



SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - 5, Issue 10

October, 2012

Chief Patron

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

Judge-In-Charge

Hon'ble Mr. Justice
Mansoor Ahmad Mir

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SUBSCRIPTION RATES

Single Copy : Rs. 20.00

Annual : Rs. 240.00

(Payment only through D.D. in favour of the
Jammu & Kashmir State Judicial Academy)

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Law, Justice and Morality

Justice is the ideal to be achieved by law. Justice is the goal of law. Law is a set of general rules applied in the administration of justice. Justice is in a cause and depends on application of law to a particular case. Jurisprudence is the philosophy of law. Jurisprudence and law have ultimately to be tested on the anvil of administration of justice. "law as it is" may fall short of "law as it ought to be" for doing complete justice in a cause. The gap between the two may be described as the field covered by morality. There is no doubt that the development of the law is influenced by morals. The infusion of morality for reshaping the law is influenced by moral. The infusion of morality for reshaping the law is influenced by the principles of equity and natural justice, as effective agencies of growth. The ideal state is when the rules of law satisfy the requirements of justice and the gap between the two is bridged.

It is this attempt to bridge the gap which occasions the development of new jurisprudence.

The existence of some gap between law and justice is recognized by the existing law itself. This is the reason for the recognition of inherent powers of the Court by express provision made in the code of civil procedure and the code of Criminal procedure. The constitution of India by article 142 expressly confers on the Supreme Court plenary powers for doing complete justice in any cause or matter before it. Such power in the court of last resort is recognition of the principle that in the justice delivery system, at the end point attempt must be made to do complete justice in every cause, if that result cannot be

achieved by provisions of the enacted law. These powers are in addition to the discretionary powers of the courts in certain areas where rigidity is considered inappropriate, e.g., equitable relief under the general law and article 226 of the Constitution.

The attempt of the courts to bridge the gap between the provisions of existing law and the requirement of justice is the occasion for the development of new Dimensions of justice by evolving juristic principles within the framework of the law for doing complete justice according to the current needs of the society. It is the quest for justice in the process of administration of justice which occasions the evolution of the new Dimensions of Justice.

What is a new Dimension of Justice ?

To qualify as a New Dimension of Justice, the decision in which it is contained must provide the bedrock of a new juristic principle for application in all similar situations while applying the same in the cause at hand. It follows that it must not be a mere *ad hoc* decision - a rail road ticket valid only for a single journey. A New Dimension of Justice based conceptually on a new juristic principle promotes the growth of law while an *ad hoc* decision creates uncertainty and renders the law vague on the point leading to inconsistent decisions in a similar situations. The acceptance of a new principle of law and thereby bridges the existing gap between law and justice. It enriches the existing law and advances it towards the goal of 'law as it ought to be'. It has, therefore, a lasting impact and contributes to the progression of law towards justice.

[Abstracted from the book "New Dimension of Justice" by Hon'ble Mr. Justice J.S. Verma, former Chief Justice of India published by Universal Law Publishing Co.]

Hon'ble Chief Justice inaugurates Free Legal Aid Clinic at Distt. Jail, Anantnag and Mobile Lok Adalat at Village Akad in Anantnag

Hon'ble Shri Justice M.M. Kumar, Chief Justice, High Court of Jammu & Kashmir (Patron-in-Chief of J&K SLSA) inaugurated Free Legal Aid Clinic (FLAC) in the premises of Distt. Jail Anantnag on 13th of October, 2012 in presence of Hon'ble Shri Justice Virender Singh (Executive Chairman, J&K SLSA), Hon'ble Shri Justice Mohammad Yaqoob Mir, Hon'ble Shri Justice Muzaffar Hussain Attar and Hon'ble Shri Justice Hasnain Massodi. The function was organized by the District Legal Services Authority, Anantnag.



Hon'ble Chief Justice in presence of Hon'ble Judges inaugurating Free Legal Aid Clinic at Distt. Jail, Anantnag

Speaking at the function, His Lordship Hon'ble Chief Justice said that judiciary is determined to provide speedy justice to all sections of the society at their doorsteps, particularly to those who cannot afford the legal expenses. While revealing the aim and objective of opening the FLAC in the jail premises, His Lordship said that many detainees are not in a position to afford

legal costs and to facilitate them, legal services authority has taken this initiative within the legal framework. His Lordship informed that till date 134 Legal Aid Clinics have been opened in every nook and corner of the State to ensure quick justice to the people. His Lordship further said that a mobile van which has been specially designed for the purpose has been put into service for attending the cases in the rural areas and redressing the grievances of the masses on the spot.

His Lordship informed that the services of lawyers will be available in the jail regularly and they will continue to monitor the cases of the detainees and provide them justice quickly. His Lordship exhorted the lawyers to motivate the educated youth to work as a para-legal volunteers after their release and help in containing the crimes from the society. Such volunteers are the best ambassadors to educate the other criminals for shunning the bad habits. His lordship revealed his experience of Punjab where services of such detainees were utilized which helped a lot in containing the petty crimes.

His Lordship said that prisoners have many reasons behind their acts as circumstances sometimes lead them to do crimes. He asked them to realize their mistakes and after their release they must lead the life of responsible citizens and motivate others not to adopt the wrong path. He asked them to help in contributing for making the social reforms and healthy society.

His Lordship also inaugurated Mobile Lok Adalat at Village Akad in Anantnag. As many as 24 cases related to motor accident claims and matrimonial disputes were settled on the spot and Rs One crore was disbursed as compensation among the beneficiaries by the Hon'ble Chief Justice.



Mobile Lok Adalat in session at village Akad

Hon'ble Shri Justice Virender Singh, Executive Chairman, State Legal Services Authority also spoke on the occasion and threw light on the aspects of the free legal service His Lordship said that free legal aid clinics have been set up in all central jail, district jails and sub-jails except district jail, Jammu. His Lordship said that Free Legal Aid Clinic in this jail will act as a bridge between the Legal Service Authority and the prisoners and prisoners can register their grievances in the Free Legal Aid Clinic at any time either orally or in writing. Retainer lawyer will be available in the Clinic on every Sunday to collect the grievances and place the same before the Chairman, District Legal Services Authority for redressal and it is the right of the prisoners under Section 12 of J&K Legal Services Authority Act as to avail the facility and component legal services and Free Legal Aid to the prisoners is not a charity but a right. His Lordship hoped that this Free Legal Aid Clinic will improve the jail life of the prisoner as he has not to spend even a penny for this legal service. His Lordship said that to create awareness about the free legal aid clinics amongst the general masses, the Mobile Lok Adalat Van has been pressed into service within necessary manpower and assistance. The Mobile Lok Adalats are organized in

the rural areas to settle legal cases on the spot. His Lordship appealed the ground level workers like Anganwari workers to educate the masses about the services.

Hon'ble Shri Justice Mohammad Yaqoob Mir, Administrative Judge of District Anantnag in his address highlighted the object of Legal Aid Clinics and said that requirement of Legal Aid Clinics in jails was felt imperative so as to provide legal assistance to jail inmates. Human beings sometimes intentionally some times accidentally and some times inadvertently get involved in the commission of the crime or in the disturbance of public order resultantly are arrested and are lodged in the jails. By remaining in the jails their position of being human beings cannot be ignored. Such persons are not attended by the relatives. Lack of knowledge about their rights give rise to violation of their rights guaranteed under the Constitution and the laws. Opening of Legal Aid Clinics in jails will help such prisoners in working at their remedies so as to safe guard their rights.

Hon'ble Chief Justice lays Foundation Stone of Conference Hall and inaugurated additional court rooms at High Court complex, Srinagar.

Hon'ble the Chief Justice laid the foundation Stone of Conference Hall in the High Court complex, Srinagar on 18th of October, 2012 in presence of Hon'ble Shri Justice Virender Singh, Hon'ble Shri Justice Mohammad Yaqoob Mir and Hon'ble Shri Justice Hasnain Massodi.

On completion, the hall will have capacity of 150 seats and will be completed within six months. His Lordship also inaugurated additional two new courts constructed by JK PCC as an extension of the High Court building at

Srinagar, thus raising the number of Courts in the High Court complex, Srinagar to Nine.

ACADEMY NEWS

Oath taking ceremony and distribution of Advocates license at Jammu and Srinagar.

In a simple but impressive function, Jammu and Kashmir State Judicial Academy under the guidance and instructions of Hon'ble the Chief Justice (Chief Patron, State Judicial Academy) and Hon'ble Shri Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy held oath taking ceremony and distribution of Advocates' license in the State Judicial Academy at Jammu on 6th of October, 2012 and at Srinagar on 20th of October, 2012 for the new entrants to the legal profession.



Oath taking ceremony at Jammu

The function was presided over by Hon'ble Shri Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy. Before delivery of enrolment certificates (Advocate license) to the Advocates of Jammu Province, they were administered oath by Shri Abdul Wahid, Director, State Judicial Academy.



Hon'ble Mr. Justice Mansoor Ahmad Mir addressing the Advocates after oath ceremony

In his address at Jammu, Hon'ble Shri Justice Mansoor Ahmed Mir congratulated newly enrolled advocates and welcomed them to the fraternity of legal profession. His Lordship enlightened them on the professional ethics and conduct.

His Lordship gave some tips to the Advocates on how to be an excellent, ethical and successful lawyer. There is no short cut to become excellent and successful lawyer. Hard work, a firm determination at all times to improve oneself in the knowledge of the law, a reasonably good mastery of the area of the law of the Advocate and Solicitor's chosen area of practice, are all of great importance towards excellence and success as a lawyer.

You are bound to meet with failures, some time or other and in some form or other in the course of your practice. After all, to err is human. However, what is important is to acquire experience to master such failures and avoid their recurrence. Here I can do no better than to recall the words of wisdom which fell from the lips of the former President of India, Mr. Abdul Kalam, and which is, "people dissect their failure for causes

and effects, but seldom deal with them and gain experience to master them and thereby avoid their recurrence".



Hon'ble Mr. Justice Mansoor Ahmad Mir delivering enrolment certificate to the Advocate

Referring to the duties cast upon advocates, His Lordship stated that you have mixed duties, duty to your client, duty to the Court, duty to your opposing counsel and duty to the establishment to which you are attached to.

In the discharge of these several duties, you must at all times keep, at your forefront, the paramount duty of yours in seeking justice to your client's cause and be prepared to discharge that duty without any fear or favour, and to the best of your ability.

In his remarks, Director, State Judicial Academy, Shri Abdul Wahid thanked Hon'ble Mr. Justice Mansoor Ahmad Mir for enlightening the newly enrolled Advocates on the professional ethics, conduct, truthfulness, honesty, updating the knowledge of law and art of advocacy, duties and responsibilities as an advocate. He expressed hope and trust that His Lordships advice, words of wisdom and suggestions will go a long way in making every one of you a good professional lawyer.

In his Lordships address at Srinagar, His Lordship stated that the first duty which the counsel owes to the court is to maintain its honour and dignity. A conduct therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean he is subordinate to the judge. It only means that he is an integral part of the machinery for the administration of justice. The first duty which advocates and judges owe to each other is of co-operation. Co-operation between the Bench and the Bar is not a mere conventional statement. It is a fundamental necessity. Without it, there can be no orderly administration of justice. Says Sir Cecil Walsh in his book called 'The Advocate' :-

“Nothing is more calculated to promote the smooth and satisfactorily administration of justice than complete confidence and sympathy between Bench and the Bar”.

Explaining the professional ethics and conduct, His Lordship stated that the advocate should not display temper in court. He shall not indulge in any kind of insinuation in the court against the judge. He should convince the judge by argument and reason and not by appeal to his sentiments. While the case is going on, the advocate cannot leave the court without the court's permission, and without putting another man in charge. The advocate must not do anything which is calculated to obstruct, divert or corrupt the stream of justice, for instance, he must not advice disobedience to the courts order and decrees. Another duty which the advocate owes to the court is that of fidelity. He must be honest in his representation of the case. He must not deceive the court. The advocate must not place himself in a position which he

cannot effectively discharge his obligations to the court as minister of justice. He should not have any personal interest in the litigation he is conducting. It will be misconduct on his part to stipulate with his client to share in the results of litigation. Advocates in their professional capacity address each other as brothers. This spirit of fraternity at Bar is one of the noblest traditions of the legal profession and is many centuries old. Lawyers stand for common ideals of order, justice and rule of law in the community and have common rules of etiquette and professional observances.

In his remarks, Director, State Judicial Academy, Shri Abdul Wahid thanked Hon'ble Mr. Justice Mansoor Ahmad Mir for gracing the occasion and enlightening the newly enrolled Advocates on the professional ethics, conduct.

2. Urdu Training Programme for staff of Subordinate courts of District H.Q. Jammu

In continuation of urdu training programme conducted earlier for 15 days in the month of June 2012, another 10 days urdu training programme was conducted by the State Judicial Academy for the ministerial staff of the subordinate courts of Jammu Headquarter from 27-08-2012 to 05-09-2012 under the supervision of S/Shri Anoop Kumar, Munsiff and Jagdish Raj, Faculty Member.

Mr. Wazir Ahmad Tak, retd. A.O., District Court, Jammu acted as Resource person.

The participants were those officials who were just beginners having very little knowledge of urdu reading and writing. This time more stress was given in

teaching the basic skills of urdu reading and writing and majority of the participants by the end of training programme were able to read and write the basic language. The participants were given practical training in reading and writing the urdu words which are commonly used in day to day business of a court. They were also trained in writing the summons, notices, warrants and other dockets. All of the participants displayed their keen interest in the training programme and showed a remarkable improvement in their performance.

LEGAL JOTTINGS

Legal briefs from High Court of J&K

[Case : LPANo : 130 of 2010

State of J&K & Ors. v. Mohammad Syed Khan

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

Date of Decision : 17-07-2012

(per Justice M.M. Kumar, CJ)]

Subject Index : J&K Police Manual - Rule 359(11)(2) - Article 113 of J&K Limitation Act - Writ petitioner appointed as constable in the J&K Armed Police on 13-11-1986 - absented himself unauthorisedly from 4-01-1990 - was asked to report back for duty and to face departmental enquiry but continued to absent himself - nor informed about his whereabouts - consequently removed from service for his prolonged absence from 17-05-1990.

Writ petitioner filed suit in the year 1995 challenging the order of removal.

During pendency of suit, he filed writ petition in the year 2008 and thereafter suit was withdrawn.

Hon'ble Writ court held that the petition cannot be hit by latches as no show cause notice has been issued to the petitioner as such the impugned order is bad and was quashed.

State filed an LPA - Held : Writ Petition is time barred and suffers from latches.

Hon'ble Court observed that it is well settled that maximum period for filing writ petition cannot be more than the period prescribed for filing a civil suit.

It was further observed that filing of memorial are not to be taken into consideration in the matter of reckoning the period of limitation. In other words, non statutory representation would not extend the period of limitation.

Likewise filing of civil suit would also not extend the period of limitation especially when the suit itself was filed after five years. The suit itself was time barred as Article 113 of the Limitation Act provides for maximum time limit of three years to challenge the termination order.

The judgement and the order of Hon'ble Single Judge set aside resultantly - Writ petition dismissed.

Case Law : *State of Madhya Pradesh & Anr v. Bhailal Bhai, AIR 1964 SC 1006, State of Jharkhand and Ors. v. K.N. Farms and Industries Pvt. Ltd. (2012)5 SCC 297, R&M Trust v. Koramangal Residents Vigilance Group and Ors. (2005)3 SCC 91, Leelawanti and Ors. v. State of Haryana and Ors. (2012)1 SCC 66, S.S. Rathore v. State of Madhya Pradesh, AIR 1990 SC 10 and State of Punjab v. Gurdev Singh, (1991)4 SCC 1* relied upon.

**[Case : WP PIL No : 02 of 2012 c/w
WPIL No. 03 of 2012**

Rinku Sharma v. Union of India

Vilaksham Singh v. Union of India

**Coram : Hon'ble Mr. Justice Virender
Singh, and Hon'ble Mr. Justice
Mohammad Yaqoob Mir.**

Date of Decision : 10-07-2012.]

(per Justice Mohammad Yaqoob Mir)]

Subject Index : Writ Proceedings Rules, 1997 - Rule 24 - Special Provision regarding Writ Petitions in Public Interest - Sub-rule 4(vii) of Rule 24 contemplates sending of representation to the concerned authorities before filing PIL petition. However in urgent cases PIL can be filed without any such representation but in such cases petition has to give prior notice of filing of petition to the concerned authorities or their standing counsel.

Petitioner file a writ petition against environmental clearance, de-notification and preventing respondents from alienating the land in violation to provision of Shri Mata Vaishno Devi Shrine Board Act, 1988, however, petitioners not complied with sub-rule 4(vii) of Rule 24 of Writ Proceeding Rules by not sending representation to respondents for taking remedial measures.

Held : Petitioners were required to send representation to the concerned authorities which they have not, in absence thereof, they were to project that the matter is of urgent nature so filed without sending such representation but again prior notice of filing petition to the concerned authorities or their counsel was imperative. In the petitions, neither petitioners have projected any urgency so as to file petition without sending

representation to the concerned authorities nor have they given any prior notice as was required.

Sub-rule 4(vii) not complied, thus non-adherence to the sub-rule 4(vii) of Rule 24 of the Writ Proceeding Rules, 1997 renders petition as pre-mature, thus dismissed.

[Case : WP (OWP) No : 1654 of 2011

Ghulam Mohi-ud-Din Bhat v. Gh. Mohi-ud-Din Bhat

**Coram : Hon'ble Mr. Justice Mansoor
Ahmad Mir.**

Date of Decision : 08-05-2012.

Subject Index : Constitution of India - Articles 226, 227 & S. 104, O. XXIX CPC - Suit for Permanent Injunction - Ad Interim relief - Application for - Dismissed by Trial Court - Appeal against - Dismissed by Appellate Court - Writ Petition - On Grounds of irregularity and miscarriage of Justice - Whether maintainable - Held : Impermissible.

Held : [T]he petitioner's case is not that the courts below have acted without, or in excess of jurisdiction The case projected by the petitioner in paragraphs 24 and 25 of the petition is that trial court and appellate court have committed gross irregularity and miscarriage of justice by rejecting the application. Thus, it is not a case where writ is permissible."

The Apex Court judgments in *Shalini Shyam Shetty v. Rajendra Shankar Patil*, 2010 AIR SCW 6387; *Kokkanda B.Poondacha v. K.D. Ganapathi*, 2011 AIR SCW 1737 relied upon.