as well as the Medico-legal issues involved in the process of reproduction.

On the Sentencing Policy in India, Prof. Mirnal has been involved in research. Having the advantage of the expertise of the resource person on the subject, the Trainee

Officers were immensely benefitted. The resource person discussed various aspects of the sentencing and the principles involved. He also discussed series of Judicial pronouncements from the Supreme Court which have given directions and guidelines concerning the sentencing. He told the participants that in absence of structured sentencing policy these judicial pronouncements have tried to fill-up the vacuum. However there is urgent need to frame a sentencing policy in order to achieve the certainty in the process of sentencing.

WORKSHOP ON JUDGESHIP AND LAWYERING IN THE AGE OF TECH, DATA AND ARTIFICIAL INTELLIGENCE; THE ART OF JUDGEMENT WRITING: BROAD Dos AND DONOTs AND INTERNATIONAL BEST PRACTICES; ISSUES RELATING TO ELECTRONIC EVIDENCE AND CYBER CRIME/CYBER FORENSICS.

J&K Judicial Academy organized workshop on the subjects "Judgeship And Lawyering in the Age of Tech, Data And Artificial Intelligence; The Art Of Judgement Writing: Broad Dos And Donots And International Best Practices; Issues Relating To Electronic Evidence and Cyber Crime/Cyber Forensics" on 18th & 19th of February, 2020 for Trainee Munsiffs of 2019-20 Batch. Mr Bharat Chug, Advocate, Partner in L&L Law Offices (Formerly a Judicial Officer in Delhi Judiciary) was the resource person assisted by Ms Tahaa Khan, Advocate working as Associate. On the subject of Judgeship & Lawerying in the Age of Tech, Data And Artificial Intelligence, Mr Bharat Chug talked about the latest technological developments in the field of ICT and highlighted the challenges which are likely to be faced by the judiciary on the advancement of technology. He also discussed the issues relating to Privacy, Security of State and individual preferences viz-via the Right of the Governments and private incorporated companies to collect data from the individuals. He also talked about the preparedness of the Judicial Institutions to deal with the challenges so posed by the technology.

On the subject of the Art of Judgement Writing, Mr Bharat Chug deliberated on various aspects of Judgement Writing. While discussing the provisions in the Civil & Criminal Procedure, he also discussed the Judicial Precedence delivered by the Supreme Court and other High Courts on the subject. He also gave an overview of the writings of celebrated authors on the subject. Referring to various Judicial Pronouncements of renowned judges from across the world, he highlighted different styles of writing Judgements. He also gave an insight into International Best Practices in Judgement Writing and related it to the local jurisdictions across the India.

On the issues relating to Electronic Evidence and Cyber Crime/Cyber Forensics, Mr Chug discussed the legal framework pertaining to Cyber-Law. He gave an introduction to various provisions of IT Act, 2000 and discussed the changes made in the Penal Law, Procedural Law and the

Evidence Act. In the matter of appreciation of evidence in the cases involving electronic evidence, he discussed various Judicial Precedents in the context of applicability of Section 65-A, 65-B of Evidence Act. He highlighted various special features of electronic evidence.

WORKSHOP ON HANDLING SURVIVORS OF SEXUAL OFFENCE AT HOSPITALS

J&K Judicial Academy organized one day Workshop on "Handling Survivors of Sexual Offence at Hospitals" on 23rd February, 2020 for District Judges, Senior Sub-Judges and Doctors. The programme was conducted by Sh. Jagadeesh Narayana Reddy and Dr. Padma Deosthalli. Both the resource persons are pioneers in the field and have conducted hundreds of such programmes to create awareness on the subject.

Dr. Padma Deosthalli gave an overview of the social and psychological context involved in the Sexual Offences. She talked about the social responses in respect of the survivors of Sexual Violence and the psychological trauma through which a survivor has to go through in the sexual assaults. She also discussed the responsibility and duty of stake-holders in the Justice dispensation to facilitate the survivors to get justice.

Dr. Reddy in his deliberations talked about the provisions of law dealing with collection, preservation and appreciation of Evidence in respect of the Sexual Offences. He pointed out that the medical officers are under obligation to render full assistance to the investigating officer in medico-legal cases, sexual offences also included in them. However in sexual offences the medical officer and the investigating officer are required to be utmost sensitive in collection of Evidence. They have to be aware about the psychological aspects of the survivor while collecting evidence. Not just from the point of view of collection of Evidence but from the point of view of medical treatment also, a doctor has huge responsibility. Despite of complicated legal processes, a doctor has to see the survivor as a patient requiring medical treatment which he can't delay in offering. This responsibility can't be forgotten merely for the reason that a medico-legal case has been registered. Then it is a responsibility of a doctor to be able to understand how to collect the best evidence. This depends upon fact situation of each case.

Dr. Reddy apprised the participants of the guidelines issued by Ministry of Health, Government of India dealing with the role of doctors in sexual offences. He highlighted the need to follow the guidelines and to develop best practices in handling such cases. During the deliberations in the Workshop, various case studies were undertaken by the participants to understand the practical aspects of the guidelines aforesaid.

INTERACTION OF ADVOCATES WITH THE TRAINEE MUNSIFFS

During the Induction Training Programme prominent Advocates from Jammu Province interacted with the trainee officers on various aspects of Procedural Laws, Substantive Laws and Court Culture.

Mr Leela Karan Sharma, Senior Advocate, Mr. Sanjay Kakkar, Advocate, Mr. Rahul Bharti, Advocate and Mr. Rohit Kapoor, Advocate interacted with the trainee officers.

Mr. Leela Karan Sharma, Senior Advocate discussed the legal requirements in dealing with applications for interim injunction in the civil suites. Referring to the landmark judgements of the Supreme Court and various High Courts, Mr. Sharma discussed the practice and procedure for dealing with such applications.

Mr. Sanjay Kakkar, Advocate talked about the court culture and the role of Advocates as officers of the court. He discussed the expectations of the litigants and the lawyers from the court in dealing with the civil matters. According to him, expeditious dispensation of Justice is the foremost expectation and the slow pace of Civil Cases causes lot of frustration among the litigants.

Mr. Rahul Bharti, Advocate talked about trial of civil cases and the ways and means to expedite the civil trials. He highlighted the need to stick to the procedural law in letter and spirit. He extorted that the procedural law is meant to give certainty to the trials and fair opportunity of participation to the parties involved. Adherence to the procedure is requisite though in cases were justice demands, the procedure can be tinkered with without changing the substance of it. He also pointed out that the procedural law has inherent provisions to ensure timely disposal of the cases.

Mr. Rohit Kapoor, Advocate in his discourse on Commercial Law: Scope & Future gave an overview of the Commercial Law. He discussed the current developments in the field of Commercial Law and said that the dynamics of law are fast changing in the world of economy driving the development. Although the scope of socialism is not to be forgotten, pace of development and globalization of the world needs to be taken care of. He also discussed the advancements made by arbitration law and the role of Mediation in settlement of disputes involving commerce and economy. He called upon the trainee officers to update the knowledge regarding the commercial aspects of litigation, which is likely to increase with every passing day.

JUDICIAL OFFICER'S COLUMN

LEGAL EMPOWERMENT OF WOMEN AND LAWS IN PLACE

Legal empowerment of women in the changing scenario is a sine-qua-non. Print media and other social media are often seen quoting terms like 'women empowerment', 'gender equality' and 'women rights' that call out unanimously to the modern educated and liberated female folks that belong to the rapidly changing 21st century. Yet, this transformation on the flip side has several **pit falls** and **cracks** notwithstanding the rapid **liberation** of women especially in urban areas. Every other day, we come across cases of violence against women harassment, molestation, eve teasing and stalking and many more.

To us women safety is our prime concern with the everyday rise in the number of cases of violence against women. Special provisions in the Constitution of India have been created exclusively for the protection of women but these laws have been amended from time to time and several inclusions to the old acts which also done from time to time but the irony is that inspite of so many laws, still the position of women is **vulnerable**. We yet need stringent system in place to enforce these laws effectively**.** Even today, women fear going out from their safe zone in the night. They face fear and are victims of sexual abuse even at public places. In public transportation, women don't have safety and most tough is that they don't prefer to travel alone. Women of today are **multi-taskers**. They not just manage their household course and look after their family but also act as bread winners, earning money and supporting their

families. Women face many hurdles at their work places; some of them face harassment at work places. Women fear for remarks they would receive from the society and even avoid talking about work place issues in public. It is high time that women stand up for their rights and speak about not letting their **dignity** be at stake at work places. By incorporating strict rules and regulations, enforcement of strict laws will help some extent in instilling fear in the minds of culprits. Our country would become fully developed if the women of the country start feeling safe for them and can live without fear without losing their dignity.

Constitution Protection For Women

The Constitution of India has laid out special provisions that empower women to use them whenever the scenario demands their usage but the sad part of the whole picture is that still not many women are aware that such protections for women exist under law. Even social media propagation for these important provisions is relatively very low. For strengthening of female population, 17 powerful rights for women are there in the Constitution, for instance:- 1. Right to equality before law and equal protection in the matter of employment; 2. Right to equal pay at work places; 3. Right to dignity and decency with respect to women; 4. Right to act against sexual harassment at work places; 5. Right to fight against domestic violence and abuse; 6. Right to maintain anonymity in cases of sexual harassment victims; 7. Right to free legal aid and counselling services; 8. Right to file complaint through virtual modes; 9. Right against derogatory remarks/indecent representations; 10. Right to fight against being stalked; 11. Right to file zero FIR; 12. Right to avail maternity benefits; 13. Right to ancestral property under Hindu Succession Act; 14. Right to deny child marriage; 15. Right to disagree; 16. Right to register police complaint; and 17. Right to not go to police station for interrogation.

Women should be aware of dangers lurking against them and protect themselves through self defence and also through appropriate usage of legal measures to help law in punishing the culprits. Besides legal rights of women, there are other basic human rights of women for instance:- 1. Right to good health and medical aid; 2. Right to be protected in the office (sexual harassment); 3. Right to equality before law; 4. Right to privacy and safe environment; 5. Right to free legal aid in case the woman is having insufficient means to survive and his spouse is incapable of managing the financial aid; 6. Right to victim compensation; 7. Right to Property; 8. Right to Franchises (Vote); 9. Right to maintenance in case of desertion by husband, 10. Right against not to be treated as property; 11. Right against honour killings; and 12. Right against forced abortion and sterilization.

Women around the globe are dis-proportionately affected by climate change and environmental hazards and there is need to provide the platform of discussion in protecting human rights of women in the context of environmental degradation and climate change. Women must be reminded of their duties while seeking rights. Rights vis-a-vis duties of women are when we talk about the rights whether they are human rights of women must emphasise that the women is duty bound i.e.-"1. Not to mislead the prosecution and falsely implicate the accused persons; 2. Not to resile from their statements made in Court of law before Magistrate or before a judge or before a police officer; 3. Duty to maintain neat and clean environment and duty to assist to maintain law and order as and when required." It has been found that not only women are discriminated but rather has also affected the women folk on the grounds of health hazards and environmental issues on the pollution and affluence.

The moot question before us in the changing scenario is protection of women at work places as well as at domestic front too and further handling survivors of sexual violence, both by medical as well as legal fraternity. Today lot of violence is happening, be it at work places or at Domestic front. Even small children are also facing sexual abuse and the biggest challenge to judicial system is protection of

these vulnerable victims and punishment of offenders of law or perpetrator of crime. Parents' role is also critical at the very outset. They should support the children or their major daughter for reporting the crime whenever it is found that she or he is victim of sexual violence. Society needs to be sensitized regarding protection of women/ children from violence and bringing culprits to book by reporting crime and by giving them moral, physical and financial support if need arises. Even the community head of a village has a pivotal role to play but sadly role of parents, Community head and medical fraternity at times is also very demoralizing and disappointing. The intention of the legislature is rehabilitation of the victim of the crime and to provide her safety and prompt justice by supporting her financially, also through legal aid if she is economically weak and unable to bring its legal battle to logical conclusion. Though numerous laws have been incorporated in the constitution and in the Penal Code but despite Union Health Ministries guidelines even the doctors are also not following them in letter and spirit, consequently many rape cases/cases of sexual violence end in acquittal for want of proper medical evidence. Despite so many criminal law amendments from time to time i.e. from 2013 to 2018 and tremendous changes in IPC 1860, CrPC 1973, IEA 1872 the culprits go scot free and the conviction rate in the country is very low. So it can be said safely that all the stakeholders i.e. judiciary, police, medical fraternity and media are still not living up to the expectations of the society for curbing the menace of crime.

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Procedure for Recording Evidence of Deaf and Dumb Witness

Section 119 of the Indian Evidence Act, 1872 provides:

"119. Dumb witnesses.- A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

While dealing with the mode of recording, non-administration of oath to a deaf and dumb witness and involving an interpreter for understanding the evidence of such a witness, the Supreme Court in the decision reported as (2012) 5 SCC 789, State of Rajasthan v. Darshan Singh @ Darshan Lal held:

"26. The object of enacting the provisions of Section 119 of the Evidence Act reveals that deaf and dumb persons were earlier contemplated in law as idiots. However, such a view has subsequently been changed for the reason that modern science revealed that persons affected with such calamities are generally found more intelligent, and to be susceptible to far higher culture than one was once supposed. When a deaf and dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law requires that there must be a record of signs and not the interpretation of signs."

In Meesala Ramakrishan v. State of A.P., (1994) 4 SCC 182 : 1994 SCC (Cri) 838, Hon'ble Supreme Court has considered the evidentiary value of a dying declaration recorded by means of signs and nods of a person who is not in a position to speak for any reason and held that the same amounts to a verbal statement and, thus, is relevant and admissible. The Court further clarified that "verbal" statement does not amount to "oral" statement. In view of the provisions of Section 119 of the Evidence Act, the only requirement is that the witness may give his evidence in any

manner in which he can make it intelligible, as by writing or by signs and such evidence can be deemed to be oral evidence within the meaning of Section 3 of the Evidence Act. Signs and gestures made by nods or head are admissible and such nods and gestures are not only admissible but possess evidentiary value.

Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing, if literate or through signs and gestures, if he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasized body language and facial expression enabled the audience to comprehend the intended message.

To sum up, a deaf and dumb person is a competent witness. If in the opinion of the court, oath can be administered to him/ her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath. It is further required to be noted that the purpose of cross-examination is to ascertain the truth in relation to the accusation leveled against an accused person and discretion is vested in the Court to control the cross-examination. A party cross-examining a deaf and dumb witness like any other witness is required to act within the bounds of law and cannot be permitted to cross-examine the witness all and sundry on irrelevant questions.

(Contributed by:
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ACCURACY AND RELIABILITY OF FINGERPRINT EVIDENCE – AN EMPIRICAL STUDY

Introduction

A fingerprint is an impression left by and pattern made by the friction ridges of a human finger. It provides an accurate and infallible means of personal identification. A person may assume different names or change his personal appearance but the fingerprints serve to reveal the identity of a person despite his personal denial. Moreover the simplicity and economy of fingerprint identification has established it as an indispensable aid of law enforcement in modern era. Fingerprint evidence connotes the evidence of all those connected with the fingerprint in question in any case. In particular, it exhibits the enlargements of latent impressions in form of photographs, found at the crime scene as well as the opinion of the fingerprint expert summoned as a witness in court of law. A fingerprint expert may be called upon to furnish evidence in a civil or criminal case. In any civil case, the expert is generally called upon to express his opinion to the fingerprint attested to a document. In criminal cases, the expert has to give his opinion on the identity or non-identity of a print or prints produced in the courts.

There is no hard and fast rule for an expert to follow in discharge of duties. It is well understood that an expert is not merely called upon as a witness to give his opinion, but he should also be able to support it with sound reason. It often happens that in several cases, the fingerprints obtained for comparison are partial or deformed or may be only a fragment of print. In such cases, comparison of the partial fingerprints is to be made with the fingerprints taken methodologically to establish its identity and to check how many rich characteristics are available. Thus in order to prove whether a particular fingerprint is identical or not, with a fragment or partial, blurred

or deformed impression which has been collected from crime scene, at least a minimum number of definite prints of agreement are to be established. Opinions differ as to what should be minimum number of points of agreement in order to establish identity between two sets of impressions.

Fingerprint Evidence – A Historical Perspective

Contrary to the popular image of fingerprinting as a tool for forensic investigation at present date, fingerprint identification was developed for the purposes of criminal record keeping, rather than forensics. Specifically, fingerprinting was developed in order to facilitate the storage and retrieval of criminal histories by the state. Under reformist jurisprudence, a criminal history was desirable and crucial because it enabled the state to draw sharp distinctions between first-time offenders and what were variously known as "habitual criminals," "incorrigibles," "repeat offenders," or "recidivists," a term which was coined in both English and French in the late nineteenth century. Attempts to retrieve criminal histories filed according to names could be evaded by the simple expedient of adopting an alias. In early 1880s, two new technologies emerged which promised to solve the problem of aliases by linking criminal records, not to names, but to some representation of the criminal's body. One of these systems is fingerprinting. The other, anthropometry – the measurement of the human body has largely been forgotten. Nonetheless, the two systems battled for dominance until well into the 1920s. One of the pioneers of the modern system of fingerprint identification was Sir Francis Galton. Galton published a study of the frequency with which these three pattern types appeared among various races. In Galton's laboratory, researchers studied the inheritance of fingerprint patterns. The most ambitious study of this kind, published by the Norwegian biologist Kristine Bonnevie in 1924, found that Asians had a higher proportion of whorls and fewer arches than Europeans. In 1922, the New York Times reported, a German professor, Heinrich Poll predicted that life insurance companies would soon be able to "tell from finger prints what will be the insured's career." This research never died out completely. The most recent publication claiming to be able to diagnose criminality from fingerprint pattern types dates from 1991. In short, the discourse surrounding fingerprinting in the early part of this century was strikingly similar to the discourse surrounding DNA today.

Fingerprint Evidence – An International Perspective

U.S.A: In America, the compulsory taking of fingerprints and photographs from persons under arrest is a very common practice. No constitutional protection exists as such against compulsion to submit fingerprints, allow taking of photographs or measurements to write or to speak for identification etc. The prevailing view is that taking of a fingerprint, photograph or measurements of an arrested person is not a violation of privilege against self-incrimination or a breach of privacy. Thus, it is valid even without any statutory authority. The Model Code of Pre-arrangement Procedure adopted in USA by the American Law Institute, permits the taking of fingerprints of arrested persons for the purpose of investigation at the stage before the commencement of trial.

U.K: In U.K., the Police and Criminal Evidence Act (PACE) was enacted in 1984, in which the provisions for fingerprinting are provided under Section 61. Besides, supplementary provisions for fingerprint and samples are provided in the Section 63 (A). This section gives power to compare the fingerprints of the arrested person with other fingerprint present on record. These powers have been conferred to the police force, the serious Organized Crime Agency, a public authority responsible for criminal investigation on charging of offenders in any part of British Island. Furthermore, the judiciary of England is also appreciative of fingerprint evidence. An accused may be convicted on fingerprint evidence alone in Scotland.

Fingerprint Evidence – A National

Perspective

During the British rule in India, Sir Henry Faults along with Aziz-ul-Haque and Hem Chandra Bose, used the technique of fingerprinting for detection of criminals in criminal investigation process. After Independence, the process continued and has been the primary ingredient of criminal justice system in India. Much advancement in the technique of fingerprinting has been developed as a major contribution in forensic analysis for criminal investigations. Apart from this the fingerprinting is now being used for issue of identification cards in nearby every filed in our country. With the advancement of technology of fingerprinting, some statutory provisions have also been enacted which specifically encourage fingerprinting techniques and its uses such as Identification of Prisoners Act, 1920; Criminal Procedure Code, 1973; Indian Evidence Act, 1872**.** Although these laws and codes provide for the power of police and judge to take the finger impressions of the accused, yet the probative value of fingerprint evidence is not provided anywhere.

Furthermore, the Indian Judiciary has been given many opportunities to analyse the admissibility of fingerprint evidence within the Indian legal system, for its evidentiary value, the value of opinion of experts under Section 45 of the Evidence Act and probative value of the fingerprint evidence. The decisions of courts have been varied only as to the evidentiary value of fingerprints and as to what weightage must be given to it or whether the fingerprint evidence on its own can be considered as an evidence by virtue of which the court is entitled to convict a person in absence of any corroborative evidence. In *Jaspal v. State of Punjab*, the court observed that the fingerprint examination is conclusive, as it is an exact science. Further, in the case of *Murari Lal v State of M.P*., the Supreme Court held that where there was no expert, court has the power to compare the writings and itself decide the matter. In *Chitaman Dissi l*v. *M. Laxmananan*, it was held that, "the mere opportunity to see fingerprints does not make one an expert. It is scientific study and outlook on the problem that is required for an expert. As such a sub-registrar is not an expert on fingerprints….". In *State of M.P.* v. *Sitaram Gajraj Singh*, the court laid down that - "No hard and fast rule can be laid down regarding finger printing. It was held that, it cannot be laid down as a rule of law that it is unsafe to have conviction on the uncorroborated testimony of finger print expert. The true law is one of caution. Again in case of *Govinda Reddy* v. State of Mysore, it was observed that, "the science of comparison of fingerprint has developed to a stage of exactitude. It is quite possible to compare the impression provided they are sufficiently clear and enlarged photography is available. The identification of finger impressions with the aid of a good magnifying glass is not difficult, particularly when the photographs of the latent and patent impression are pasted side by side". In *Parrapa & Ors* v. *Bhimmappa & Ors* while dealing with the question regarding evidence of finger impression, the Apex Court held, when the thumb impression on the disputed document is disputed, this science of finger prints aids and guides the courts in resolving the dispute, if an expert's evidence is made available, the evidence of finger impression is admissible. But the person giving his opinion as in other cases must be an expert. The Court is at liberty to use its own discretion and to affirm or to differ from the expert opinion. The evidence of an expert is in the nature of opinion evidence. It is advisory in nature. It is not conclusive. It is not substantive evidence.

The position so far is that though the courts have relied on the fingerprint evidence, they have done so only on the basis of expert opinion corroborated by other evidence.

Fingerprint Evidence – A Local Perspective (Kashmir valley)

In order to ascertain the degree of reliability on fingerprint evidence by the state criminal justice system, I conducted a field survey to find the reliability and probative value accorded to fingerprint evidence in our criminal justice system. This decision was an eye opener to pitiful and deplorable state of affairs. Some of the

striking truths with regard to the scenario of fingerprint evidence in criminal justice system of valley are:

1.**One fingerprint expert for entire state:** There is only one fingerprint expert for entire state of Jammu and Kashmir who manages the entire work of identification and analyses of fingerprint evidence collected in every criminal and civil case. Although the rules lay down that the total strength of the unit on papers is that of 6 members - 1 Senior Officer, 2 Assistant Senior Officers, 2 Lab Assistants, and 1 Attendant. But presently the fingerprint department is a 3 member unit where Incharge is assisted by two lab assistants. Considering this scenario for unknown reasons even the required strength of the unit is not filled. Originally there were two main fingerprint In-charges, one at Srinagar and another at Jammu. The Incharge of fingerprint unit at Jammu has retired 4 years back and since then the entire bulk of identification and analysis has fallen upon a single fingerprint expert. The matter of concern is as to why even the required slots in the unit are not filled? Why has the government turned a blind eye to even such important institution which forms a front wheel of criminal justice system?

2. Absence of photography as a tool of evidence preservation at time of evidence collection and analysis: The importance of photography in the preservation of the fingerprint evidences is world renowned and highly used. It is the backbone of forensic science in general and fingerprinting in particular. But this main aspect of the fingerprint analysis is totally absent in our system here. The experts in state have to rely on making the enlargements and record the similarities manually after comparing the question prints through naked eye using magnifying glasses which has not only affected the efficiency of our experts but also has taken a heavy toll on their health especially eyes. The use of latest computer technology allows the question prints to be compared with millions of fingerprints already available in very less time is not even known in our state. The product of examination also depicts an enlarged picture of fingerprint patterns and at the same time points out the locations of the similarities between the question prints and the compared print in order to make it easily understandable by the judges and advocates who finally have to put it into use in a particular case. This technology is not even known in the valley, therefore the imminent need is to introduce the updated tools for fingerprint analysis in the FSL and at the same time to make it a success, state authority needs to put in efforts to recruit and train a section of educated youth to put such tools in use and work under and alongside the already working efficient and able expert in valley.

3. Reliance on outdated tools and techniques: The equipment present at the fingerprint unit involves only magnifying glasses with fixed focal length. It was surprising to know that the skilled fingerprint expert had to solely rely upon those traditional magnifying glasses when the scenario at the international front has undergone a sea change. The valley's fingerprint unit lags behind extremely in the area of updated tools and techniques of fingerprint identification and analysis. The fingerprinting has reached an entirely new phase of scientific development due to digitization of fingerprints. The fingerprint identification and analysis has become both cost and time efficient at international level. But our state is still using those obsolete and redundant methods of collection and identification of fingerprints which leads to less reliability on the same at the trial stage. It is a serious concern considering the consequences of the present scenario of casualness if it remains unabated.

4. Non appreciative and discouraging attitude of judges and advocates towards fingerprint evidence: An inquiry into the reliance upon the fingerprint evidence by both judges and advocates revealed 80% negative response. 90% judges believe that even though fingerprint evidence is accurate evidence, the lawyers do not bring forth the same at an expected level. 70% of the lawyers find it very doubtful to rely on

fingerprint evidences due to the lack of efficient investigating officers. furthermore 80% advocates consider that majority of judges seldom rely on fingerprint evidence, reason being lack of the efficient collection of evidence at the very inception of investigation of case and lack of efficiency shown by fingerprint experts.

5. Non preservation of crime scene as one the major reason of non reliance on fingerprint evidence: The inquiry into this significant aspect revealed unnerving realities. 40% investigating officers revealed that when they reach the spot a mob is usually already there at crime scene and generally it makes no sense thereafter to seal the crime spot as it is already contaminated. 40% opined that they do seal the crime scene for keeping the public away from the spot but they also at the same time add that usually sealing the crime scene doesn't serve much purpose as later the scientific evidences thereafter are not given much importance at the trial level. 20% viewed that sealing serves no purpose as the public generally doesn't cooperate even if it is sealed.

6. The unending rivalry between education and experience: 80% of judges and advocates opine that investigating officers are very negligent, inefficient, and ignorant of the level of expertise needed for the job, and most importantly not educated enough for such responsible position. The reason being that most commonly the investigating officers are mostly dropouts of high schools, they lack the needed skills for the job and hence the entire staircase of the judiciary suffers the consequences of such irresponsible attitude of investigating officers. 90% judges and advocates deem proper education as a condition precedent for improvement of overall scenario of criminal justice system. On other hand, 80% of the investigating officers and experts feel they are well experienced to handle the cases and investigate efficiently. They believe their experience in field compensates for their educational deficiency and furthermore believe that experience overpowers education always.

Conclusion and Suggestions

The main limitation of fingerprint evidence in India is that the main issues like the availability of digitizing and data missing hardware's at all levels of police force, high cost of digitalization and preservation of fingerprint cards, creation of national level fingerprint database and networking between law and order maintenance forces, are not resolved yet. Moreover there are further challenges like the matters of training, qualifications, testing equipment's, climate control of preservation facilities etc. Furthermore, there is an impending need of broadening the vision of all professionals related to criminal justice system, be it Judges, advocates, prosecuting officers, investigating officers or experts with regard to giving more importance and space to fingerprint evidence in order to prove its utility. The trust deficit on scientific evidence which is brooding over entire criminal justice system needs to be worked upon and the gap is to be filled positively. I believe that investigation process needs lot of improvement and our investigating officers need to be infused with special skill, knowledge and training with regard to collection and preservation of the fingerprint evidence. Fingerprint experts also believe that the accuracy of this evidence will be emphasised upon by the courts and relied upon by the advocates and judges only if the fingerprint unit at FSL is updated with proper tools and techniques and the strength of the fingerprint experts is increased at war footing. The advocates need to be more appreciative of fingerprint evidence. They try to avoid the use of scientific evidence as much as possible either due to lack of awareness or fear of technicalities involved in the scientific evidences or both. Furthermore, the judges are also hesitant in relying on fingerprint as substantive evidence which also needs to be changed with changing times and developing crime solving techniques.

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