



SJA e-NEWSLETTER

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From the Editor's Desk

Working of a Court in the judicial system fundamentally involves two functions; one, the core function of judging and second, the function of management. In a way judging is also judicial management but is different in many aspects from pure management. Effective and efficient working of a Court, therefore, depends essentially on properly managing both the functions. Effectiveness and efficiency of each Court in a judicial system cumulatively leads to effective and efficient judicial system. For the judges, as leaders of the respective courts, it needs to develop skills to effectively manage both the functions of a court. Skill development needs a constant endeavour.

In the matter of improving core judicial skills, a need was long felt and a mechanism is now in place to provide judicial education through Judicial Academies at National and State Level. Much has been achieved by judicial education but still a lot remains to be achieved. Since the recent past a need has been felt to impart training on Court Management. In this regard an initiative has also been put in practice of having dedicated Court Managers, to look after the non judicial functions. Court Managers have shown some scattered efficiency improvement in some areas. Structured policy planning, job profiling, appraisal mechanism, monitoring and some semblance of autonomy in functioning is likely to deliver improved results.

Management is a complex process and involves various sub-processes which have to be practiced, based on principles worked out after thorough research. It involves process management, human resource management, time management and financial management. A judge as a leader of a court has to deal with each aspect of the management in one or the other way. Knowledge and practice of management techniques is necessary for the judges to enhance the efficiency of the courts. Until the pure management functions are not segregated, the judges would continue to be required to learn and practice management techniques. A judge has to take lead, both in core judicial functions and non judicial functions being pure management functions, for improving the effectiveness of the court processes, for greater satisfaction of the consumers of justice. These functions can neither be delegated nor can be left to the fate of the system.

Legal Jottings

CRIMINAL

“The freedom of the individual is of utmost importance in any civilized society. It is a human right. Under our Constitution it is a guaranteed right. It can be deprived of only by due process of law. The power to detain is an exceptional power to be used under exceptional circumstances.”

K.S. Hegde, J. in Sudhir Kumar Sabha v. Commr. of Police, (1970) 1 SCC 149, para 7

**Udiya v. State of Madhya Pradesh
Criminal Appeal Nos. 2267-2268 of 2009
Decided on: August 14, 2019**

In a case of conviction by the trial court in offence under section 302 IPC and sentence to the accused of imprisonment for life, Hon’ble Supreme Court found the evidence to be sufficient to prove the occurrence, however on the fact that the matter involved only a free fight between two brothers and not a premeditated attack or violence actuated by a motive and previous feud, it being a case of sudden fight in which the two brothers got involved and in the grapple the appellant had picked up a stone and had hit the deceased brother. Case falls within the Exception 4 of Section 300 IPC. Accordingly, the Court converted the conviction of the appellant from Section 302 to Part-I of Section 304 IPC.

**Bharat Sanchar Nigam Ltd. & Ors. v. Pramod V Sawant & Anr.
Criminal Appeal Nos. 503 of 2010
Decided on: August 19, 2019**

Hon’ble Supreme Court in this case held that sanction under Section 197 CrPC would not be required where the Government servant sent on deputation to a Corporation stands absorbed before the commission of offence. However, for a Government servant who has not been so absorbed, the question of sanction would depend only on the nature of duties, as also the fact that the act committed by him is relatable to actual or purported discharge of

his official duties.

**Vijay Panday v. State of Uttar Pradesh
Criminal Appeal No. 1143 of 2019
Decided on: July 30, 2019**

Hon’ble Supreme Court in this case set aside the conviction and the sentence of the appellant under Sections 8, 15 & 31 of the NDPS Act. Held that – the reverse burden of proof on the accused in terms of Section 15 does not relieve the prosecution of its burden to prove its case beyond reasonable doubt. The failure of the prosecution in the present case to relate a seized sample with that seized from the appellant makes the case no different from failure to produce the seized sample itself. In the circumstances the mere production of laboratory report that the sample tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested have to be co-related.

**Samsul Haque v. State of Assam
Criminal Appeal No. 1905 of 2019
Decided on: August 26, 2019**

Hon’ble Supreme Court reiterated the principle of law that recording of statement of the accused in terms of Section 313 CrPC (Central) is of considerable importance. Any material which is culpative in nature and is not put to the accused for his explanation, cannot be used against him to record conviction. Further held that Section 34 of the IPC does not create a substantive offence unlike Section 107 IPC which is an independent offence. Section 34 of IPC only

creates a constructive liability and it is with the participation of the accused that the intention of committing the crime is established when Section 34 is attracted. For this, the prosecution has to prove that the criminal act was done by the actual participation of more than one person and that the act was done in furtherance of a common intention of all engaged in a prior concert.

Sudru v. State of Chattisgarh
Criminal Appeal No. 751 of 2010
Decided on: August 22, 2019

Hon'ble Supreme Court reiterated the principle of law that the testimony of a hostile witness cannot be rejected altogether. Part of evidence of such witness which inspires confidence of the Court has to be taken into consideration. Further held that where the victim was last seen with the accused, which is established by the prosecution, the burden would shift upon the accused under Section 106 of the Indian Evidence Act to explain, as to what has happened in those circumstances and how the death of deceased has occurred. In this case the accused having failed to give any plausible explanation of the circumstances leading to death of the deceased, his conviction by the Trial Court for the offence under Section 302 IPC is upheld.

Guruvaih v. The State represented by the Inspector of Police
Criminal Appeal No. 1208 of 2019
Decided on: August 20, 2019

It is a case of conviction and sentence recorded by the special Court under Section 13(1)d, 13(2) and 12 of the Prevention of Corruption Act, having accepted bribe for and on behalf of Village Administrative Officer, the accused no. 1. Challenged on the ground that there was no evidence on record to establish the demand of bribe

made by the appellants and presuming that they had accepted money, it is only the accused no. 1 who can be convicted for demand and acceptance of illegal gratification. Held that – demand of illegal gratification by all the accused persons is not necessary to be established, and demand attributable only to one of the accused can be of no avail to the appellants. Section 20 of the Act provides that if an accused public servant has accepted or obtained for himself or any other person any undue advantage from any person, there shall be a presumption unless the contrary is proved that he accepted or obtained that undue advantage as a motive or reward for performance of a public duty improperly or dishonestly either by himself or by another public servant.

Bhagwan v. State of Maharashtra
Criminal Appeal No. 1385 of 2010
Decided on: August 07, 2019

Hon'ble Supreme Court held that dying declaration of the deceased where she had suffered 92% burn injuries cannot be discarded simply on the assumption that in such severe burn injury case the victim would not be mentally fit to make the statement, more so when the Magistrate recording the statement and the Medical Officer who had given medical certificate, have in their evidence established that the victim was conscious throughout the making of dying declaration. Not taking thumb impression of the victim on the dying declaration is inconsequential and not sufficient to discard the dying declaration, when it is found that both her hands were extensively burnt. Minor discrepancies in the statements of the Magistrate and the Medical Officer are inconsequential and do not cast any doubt on the correctness of dying declaration.

**Dev Karan @Lambu v. State Haryana
Criminal Appeal No. 299 of 2010
Decided on: August 06, 2019**

Hon'ble Supreme Court held that for conviction of the accused in substantive offences (in this case under Section 302, 307, 325 and 148 of IPC, in aid of Section 149 IPC) it is not necessary that accused be charged and held guilty under Section 141 IPC. There was no fatal flaw in this case in the non-inclusion of Section 141 of the IPC while framing charges, as would render the complete trial illegal, or that it can result in a finding that there would be no occasion to invoke Section 149 of the IPC. As long as necessary ingredients of an unlawful assembly are set out and proved, as enunciated in Section 141 of the IPC, it would suffice. The actions of an unlawful assembly and the punishment thereafter are set out in the subsequent provisions, after Section 141 of the IPC, and as long as those ingredients are met, Section 149 of the IPC can be invoked.

**Pramod Suryabhan Pawar v. The State of Maharashtra & Anr.
Criminal Appeal No. 1165 of 2019
Decided on: August 21, 2019**

Hon'ble Supreme Court held that - To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

**Deep Kumar v. Anoop Aggarwal & Ors.
CRM(M) No.400/2019
Decided on: July 29, 2019
(High Court of J&K)**

Special Court, in a complaint as regards forgery of revenue records and misuse of official position, passed an order directing verification of the allegations against Revenue officials done by the SDM by making local inspection, and then on receiving report directed demarcation of the land. Orders challenged. Held that - The trial Court under the provisions of Jammu & Kashmir Prevention of Corruption Act is enjoined to take cognizance of the offences which are punishable under the J&K Prevention of Corruption Act. His jurisdiction is, therefore, limited and cannot be extended to decide the civil dispute between the parties. It may be noted that the petitioner is not a party in the complaint and the allegations in the complaint are primarily against the revenue officers/officials, who have held different positions from time to time. Given the nature of allegations which are made in the complaint, it is not understandable as to how the demarcation of the disputed land is going to fasten the criminal liability on the revenue officials. Demarcation of land, if done, may be determinative of the factum of actual position of land as on date, but whether the sale deeds which are claimed to have been executed in favour of the petitioner and three more persons are genuine or not; whether the fard intkhab and other revenue extracts have been forged by the revenue officers or not could only be ascertained, if there is proper investigation in the matter either by police in terms of Section 156(3) Cr.P.C. or Court proceeds to take cognizance and gets an enquiry conducted in terms of Section 202 Cr.P.C. after following the due procedure. Orders set aside.

State of J&K v. Charan Dass & Ors.
CRAA No. 66/2008
Decided on: August 01, 2019
(High Court of J&K)

The respondents tried for offences under section 5(2) Prevention of Corruption Act and 161 RPC on the allegation of having demanded and accepted bribe to allow a candidate in examination centre to copy, and being caught red-handed by the Vigilance Organisation, acquitted by the trial court for insufficiency of evidence. Hon'ble Court on analysing evidence concurred with the trial court. Held that - after evaluating the evidence led by the prosecution, particularly the statement of the complainant the trial court rightly came to the conclusion that the prosecution had failed to prove the essential ingredients constituting the offences under Sections 5 (2) of Prevention of Corruption Act read with 161 RPC. The specific findings have been returned by the trial Court that having regard to the statement of the complainant, the prosecution could not prove that there was demand made by any of the respondents and that the bribe money claimed to have been paid by the complainant was received by them. As a matter of fact, the trial Court has correctly noted that the recovery has not been effected from the possession of any of the respondents. It is on the basis of this evidence, the trial Court, giving benefit of doubt to the respondents-accused, ordered their acquittal in terms of judgment impugned in this appeal.

Sohan Lal v. State of J&K & Ors.
CRM (M) No.416/2019
Decided on: August 02, 2019
(High Court of J&K)

The petitioner booked for offence under section 376 RPC, initiated on

lodgement of FIR on the basis of investigation directed by the Magistrate in terms of Section 156(3) CrPC seeks quashment of the investigation on the ground that the offence has been registered against him only to coerce him to marry the alleged victim, and that there is no specific allegation as to the incident of rape. Held that - the allegation of the complainant that she was raped by the petitioner also requires to be investigated. The proceedings in the FIR cannot be quashed at the very outset on the mere allegation that the case has been registered with a view to wreck vengeance or to force the petitioner to enter into wedlock with the complainant.

Balbir Singh & Ors. v. State of J&K & Ors.
CRMC No. 201/2018
Decided on: August 09, 2019
(High Court of J&K)

The petitioner along with other accused charged by the trial court for commission of offences under sections 420, 407, 201 and 109 RPC, on the allegations that the employee of the CAPD, Government of the State in connivance with the carriers engaged for transportation of the Government Ration, instead of transporting it to the Depot of the society for distribution to the consumers, diverted it to private mill for a consideration. Challenged on the ground that there is no sufficient material on record to disclose commission of offences and that the ingredients of the offences under sections 420 and 407 RPC are mutually exclusive, as such both the offences cannot be tried together. Held that - on the facts and circumstances and the evidence collected by the investigating officer, ingredients of offences under sections 407, 201 and 109 are made out against the carriers and under section 409 RPC against the employee of CAPD. It is prima-facie substantiated that the government property,

i.e., ration was entrusted to the carriers for its transportation to the depot of the society for its distribution to the consumers/public at large, but, the same was, instead, carried to a private mill where it was sold for consideration. Offence of cheating under section 420 RPC is not made out as the ingredients of cheating are different from the ingredients of criminal breach of trust as defined under section 406 RPC. No elements of deception are made out.

Ishrat Hussain Sheikh v. State through Police Station Achabal

B.A.No.70/2019

Decided on: August 14, 2019

(High Court of J&K)

The accused sent up for trial of offences under sections 307 RPC, 7/27 Arms Act, 18 and 38 of the Unlawful Activities (Prevention) Act, 1967 before the Special Court, having failed in his application moved for grant of bail, made statutory appeal to the High Court as provided under UA(P) Act. The High Court relying upon the case law in (2005) 5 SCC 294 :Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and anr., (2007) 1 SCC 242 :Chenna Boyanna Krishna Yadav v. State of Maharashtra and anr., (2007) 7 SCC 798 : Union of India v. Shiv Shanker Kesari, and Criminal Appeal No. 578 of 2019 entitled National Investigation Agency v. Zahoor Ahmad Shah Watali, decided on 2nd April 2019, held that - The statutory requirement thus stands reinforced by the afore detailed enunciation of the legal principles that till contradicted/overcome/disproved by other evidence, the materials/evidence collected by the investigating agency against an accused person in the first information report would have to prevail. Furthermore, the degree of satisfaction for opining that the allegations are “prima facie true” as required by the

proviso to Section 43D(5) is much lighter than for recording an opinion that the accused was “not guilty” (as contained in TADA, MCOCA and the NDPS Act). It is also lighter than the degree of satisfaction required while considering an application of the accused for discharge from the case or for framing of charges. - The Supreme Court has also clearly emphasized that court is required to take into account the entirety of evidence referred to in the report under Section 173 Cr.P.C. and the totality of material and evidence on record which is not required to be weighed and examined only for the purposes of forming an opinion on broad probabilities.

Prof. Ab. Gani Bhat v. Altaf-ur-Rehman & Anr.

CRMC 298/2015

Decided on: August 20, 2019

(High Court of J&K)

In the context of proceeding in terms of Section 476 CrPC sought to be initiated by a party to litigation before any court, the following observations in the judgment are worthwhile to be taken note of - It needs to be understood that Section 476-A Cr.PC prescribes the procedure to be followed in cases mentioned under Section 195 Cr. PC. Section 195 Cr.PC is clearly an exception to the general rule, that any person can lodge a complaint after an offence is committed. The cognizance cannot be taken unless the prerequisite indicated in the said section are followed. Complaint in relation to the offences alleged to have been committed in terms of Section referred in Section 195 (b) Cr.PC can be filed only by the court or such an officer of the court who is authorized in this behalf or some other court to which the court is subordinate. The preliminary inquiry may have to be made if the court does not proceed in terms of the Section 476 Cr. PC suo motu. It would be only after a

preliminary inquiry is held that the court may make a complaint in writing, if approached by a private party. Even after preliminary inquiry is held the court holding such an inquiry is not under an obligation to file the complaint on the asking of the party approaching it, and to whose belief the offence of perjury may have been committed. The court which is seized of judicial proceeding is empowered and may direct for prosecution of a person even otherwise if it appears to it, on the conclusion of the any judicial proceedings, that perjury has been committed, or false evidence has been fabricated during such proceedings.

Najma Begum & Ors. v. State & Ors.
CRMC No. 151/2018

Decided on: August 21, 2019
(High Court of J&K)

Relying on the case law in *Som Mittal v. Govt. of Karnataka*, 2008 AIR SCW 1003, *M. N. Ojha v. Alok Kumar Srivastav*, AIR 2010 SC 201 and *Mian Abdul Qayoom v. State & others*, 2011 (1) JKJ 470 (HC), Hon'ble Court held that the remedy under Section 561-A Cr.P.C. should not be exercised by the Courts in a routine manner, rather has to be exercised sparingly, carefully with caution and in rarest of rare cases. Courts should refrain from making prima facie decision at the infancy stage or in a case where all the facts are incomplete and hazy. It is beaten law of the land that conducting of investigation cannot be scuttled away en-route.



CIVIL

"A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly."

R.P. Sethi, J. in *Anil Rai v. State of Bihar*, (2001) 7 SCC 318, para 9

Smt. Sunita Tokas & Anr. v. New India Insurance Co. Ltd. & Anr.
Civil Appeal No. 6339 of 2019
Decided on: August 16, 2019

Relying on its earlier decisions, Hon'ble Supreme Court held that - In the case of the death of a married person, it is an accepted norm that the age of the deceased would be taken into account. This Court has held that even in the case of a bachelor, the same principle must be applied. This Court has held that once the law is settled, it should not repeatedly be changed, since certainty of law is of crucial importance, to avoid any confusion.

Ravinder Kour Grewal & Ors. v. Manjit Kaur & Ors.
Civil Appeal No. 7764 of 2014

Decided on: August 07, 2019

Hon'ble Supreme Court considered the vexed question of law - Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act, 1963 (for short, "the Act") for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person? Held that - we hold that decisions of *Gurudwara Sahab v. Gram Panchayat Village Sirthala* (supra) and decision relying

on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (supra) and Dharampal (dead) through LRs v. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

Garmeen Bank Sial v. Anita Kumari & Anr.

OWP No. 2312/2018

Decided on: July 31, 2019

(High Court of J&K)

Trial court dismissed the application seeking condonation of delay in filing written statement holding that there was no good ground made out to extend time. Challenged by way of revision – held that – the trial court failed to take notice of the fact that the case was still at the stage of service of one of the defendants and that from time to time the court had granted time to the defendant to file written statement. When the matter had been posted for filing written statement, the trial court refused receiving the written statement. In the facts and circumstances of the case written statement allowed to be taken on record on paying costs.

(Note – Hon'ble Court has also passed some directions to be followed by the subordinate courts. A separate write-up on these observations is given in this issue)

Oriental Insurance Co. Ltd. v. Nardeep Singh and ors.

MA No. 234/2014

Decided on: August 08, 2019

(High Court of J&K)

Claim petition on account of accident suffered by the respondent, decided by the Motor Accident Claims Tribunal, holding the insurer liable to pay compensation. Award challenged by the insurer. Held that – insurer cannot avoid liability on the ground that the vehicle at the time of accident was hired by the Election Commission in connection with conduct of election, since the insurer has failed to prove this fact. However, the Tribunal has wrongly considered the multiplier as 17. Age of the claimant at the time of accident being 32, multiplier of 16 is appropriate on settled proposition of law. Further held that – although there is no categorical evidence as to permanent disability leading to loss of future earnings, it can be construed on the basis of the fact that claimant was on the executive job and there would be a loss of earning capacity on account of restrictive mobility because of injuries suffered in the accident. 30% loss of earning capacity as loss of future income is taken as appropriate in view of medical certificate disclosing 30% permanent disability.

IRA Leo v. State of J&K & Ors.

OWP No. 560/2011

Decided on: August 19, 2019

(High Court of J&K)

The following question of law framed in terms of proviso (b) to Rule 30 of the Jammu & Kashmir High Court Rules, 1999 referred for determination:-

“Whether the amendment brought out under Section 13 of the Jammu & Kashmir Civil Services Decentralization and Recruitment Act, 2010 by virtue of Jammu & Kashmir Civil Services Decentralization and Recruitment (Amendment) Act, 2013 is retrospective or only prospective in nature”, has been answered thus by the Hon'ble Court – the amendment incorporated under

Section 13 of the Jammu & Kashmir Civil Services Decentralization and Recruitment (Amendment) Act, 2013 is only prospective.

Prinkle Mahajan v. Shoba Sharma

MA 359/2017 (O&M)

Decided on: August 21, 2019

(High Court of J&K)

Hon'ble Court made the following observations as regards mode of service of summons on the defendant:

“15. Code of Civil Procedure provides for complete procedure in Order V for service of summons. Rule 12 thereof provides that wherever practicable service of summon has to be made on defendant in person unless he has an agent empowered to accept the service. Service can also be effected on an adult member of the family residing with him in case there is no likelihood of defendant being found at the place of address within reasonable time, as provided for in Rule 15. Order V Rule 17 details the procedure to be adopted when the defendant refuses service or cannot be found. In that eventuality the serving officer

shall affix a copy of the summon on the outer door or some other conspicuous part of the house in which defendant ordinarily resides or carries on business. The report of the process server should suggest that under what circumstances affixation was made and name and address of the person who identified the house and was present when the summon was affixed. Where the summon has been returned and is not verified by affidavit of Returning Officer, Court is to examine him on oath before passing appropriate order. Order V Rule 20 of CPC provides for substituted service where the Court is satisfied, for the reasons to be recorded, that the defendant is keeping away for the purpose of avoiding service or that the summons cannot be served in ordinary way.”

Finding the summons not to have been served in the aforesaid manner, exparte decree passed by the court below is set aside after condoning the delay in presenting the application for the purpose.



Activities of the Academy



Glimpses of the Training Programme

Two Day Training Programme on 'Cyber-Law including Cyber-Crimes, Cyber-Forensics, Cyber-Security' organised by J&K State Judicial Academy in collaboration with Information Technology Department J&K.

On 3rd & 4th August, 2019 J&K State Judicial Academy, in collaboration with J&K e-Governance Agency (Department of Information Technology, Government of Jammu & Kashmir) organised a two-day Training Programme for the Judicial Officers, Investigators, Prosecutors, Law Officers and Officers from the Anti Corruption Bureau, on 'Cyber Law including Cyber-Crimes, Cyber Forensics and Cyber Security' in the Conference Hall of District Court Complex, Mominabad Srinagar.

This programme was meant to achieve an objective of creating awareness among the various stake-holders in the judicial system of the State and to give them insight into techno-legal aspects of the cyber law regime.

The training programme was inaugurated by Hon'ble Mr. Justice Ali Mohammed Magrey. In his inaugural address Justice Magrey said that we are entering into entirely a different world in near future which shall completely be driven by the cyber technology. It is the virtual world that shall take over, pushing the real world in the background. People have started living their virtual life. This brings into picture the need for awareness of cyber law regime and the cyber security. Cyber Security has two aspects which are important to understand viz. preventive and investigative. Cyber crime is silent and difficult to detect. Training of the stakeholders in justice dispensation, is very important to address those issues.

Justice Magrey also said that since last two decades mobile phone networking and mobile internet has developed by leaps

and bounds, and lately now we have smart mobile phones and computers with internet. Every detail, from personal to professional, is stored in these gadgets. Unscrupulous people with criminal mindset are misusing these devices with impunity, so we need to take necessary security and protective measures to prevent its misuse, monitor its operations and provide proper deterrence to prevent recurrence of such offences.

The Training Programme was attended by the District Judges, Sub Judges, Munsiffs, Investigating officers and Public Prosecutors from Districts Srinagar, Budgam and Ganderbal, officers from the Anti-Corruption Bureau and officers from the Law Department, Government of J&K. Mr. Satyajit Vagala from National Institute of Smart Governance (NISG), Mr. Sandeep Mudulkar and Mr. Yogesh Pandit, renowned experts on Cyber law and Security, as resource persons conducted the Training Programme.

The Training Programme opened with introductory session by Mr. Vagala from NISG, who apprised the participant about the role being played by the NISG as special purpose vehicle of the Central Government's IT Department, in helping to create awareness among the agencies and authorities involved in every functioning of the Government. He also talked about the involvement of the NISG in policy planning in the matters of ICT. He detailed the initiatives so far accomplished by NISG, including their involvement in the Capacity Building initiative of the J&K e-Governance Agency (JKeGA).

Mr. Yogesh Pandit took the sessions on the fundamentals concepts of Computers and Information and Communication Technology. He talked about the gradual development of Computers and the introduction of Information Technology in the early seventies by certain organizations for their personal use, and thereafter the spread of Information Technology as the most important tool in the



Glimpses of the Training Programme

field of communication. He also dealt with the legal aspects of the Cyber Law and gave elaborate presentation on Cyber Crimes, including the crimes against women and children. He also addressed the issue as to collection of evidence by the investigating agencies, its production before the courts of law and appreciation of evidence by the courts. He discussed case law and latest trends in the matters of electronic evidence and requirement of furnishing certificate under section 65-B of the Evidence Act to give admissibility to the electronic evidence. In this backdrop, he also highlighted the importance of proactive role of the judicial officers in getting on record every piece of evidence which is necessary to arrive at truth. For this there are various provisions in the procedural laws and the Evidence Act, which can be utilized for getting desired results.

Mr. Mudulkar talked about the technical aspects of the cyber technology from the point of view of cyber security and cyber forensics. He started with discussion on vulnerability and loopholes in the Internet and Communication Technology, and the need to put in place the requisite security mechanism

in computer and mobile systems, as also in the internet regime. He also apprised the participant as to how the unscrupulous elements have exploited the vulnerabilities and have put the ordinary user of the technology to a great risk. He also discussed the cyber frauds, especially in the Internet Banking, Online Commercial Transactions and Credit/Debit Card Scams. From the prevention point of view he gave insight into various technological measures which can be utilized to minimize the risk of frauds. In one session he gave an overview of the dark-web and the illegal; activities being carried out by secret world mafia.

On the investigative and forensics side of the cyber law, Mr. Mudulkar gave demonstration of numerous open source technological tools which are helping the government agencies in detection of crimes and bringing home the guilt of such culprits.

In various technical sessions, the resource persons gave practical demonstration of investigative inputs and the resultant outputs in unraveling truth in cyber and non-cyber crimes.



Legislative Updates

1. The Constitution (Application to Jammu & Kashmir) Order, 2019

The Constitution (Application to Jammu & Kashmir) Order, 2019 (C.O. 272) has been made by the President on 5th August 2019, whereby the Constitution (Application to Jammu & Kashmir) Order, 1954 has been superseded. By Clause (2), all the provisions of the Constitution of India, as amended from time to time have been made applicable to the State of Jammu & Kashmir with immediate effect. In the wake of applicability of all the provisions of Constitution of India on the subjects covered under the Constitution of J&K, the provisions of Constitution of India shall have precedence.

2. Presidential Declaration in terms of Article 370 of The Constitution of India

By presidential Declaration in exercise of the powers vested under Article 370 (3) read with Article 370 (1), on the recommendation of the Parliament, issued as C.O. 273, with effect from 6th August 2019, all clauses of Article 370 of the Constitution of India, in relation to State of Jammu & Kashmir have been made inoperational. It has brought the status of J&K State at par with other States of the Union.

3. The Jammu & Kashmir Reorganisation Act, 2019.

The Jammu & Kashmir Reorganisation Act, 2019 (34 of 2019) having been passed by the Parliament of India received the assent of the President on 9th August, 2019 and has been published in the Gazette of India dated 9th August, 2019. By this Act, geo-political structure of the State shall be impacted on and from the appointed day, which has

separately been notified as 31st October, 2019.

Effective from the appointed day the two Union Territories i.e., the Union Territory of Jammu & Kashmir and Union Territory of Ladakh shall be formed out of the existing State of J&K. Districts Leh & Kargil carved out of the existing Territories of State of J&K would form the Union Territory of Ladakh. Rest of the territories of the existing State would be defined as the Union Territory of Jammu & Kashmir.

The Union Territory of J&K shall have Legislative Assembly but no Legislative Council, and the Union Territory of Ladakh shall be without Legislative Assembly. Both the Union Territories shall be administered by the President through an Administrator by the name of Lieutenant Governor. On and from the appointed day, the Governor of the State shall be the Lieutenant Governor of the two Union Territories, for such period as may be determined by the President.

The Reorganization Act puts structural changes in the Administrative and Legislative setup, however the Judicial structure of the State would be impacted only in administration of laws that have been made applicable and those have been repealed, effective from the appointed Day.

In terms of Section 75 (1)(a) the existing High Court of Jammu & Kashmir shall be the common High Court for the two Union Territories and in terms of Section 75 (1)(b) the Judges of the High Court shall become the Judges of the common High Court. Section 77 provides that the law in force with respect to practice and procedure before the High Court, shall with necessary modifications apply to the common High Court. The rules in force as to practice and

procedure shall continue to be in force in the common High Court until varied or modified.

By the Reorganization Act, 108 Central Laws, as mentioned in the Fifth Schedule, Table-1 have been made applicable to the two Union Territories on and from the appointed day. 7 State Laws mentioned in Table-2 shall be applicable with certain amendments. 153 State Laws and 11 Governor's Act as mentioned in Table-3 have been repealed. 166 State Laws as are in force today, as mentioned in Table-4, shall continue to operate in the two Union Territories.

The prominent procedural laws, Code of Civil Procedure and Code of Criminal Procedure, as are in force today shall be replaced by corresponding Central Laws on and from the appointed day. Law of evidence as in force today shall also be replaced by the Indian Evidence Act. Prominent substantial laws operative in the State as of now, shall also be replaced by the corresponding Central Laws. Indian Penal Code shall replace the Ranbir Penal Code, and the Specific Relief Act, the Limitation Act, the Contract Act, the Consumer Protection Act, the Stamp Act and the Suit Valuation Act shall be replaced by the corresponding Central Acts. Prominent personal laws, the Hindu Succession Act, the Hindu Marriage Act, the Hindu Adoption and Maintenance Act, the Muslim Personal Law (Shariat) Application Act, the Dissolution of Muslim Marriage Act, the Special Marriage Act and the Christian Marriage Act shall, on and from the appointed day, be replaced by the corresponding Central Laws.

The Administrative Tribunal Act shall also be applicable to the two Union

Territories, requiring all the Service Matters as defined under Section 3(q) of the Act to be dealt by the Administrative Tribunal constituted in terms of Section 14 of the Act. Sections 28 & 29 mandate that all the service matters pending before all the courts shall stand transferred to the Administrative Tribunal. In relation to the Union Territory, as explained in Section 14, reference to service under the Union shall be construed as service under the Union Territory, meaning thereby the service matters under the two Union Territories shall be adjudicated by the Central Administrative Tribunal.

The State Judicial Academy has collated into a single document the soft copies of the Central Acts made applicable in terms of the Fifth Schedule, Table-1 and the compilation has been uploaded on the Web Portals of the High Court of J&K and the State Judicial Academy. Learned Judicial Officers may download the document which can be conveniently used as and when required. This document then further be modified by the Officers suiting to their own convenience and requirement.

Similarly, the compilations of the Central Acts and repealed State Acts have been made along with the statement of interplay between the corresponding Acts. The compilations shall be handy for the Judicial Officers to have quick understanding of the corresponding laws i.e., the extended Central Acts and the repealed State Acts. These compilations would be made available in due course to all the Judicial Officers for their convenience.



While deciding a case titled **Garmeen Bank Sial v. Anita Kumari & Anr.**, OWP No. 2312/2018, July 31, 2019, the Hon'ble High Court of J&K has noticed some anomalies in recording the daily proceedings in the cases, as also from the point of view of uploading of the proceedings on CIS for access on eCourts system and NJDG portal. Such anomalies have been highlighted in the judgment and the measures to be followed have been suggested. It shall be worthwhile to take note of the observations of the Court for profit, as under:

“Before parting with the order, this Court would like to make certain observations regarding the manner in which the proceedings are being conducted by the courts below.

(i) In most of the zimni orders passed by the courts below, names of the counsels who represent either of the parties is not mentioned.

(ii) Most of the order sheets on which zimni orders are recorded do not reflect the names of the Presiding Officers who sign the orders or the case number and the parties' name, making it difficult to link any order sheet with the main case, if separated.

(iii) All the officers are well aware of the fact that with the e-court system being in place, CNR number is the identification for any case, which is required to be mentioned not only on each page on which zimni orders are passed, besides the title of the case in brief, but even on the interim orders passed deciding the application and the final judgment. This is one of the easiest parameter with which search is possible on the NJDG

portal.

(iv) Not only in this case, in some of the cases it has been noticed that the zimni orders passed by the courts below do not reflect on whose behalf the adjournment has been sought and granted. In certain matters the requirement of law is to even mention the reasons why the case is being adjourned but these are also missing.

(v) Uploading of orders passed in language other than English will not be possible immediately though efforts are being made for the purpose. Even if the orders are recorded in language other than English, copy thereof also should be available on record in English language duly signed by the officer concerned, which is to be uploaded on the website.

(vi) None of the orders passed by the courts below mention the unique identification number (UID) allotted to each of the Judicial Officer.

(vii) In many of the orders date of filing of suit and date of decision thereof is missing.

(viii) It is further noticed that separate order sheets are maintained for passing zimni orders in the main cases and in the application, either filed at the time of institution of the case or subsequently. The order sheets are also kept separately in the files. As a result of which the officers are not able to keep pace with the progress of the case or track of the applications.

(ix) In the orders passed by the court below exercising Appellate or Revisional jurisdiction complete details of the order impugned are sometimes missing.

(x) Whenever, any application for bringing on record the legal representatives of any deceased party is allowed, the names thereof are not properly recorded in the memo of the parties, which many a times results in passing of final order without correct memo of parties and consequently issuance of certified copies of thereof.

(xi) In many of the judgments/long orders the learned courts below did not mention the para numbers or are in habit of unnecessarily underlining many paras.

(xii) If we have to keep pace with the developments taking place in the judicial system with introduction of e-courts system, which is for benefit of all the stake holders, such as judicial officers, advocates, staff, higher Courts and most important being the litigants, we will have to streamline our working. Unless we improve the manner in which the details are mentioned in the orders, the real object for which e-courts system has been put in place, will be defeated and we will lag behind. Hence it is directed:

(1) While passing the zimni orders, on all order sheets in the centre, case number (CNR No.) and parties name in brief such as ABC (and Others) v/s. XYZ (and Others) should be mentioned.

(2) In all of the zimni orders, interim orders or final judgments the names of the counsels who represent different parties should be clearly mentioned, instead of merely mentioning „L/c“ for the plaintiff or defendant or any other form used.

(3) Whenever any request is made for adjournment by any of the parties it should specifically be recorded in the order as to on

whose behalf adjournment has been prayed for and granted with reasons in brief. This will help the court in finding, which of the party delayed the proceedings.

(4) It has been noticed in number of cases that the parties to the litigation do not mention there complete addresses or the parentage as a result of which it is difficult to serve them. Addresses of the plaintiff (s)/petitioner(s) before the court below is equally relevant though he may not have to be served at that stage but his/their service may be required, if any adverse order is impugned before the higher Court. At the time of filing of the cases and applications, the learned court below to ensure that address(s) and parentage of other parties is also complete on which service of notices can be effected.

(5) In all the orders passed by the courts below names along with UID number of the officers concerned should be typed below the signatures.

(6) Whenever zimni orders or any other order is passed in language other than English, translation thereof in English should also be available on record, duly signed by the officer concerned, for the purposes of uploading of those orders on the Website or supply of copies to the parties concerned. Subsequent translation by any person other than officer, who passes the order, may change real spirit and intent of the order. In all the orders passed, deciding the applications during the pendency of the main case, the date on which the main case was filed, the date on which the application in question was filed and the decision thereof should be mentioned before title of the case, in the centre of page, so as to save it from tagging.

(7) At the time of final decision of a case,

the date of filing and the date of decision thereof should be mentioned above the memo of parties, in the centre of the paper.

(8) Whenever any application is allowed for amendment or for bringing legal representatives of any of the party or deletion/addition of any party in the proceedings, specific note thereof should be made on the memo of parties itself to be taken care of at the time of passing final order and supplying copies of the orders.

(9) While deciding any appeal or revision against the order passed by the court below, the learned courts below are directed to mention complete details of the case, order passed wherein is impugned.

(10) In all the orders and judgments the paras should be numbered.

(11) In criminal cases complete details of the FIR, offence for which same was registered and details of the Police Station should be clearly mentioned including specific details of the offence, if any, added later on.

(12) In all the proceedings the order sheets of the main case and the application should be common and not separate. Any order passed on a particular date should contain the details with reference to the main case and/or the application which is being dealt with on that date.

(13) All the applications filed should be duly numbered, for which provision is there in CIS-3 and indexed separately with details such as the, date of filing, prayer in the application and date of disposal. It will enable the officers to keep track of all the applications filed and especially those, which are pending.

(14) In cases pertaining to determination of compensation in land acquisition matters, dates of various notifications, date of award by the collector area acquired and the area where the land is situated are required to be mentioned. Efforts should be made to decide all the cases of same acquisition together.”

Reading of the above observations of the Court reveals that the anomalies in recording daily proceedings in the cases may appear to be innocuous but are substantial in nature and have great impact on progress of the case and for dissemination of complete information to the consumers of justice. All the subordinate judges have been mandated to follow the directions issued by the Court in letter and spirit. If these directions are given effect to, it would give a substantial clarity to the daily proceedings recorded in the file and it shall also facilitate in keeping correct track of court proceedings in the cases.

- Editor



It is an earnest request to all the worthy judicial officers to make contribution to this newsletter by writing on the legal issues having bearing on the administration of justice by the subordinate courts. This may include any personal experience or research in the working of the judicial system in general or particular courts. Any positive suggestion for making improvement in standard of the e-Newsletter shall be accepted wholeheartedly.

- Editor

