



# SJA e-NEWSLETTER

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

Volume 4

Monthly

July 2021

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## From the Editor's Desk

Gender, as a social structure, identifies itself as the central characteristic for social organization, and the process of comprehending its impact while becoming aware of its numerous manifestations is called gender sensitivity. Gender identity, being a critical aspect of culture, has led to a deeply entrenched structure of power imbalance that reflects in societal institutions. The current state of pandemic brings the factors of discrimination and privilege regarding gender bias to the forefront. Diversity in terms of customs, traditions, rituals, social values, family beliefs, and individual perception requires a more systematic and professional approach to inculcate this sensitivity and primarily highlight the contribution of both genders in the creation and development of a well-balanced society. Policies and programs that take into account the particularities of the lives of both women and men, while aiming to eliminate inequalities and promote gender equality, help in addressing and taking the gender dimension into account. Changing Organizational structure and removing stereotypes has become a social incentive for sustainable development and has naturally trickled into the legal profession. Access to justice means providing those seeking to secure their vested rights with appropriate and understandable information about the scope of these rights and how to access them; a readily accessible infrastructure – in both the formal and practical sense – for acquiring this information and then acting upon it; the quality of the functioning of this infrastructure in practice; and the confidence in the utility and integrity of the infrastructure. In strengthening access to justice, programs for justice reform and service delivery have given unprecedented momentum to the subject of gender sensitization. A nationwide need for recognizing prejudices, that lie within the legal sphere, and devising steps to reinforce the enduring rules of justice has been taken into account. Necessary steps have been taken for using neutral language to avoid secondary victimization and stigmatization. Access to justice, in the present scenario of the pandemic, needs further strengthening particularly in comprehending the reality of gender disparity and incorporating attitude that makes the system more flexible. Gender sensitization will only help in making the system more convenient for the masses and help justice in prevailing over gender bias.

## LEGAL JOTTINGS

'Rule of Law' is the basic rule of governance of any civilised democratic polity. Our Constitutional scheme is based upon the concept of Rule of Law which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of Law. Whoever the person may be, however high he or she is, no-one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs.

**Justice R.P. Sethi, In Arundhati Roy v. Respondent,  
March 06, 2002**

### CRIMINAL

#### Supreme Court Judgments

**Writ Petition (C) No.1088 of 2020  
Ajit Mohan & Ors v. Legislative Assembly  
National Capital Territory of Delhi & Ors.  
Decided on: 08 July, 2021**

In its postscript to the 182 paged judgment refusing to quash Delhi Assembly's summons to Facebook India Head in Delhi Riots Enquiry, the Hon'ble Supreme Court Bench comprising of Justices Sanjay Kishan Kaul, Dinesh Maheshwari and Hrishikesh Roy emphasized the need to restrict the time period for oral submissions by lawyers and to have 'more crisp, clear and precise' judgments which litigants can understand. The Bench further observed that we have become courts of interim proceedings where final proceedings conclude after ages. It was observed that it is the need of the hour to write clear and short judgments which can be easily understood. The Bench also observed that we are weighed down by judicial precedents. On every aspect there may be multiple judgments. If the proposition of law is not doubted by the Court, it does not need a precedent unless asked for. If a question is raised about a legal proposition, the judgment must be relatable to that proposition and not multiple judgments. It was stated thus:

*"The purpose of our post script is only to start a discussion among the legal fraternity by bringing to notice the importance of*

*succinctly framed written synopsis in advance, and the same being adhered to in course of oral arguments to be addressed over a limited time period and more crisp, clear and precise judgments so that the common man can understand what is the law being laid down. After all, it is for 'the common man' that the judicial system exists."*

**Special Leave Petition (Criminal) Diary  
No.7772/2021**

**Birbal Kumar v. The State of  
Chhattisgarh**

**Decided on: 30 June, 2021**

A three-judge Bench of Supreme Court comprising of Justice Ashok Bhushan, Justice Vineet Saran and Justice M.R. Shah took strong objections to a Sessions Court Judgment where the name of rape victim is mentioned. The Bench held that all the subordinate courts should be careful not to reveal the identity of a rape victim in any proceedings. The Bench observed:

*"It is well established that in cases like the present one, the name of the victim is not to be mentioned in any proceeding. We are of the view that all the subordinate courts shall be careful in future while dealing with such cases"*.

The Chhattisgarh High court, in its judgment, had dismissed the convict's plea

against a trial court verdict awarding him 10 years' jail after holding him guilty in the case lodged in 2001. The high court had upheld the trial court's order saying the victim's statement inspired confidence and as per the evidence, it cannot be said to be a case of consensual physical relation.

The Hon'ble Apex Court rejected the plea filed by a convict who was challenging the Chhattisgarh High Court verdict dismissing his appeal against conviction in the case.

**Criminal Appeal No.533 of 2021**  
**Shaik Ahmed v. State of Telangana**  
**Decided on: 28 June, 2021**

In an appeal filed by the accused challenging the judgment of the High Court by which Criminal Appeal filed by the appellant questioning his conviction and sentence under Section 364A IPC has been dismissed, a Bench comprising Justice Ashok Bhushan and Justice R. Subhash Reddy has held that to prove an offence of 'kidnapping for ransom' under Section 364A of the Indian Penal Code (IPC) it is necessary to prove that along with kidnapping, the kidnapper also threatened to cause death of the victim or hurt the victim. Factually, the appellant, an auto-rickshaw driver, was convicted for kidnapping a school boy who had taken ride in the auto and for demanding a ransom of Rs 2 lakh from his father.

The Court framed questions for consideration in the appeal viz: the essential ingredients of Section 346A to be proved beyond reasonable doubt by the prosecution for securing the conviction of an accused under Section 364A IPC and whether each and every ingredient as mentioned under Section 364A needs to be proved for securing conviction under Section 364A and non-establishment of any of the conditions may vitiate the conviction under Section 364A IPC and observed that the word "and" is used between first and second conditions. So merely proving the first condition is not sufficient. It was also noted that the use of the conjunction "and" has its purpose and objects and that Section 364A uses the word "or" nine times but the whole section contains only one "and", which is between the first

and second conditions. It was also observed that the word "and" is used as conjunction whereas the use of word "or" is clearly distinctive. Both the words have been used for different purpose and object.

*"15. The use of conjunction "and" has its purpose and object. Section 364A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364A, apart from fulfilment of first condition, the second condition, i.e., "and threatens to cause death or hurt to such person" also needs to be proved in case the case is not covered by subsequent clauses joined by "or"."*

Hon'ble Supreme Court noted that both the Sessions Court as well as the High Court did not advert to the necessity of proving second condition of Section 364A IPC.

Relying on the testimonies of the victim and his father, which were to the effect that the appellant had not caused any sort of harm to the victim during the period of abduction, Hon'ble Supreme Court concluded that second condition of Section 364A IPC was not proved in the case. Therefore, the conviction and life sentence under Section 364A IPC was set aside. However, since the fact of kidnapping was proved, the Court altered the conviction to Section 363 IPC, which carries a maximum punishment of 7 years imprisonment.

**Criminal Appeal No. 526 of 2021**  
**Sunil Kumar @ Sudhir Kumar & Anr. v.**  
**The State of Uttar Pradesh**  
**Decided on: 25 May, 2021**

Hon'ble Supreme Court Bench consisting of Hon'ble Justice Dinesh Maheshwari and Hon'ble Justice Aniruddha Bose held that it is legally obligatory upon the Court of the first instance while awarding multiple punishments of imprisonment, to specify in clear terms as to whether the sentences would run concurrently or consecutively. In the present case, the question of law was restricted to the

question of sentence and the appellants were convicted under sections 363, 366 and 376(1) of the Indian Penal Code. The Sessions trial court convicted them under the above-mentioned offences and sentenced the appellants for rigorous imprisonment for a term of 5 years with a fine of Rs. 2,000/- and in default, further imprisonment for 6 months for the offence under Section 363 IPC; rigorous imprisonment for a term of 7 years with a fine of Rs. 3,000/- and in default, further imprisonment for 1 year for the offence under Section 366 IPC; and rigorous imprisonment for a term of 10 years with a fine of Rs. 5,000/- and in default, further imprisonment for 1½ years for the offence under Section 376(1) IPC. The trial court failed to specify if the punishments would run consecutively or concurrently and if consecutively, the Trial Court did not specify the order in which one punishment of imprisonment was to commence after expiration of the other. The Hon'ble Apex Court observed that section 31(1) Cr.P.C completely vests discretion with the court to order the sentences for 2 or more offences at one trial to run concurrently having regard to the nature of offences and the surrounding factors. Even consecutive running of punishment has been laid down. Further, the court of the first instance has a legal obligation to specify whether the sentences would run consecutively or concurrently in case of multiple sentences. In the cases where the court specifies or decided on the consecutive running of the sentence, it is obligated to state the sequence in which they are to be executed. The Supreme Court observed that both the trial court and high court failed to address these questions of law.

The Supreme Court held that the principle of "single transaction" cannot be invoked due to the omission of the Court since the facts and offences under which the appellants /accused.

### [J&K High Court Judgements](#)

### **CRM(M) No.653/2019**

**Arshad Ahmad Allaie v. UT of J&K & Anr.**

**Pronounced on: 06 July, 2021**

Hon'ble High Court of Jammu & Kashmir while deciding a petition whereby the petitioner had challenged an order granting extension of period of custody of accused beyond 180 days passed by a Sessions Court in terms of Section 36-A of NDPS Act and was claiming entitlement for default bail, ruled that where an accused is facing investigation for offences under UAPA together with offences under NDPS Act, concerned Sessions Judge under Section 36 of NDPS Act is vested with jurisdiction to extend the custody of such an accused beyond the period of 180 days subject to fulfilment of the conditions mentioned in proviso to sub-section (4) of Section 36A of NDPS Act. It was observed that jurisdiction to extend detention of an accused beyond the period of 90 days in relation to a case where the accused is booked for offences under UA(P) Act, which is included in the Schedule appended to NIA Act, vests with Special Court constituted in terms of provisions of NIA Act and Proviso to sub-section (4) of Section 36-A gives jurisdiction to Special Court to extend the custody of a person who is accused of offences under NDPS Act beyond 180 days up to one year on the report of the Public Prosecutor indicating progress of the investigation and the specific reasons for detention of the accused beyond said period of 180 days. Further observing that Section 36-D of the NDPS Act provides for a situation where Special Courts in terms of Section 36 of the NDPS Act have not been constituted, The Hon'ble Court pointed out there is high pendency of cases related to offences under NDPS Act in JK and in the absence of Special Courts, these cases are being tried by ordinary Sessions Courts thereby resulting in delay in disposal of these cases and the very object of the Act is getting defeated.

The court expressed its anguish and dismay for the manner in which "the successive governments of erstwhile state of JK and now union territory of JK have dragged their feet on constitution and setting up of Special Courts in terms of

Section 36 of NDPS Act in this part of the Country " and asked the government to take immediate steps for setting up of Special Courts for speedy disposal of cases related to offences under Narcotic Drugs and Psychotropic Substances Act, (NDPS) 1985.

**Bail App No.253/2020**  
**Sohan Singh v. Union Territory of J&K**  
**Decided on: 24 June, 2021**

Hon'ble High Court of Jammu & Kashmir while dismissing a Bail application observed that case where gravity of offence alleged against an accused is severe, the bail cannot be granted only on the ground of long incarceration.

The Petitioner in this case was incarcerated since 31st December, 2012 for allegedly committing an offence under Section 302 of RPC. He was charged by the Trial Court in February 2014 and subsequent developments pertaining to impleadment of more persons as accused led to stay of Trial by the Supreme Court in December 2016. According to the petitioner, there has been unexplained and unreasonable delay in completion of the trial of the case, which entitles him to the grant of bail.

The High Court opined that nature of accusation and the severity of punishment in case of conviction has to be kept in mind before granting bail.

Referring to case law case of *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another*, (2004) 7 SCC 528, the Bench observed that the conditions laid down in Section 437(1)(i) of Cr. P. C are sine qua non for granting bail even under Section 439 of the Code, meaning thereby that in a case where a person is alleged to be involved in a offence punishable with death sentence or imprisonment for life, he cannot be released on bail if there appear reasonable grounds for believing that he has been guilty of such an offence. It was also observed that as per case law *State of UP through CBI v. Amaramani Tripathi*, (2005) 8 SCC 21, a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no pre-judging and no prejudice. The Bench further held that:

*"It is true that some delay in completion of trial has taken place on account of restrictions in physical hearing of cases due to COVID-19 pandemic but that is an eventuality beyond the control of everybody. The same cannot be the sole ground for enlarging an accused on bail, particularly in a heinous offence like murder. Even otherwise, the Supreme Court in Kalyan Chandra Sarkar's case (supra) has clearly laid down that in a case where gravity of offence alleged against an accused is severe, the bail cannot be granted only on the ground of long incarceration."*

With these observations, the petition was dismissed.

**CrLA(D) No. 08/2020**  
**Vishal Sharma v. Union Territory of**  
**Jammu and Kashmir through SHO P/S**  
**Domana and Anr.**  
**Pronounced on: 02 June, 2021**

A Division Bench of Hon'ble High Court of Jammu and Kashmir refused to suspend the sentence for the three convicts in the 2008 Deputy Advocate General Murder case and said it cannot overlook the fact that the accused-applicants have been held guilty and convicted for commission of a "heinous offence against the then serving Law Officer". The Hon'ble Bench referred to the judgement of the Apex court passed in case titled as "*Preet Pal Singh Vs. State of UP*" reported in 8686 (4) SCC 201 and reiterated that power of suspension of sentence by Appellate Court under Section 389 Cr.P.C confers 'discretionary jurisdiction' and has to be "exercised sparingly".

*"A plain reading of Section 389 Cr.P.C, makes it is clear that the Section confers discretionary jurisdiction on Appellate court to suspend the execution of sentence during the pendency of the appeal on valid reasons recorded in writing. Law being settled that although the High court is not debarred from suspending the sentence and granting bail to a convict but that power has to be exercised sparingly while objectively assessing the matter and that too in the particular circumstances of each case."*

It further noted that they were convicted after a full trial for about twelve

years by the Trial Court upon evaluation of ocular, circumstantial, medical and scientific evidence and were sentenced to life by a Court of Additional Sessions Judge, Jammu in July 2020. The applicant-accused had also applied for bail on the premise that they have been under incarceration for the last more than 10 years and there is no possibility of adjudication/disposal of their respective appeals by the Court in near future. The Bench held that a conjoint reading of the applications in hand would reveal that in none of the said applications the applicants have spelt out any cogent ground giving rise

to substantial doubt about the validity of the conviction, or that there is likelihood of unreasonable delay in disposal of their appeals.

The applicants in the peculiar facts and circumstances of the case were not held entitled to suspension of sentence and consequent grant of concession of bail during pendency of their respective appeals and as such, applications were dismissed.



Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulosity, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned.

**Justice T.S. Thakur, In Dashrath Rupsingh Rathod v. State of Maharashtra & Anr., August 01, 2014**

## CIVIL

### Supreme Court Judgments

#### **Civil Appeal No. 1537 of 2016**

#### **R. Janakiammal v. S.K. Kumarasamy (Deceased) Through Legal Representatives and Others**

**Decided on : 30 June, 2021**

Hon'ble Supreme Court Bench comprising of Justice R. Subhash Reddy and Justice Ashok Bhushan, while deciding two appeals which were filed challenging the Division Bench judgment dated 23.11.2011 of Madras High Court whereby the High Court dismissed the plea of plaintiff and had held that suit filed by plaintiff before the trial court was barred by Order XXIII Rule 3A CPC and only remedy available was to question the compromise decree in the same suit, held that "An agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3A shall be attracted if a compromise on the basis of which decree was passed was void or voidable." It was also observed by the Bench that the lone remedy which is available to a party of a consent decree to avoid such con-

sent is to approach the Court that had recorded the compromise and a separate suit is not maintainable. In the present case, plaintiffs had filed a suit to challenge a compromise decree which he contended was obtained through fraud and misrepresentation. The plaintiff stated that the consent which he gave therefore for the compromise was not free consent.

The Bench made the following observations in the instant case:

*"42. Reading Rule 3 with Proviso and Explanation, it is clear that an agreement or compromise, which is void or voidable, cannot be recorded by the Courts and even if it is recorded the Court on challenge of such recording can decide the question. The Explanation refers to Indian Contract Act. The Indian Contract Act provides as to which contracts are void or voidable. Section 10 of the Indian Contract Act provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Section 14 defines free consent in following words:- "14. "Free con-*

*sent" defined.—Consent is said to be free when it is not caused by— (1) coercion, as defined in section 15, or (2) undue influence, as defined in section 16, or (3) fraud, as defined in section 17, or (4) misrepresentation, as defined in section 18, or (5) mistake, subject to the provisions of sections 20, 21 and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake."*

It was also held that Hindu Joint Family even if partitioned can revert back and reunite to continue the status of joint family and that the acts of the parties may lead to the inference that parties reunited after previous partition. The Bench Parties held that the plaintiffs are at liberty to make an application before the trial court for passing an appropriate final decree and such application is to be disposed of by the trial court in accordance with law.

In this case, the plaintiffs filed a suit challenging a compromise decree contending that it was obtained by fraud and misrepresentation. It was contended that the consent which he gave for compromise by signing the compromise was not free consent and thus it became voidable at the instance of the plaintiff. The Trial Court, and the High Court, held that suit is barred under Order XXIII Rule 3A of the Code of Civil Procedure.

Rule 3A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The issue considered by the Apex court bench was whether the bar under Rule 3A of Order XXIII shall be attracted in the facts of the present case?

Referring to Rule 3 and 3A and Sections 10, 13 and 14 of the Indian Contract Act, the bench noted thus:

*41. Determination of disputes between persons and bodies is regulated by law. The legislative policy of all legislatures is to provide a mechanism for determination of dispute so that dispute may come to an end and peace in society be restored. Legislative policy also aims for giving finality of the litigation, simultaneously 29 providing higher forum of appeal/revision to vent the grievances of an aggrieved party. Rule 3A which has been added by above*

*amendment provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. At the same time, by adding the proviso in Rule 3, it is provided that when there is a dispute as to whether an adjustment or satisfaction has been arrived at, the same shall be decided by the Court which recorded the compromise. Rule 3 of Order XXIII provided that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall order such agreement or compromise to be recorded and pass a decree in accordance therewith. Rule 3 uses the expression "lawful agreement or compromise". The explanation added by amendment provided that an agreement or a compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful."*

*42. Reading Rule 3 with Proviso and Explanation, it is 30 clear that an agreement or compromise, which is void or voidable, cannot be recorded by the Courts and even if it is recorded the Court on challenge of such recording can decide the question. The Explanation refers to Indian Contract Act. The Indian Contract Act provides as to which contracts are void or voidable. Section 10 of the Indian Contract Act provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*

*43. A consent when it is caused due to coercion, undue influence, fraud, misrepresentation or mistake is not free consent and such agreement shall not be contract if free consent is wanting. Sections 15, 16, 17 and 18 define coercion, undue influence, fraud and misrepresentation. Section 19 deals with voidability of agreements without free consent.*

*44. A conjoint reading of Sections 10, 13 and 14 indicates that when consent is obtained by coercion, undue influence, fraud, misrepresentation or mistake, such consent is not free consent and the contract becomes voidable at the option of the party whose consent was caused due to coercion, fraud or*

*misrepresentation. An agreement, which is void or voidable under the Indian Contract Act, shall not be deemed to be lawful as is provided by Explanation to Rule 3 of Order XXIII.*

Having noted it, the bench further added:

*48. Whether the bar under Rule 3A of Order XXIII shall be attracted in the facts of the present case as held by the Courts below is the question to be answered by us. Rule 3A bars the suit to set aside the decree on the ground that compromise on which decree was passed was not lawful. As noted above, the word "lawful" has been used in Rule 3 and in the Explanation of Rule 3 states that "an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful.....;"*

*49. Thus, an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3A shall be attracted if compromise on the basis of which decree was passed was void or voidable.*

Referring to Banwari Lal Vs. Chando Devi (Smt.) Through LRs. And Anr., (1993) 1 SCC 581 Pushpa Devi Bhagat (Dead) Through LR. Sadhna Rai (Smt.) Vs. Rajinder Singh and Ors., (2006) 5 SCC 566 R. Rajanna Vs. S.R. Venkataswamy and Ors., (2014) 15 SCC 471 Triloki Nath Singh Vs. Anirudh Singh (Dead) Through Legal Representatives and Ors., (2020) 6 SCC 629, the court added:

The above judgments contain a clear ratio that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful, i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

In this case, the court noted that the plaintiff prayed for a declaration declaring that the decree passed in O.S. No. 37 of 1984 is sham and nominal, ultravires, collusive, unsustainable invalid, unenforceable and not binding on the plaintiffs. Upholding the judgments of High Court and Trial Court on this aspect, the bench said:

*"We have noted the grounds as contained in the plaint to challenge the consent decree in foregoing paragraphs from which it*

*is clear that the compromise, which was recorded on 06.08.1984 was sought to be termed as not lawful, i.e., void or voidable. On the basis of grounds which have been taken by the plaintiff in Suit No.1101 of 1987, the only remedy available to the plaintiff was to approach the court in the same case and satisfy the court that compromise was not lawful. Rule 3A was specifically added by the amendment to bar separate suit to challenge the compromise decree which according to legislative intent to arrest the multiplicity of proceedings. We, thus, do not find any error in the judgment of trial court and High Court holding that Suit No.1101 of 1987 was barred under Order XXIII Rule 3A.*

### **J&K High Court Judgements**

**CM(M)No.1/2021**

**Amar Nath and Another v. Darshana Kumari & ors.**

**Decided on: 04 June, 2021**

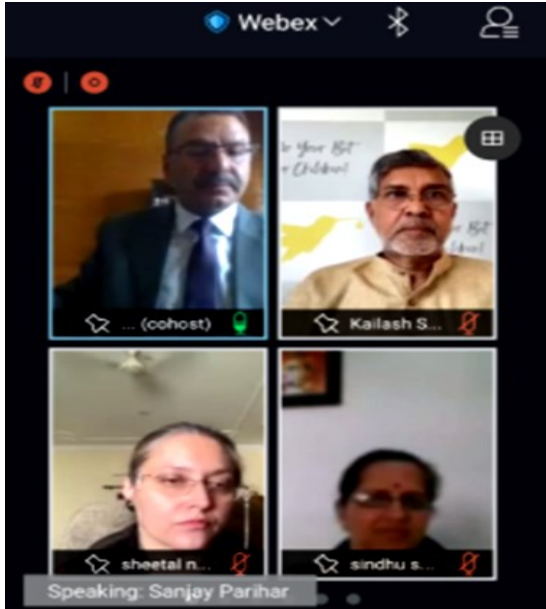
In a petition invoking the supervisory jurisdiction of the Hon'ble High Court of Jammu & Kashmir Court vested in terms of Article 227 of the Constitution, the petitioner sought quashment of the proceedings initiated by the Trial Court on a suit filed by respondents aggrieved of the fact that the same is third suit in succession filed by the respondent No.1 to 3 on same cause of action and that he has raised the plea of non-maintainability of the suit and sought rejection of the plaint in terms of Order VII Rule 11 CPC but the same is not being decided by the trial court.

The Hon'ble Bench held that once a plea of non-maintainability of suit is taken by the party and particularly when a specific application under Order VII Rule 11 CPC is moved seeking rejection of the plaint, it is a bounden duty of the civil court trying the suit to first advert to and decide the said application. The Court disposed of the petition directing the trial court to consider and decide the application under Order 7 Rule 11 CPC at the earliest and in any case not later than two months from the date copy of the order is received by the trial court.



## ACTIVITIES OF THE ACADEMY

### WEBINAR ON “UNDERSTANDING CONTOURS OF NEGLECTED JUVENILE AND JUVENILE IN CONFLICT WITH THE LAW- A WAY FORWARD FOR THEIR CARE, PROTECTION AND REHABILITATION”



On June 26, 2021, J&K Judicial Academy conducted a webinar on “Understanding Contours of Neglected Juvenile & Juvenile in conflict with the Law-A way forward for their care protection and rehabilitation” for Judicial Officers of Jammu & Kashmir and Ladakh, Principal Magistrates of Juvenile Justice Boards, Child Welfare Committees, Child Protection Officers and Observation Homes.

The webinar was presided over by Hon’ble Ms. Justice Sindhu Sharma, Member, Governing Committee, J&K Judicial Academy in the presence of Sh. Kailash Satyarthi, Nobel Peace Laureate (2014) who was the keynote speaker of the programme, Ms. Sheetal Nanda (IAS), Secretary, Social Welfare Department, Government of J&K and Mr. Sanjay Parihar, Director, J&K Judicial Academy. In her inaugural address, Hon’ble Ms. Justice Sindhu Sharma highlighted the key provisions of Jammu & Kashmir Juvenile Justice (Care & Protection of Children) Act, 2013 and its special provisions relating to Care, Protection and Rehabilitation of children. She described the nature of Act as being curative and not punitive and stressed that we must make endeavours to see that not even a single child

is neglected and all possible measures are taken for the implementation of the Act for the overall welfare of the children.

Ms. Sheetal Nanda, IAS described that the Act has immense scope for taking initiatives for the overall care and welfare of children. She reminded the participants about the sustained commitment and responsibilities of all citizens to work for the cause of well-being of children.

Sh. Kailash Satyarthi in his keynote address described the programme as being of immense importance in the context of unique requirements of the UT’s of Jammu & Kashmir and Ladakh vis-a-vis its children. He sensitized the Judicial Officers to be conscious of their social and legal responsibilities as the unbiased guardians of all citizens and particularly children. He underscored that Judiciary plays a divine role in ensuring Justice and therefore keeping in view the expectations of the society, the members of the Judicial fraternity will have to play a very active and positive role in minimizing the challenges confronting the holistic growth of a child. He referred to the campaign “Justice for every Child” and encouraged the participants to adopt preventive measures to deal with neglect issues ranging from emotional, social and economic which may be prevalent during the pandemic particularly. He also cited the example of “Baal Mitr Gaon” which have the participation of the children in schools, panchayats and at all levels of activity within a particular village which will further create a culture of child right and a child conducive ecosystem. He advised the participants to empathise with the children in stress situation and feel their pain with a firm determination to take action for bringing an end to their sufferings in the same manner as if they were our own children.

Judicial Officers had an interactive session with the vastly experienced resource person who ably responded to the doubts and queries raised by the participating officers.



### MENTAL HEALTH ISSUES OF A WOMAN AND ACCESS TO JUSTICE.

Mental Health refers to emotional, behavioral, and cognitive well-being. While it is generally referred to as the absence of a mental disorder, it also defines how people think, feel, and behave. Mental Health ailment is majorly caused due to **Emotional** abuse and extends on to affect a person's mood and thinking, making day-to-day activities an arduous task. It is also of many types which also include: (1) Chemical depression, (2) Anxiety disorder (3) Bipolar disorder. Anxiety disorder leads to an irrational sense of fear, worry, and anxiety which is enough to disrupt a person's daily activities. Thus many people with mental health conditions may feel inadequate and have performance anxiety and low self-esteem. A dysfunctional factor of Social withdrawal coupled with eating or sleeping habits is a noticeable trait for mental disorders.

The issue of prejudice against mental health patients is quite prevalent even in the modern age. Despite the Mental Health Care Act 1987, all mentally retarded persons are not protected from discrimination and this act applies to those who have substantial, impairment in mood perception, or memory that grossly impairs judgment, behavior, capacity to recognize reality. Thus other problems with, perhaps, milder symptoms make get excluded.

There is a dynamic relationship between the concept of mental illness the treatment of the mentally ill and the law. Art 21 of the Constitution of India guarantees the right to life which includes facilities for freely moving and mixing and commingling with fellow human beings. All people with mental illness have the same rights to medical and social care as others. Everyone with mental illness has the right to work and receive treatment in the community as far as possible, mental health care should be based on internationally accepted ethical standards.

Art 142 (1) has been assisting in promoting access to justice in India while Art 39 (a) of the Constitution of India provides for equal justice and free Legal Aid. Access to

justice is an essential ingredient of the rule of law. People need to be able to access the courts and the legal process of the law cannot enforce people's rights and responsibilities. Education and promotion of self-help centers is a *sine qua non*. Access to justice involves legal protection, legal awareness, legal aid, counsel adjudication enforcement, and civil society oversight. Legal awareness has some fundamental elements such as identification and recognition of grievances awareness and legal advice. The right of being heard which includes legal representation as well as fair trials is fundamental to the justice system. Access to law is a fundamental right and protection by rule of law entitles justice to everyone and fair treatment before the law. The notion of 'Access to Justice' should be part of the regulatory objective standardized by the Legal Services Authorities Act, 1987. People are entitled to receive the best mental health care available and be treated with humanity and respect. There should be no discrimination on the grounds of mental illness.

Within the scope of mental health, another factor that predominates the societal bias is that of gender. There is a disturbing presence of gender-related prejudice within the perception of mental health patients. The availability of privilege and the nature of reinforcing stereotypes make gender disparity an issue when it comes to access to justice. Today women's hygiene and mental health are big issues and it is imperative to address mental health issues, hygiene, and emotional abuse. Emotional abuse seriously affects the mental health of a woman while she struggles to strike a balance both at the workplace as on the domestic front, but some major challenges impact women's access to justice. Deeply entrenched gender-biased attitudes, prevent women from accessing justice. Navigating everyday justice problems is a complex process. Communication barriers, Adjustment, necessary support & aids to participate justice system. Gender is a critical detriment of mental health & mental

illness. Women have a higher mean level of internalizing disorder while men show a higher mean level of externalizing. There are several critical problems faced by a woman in distress including women in prisons. Many cases of women inmates are still repeated crimes against those are alarming as many issues remain unaddressed in prison environments like (1) physical & Mental care (2) sexual and emotional abuse (3) separation from children. The mental health of a woman, especially during the trying times of a lockdown, who is suffering from domestic violence is a matter of concern. The continuous exercise of emotional and physical abuse without a semblance of outside help makes it easier to break her spirits. It is to be noted that despite the plethora of laws like the D.V. Act/ maintenance laws etc still, the situation is quite grim and alarming. N.G.O's, counselors, Legal Aid Agencies have to be extra vigilant to redress the grievance of mental health issues of women in distress particularly in the present times of crisis.

Mental cruelty / mental torture/ inequality & gender disparity are major factors for the deteriorating condition of helpless women who is almost put to starvation, vagrancy, and made physically weak. For her Access to justice is still a dream. It is imperative for the integration of mental health perspective into the legal Discourse on Reproductive justice in India for visible victims of sexual violence and women and girls with disabilities. Marginalization of mentally ill women is still a grim reality. The narratives of women with mental illness and their agony are invisible. There is thus a dominant need for enabling an environment for women's access to justice like an equal opportunity to Education, Health, Citizenship, and Participation in elected and appointed processes.

As a matter of caution persons with intellectual disabilities and mental illness should be categorized for justice framework. Women's Human Rights & Rights to a safe, clean & sustainable Environment for mental well-being is need of the hour and is required to be protected and for a peaceful life, yelling

is required to be depreciated at all levels. Even for a working woman, a safe, congenial, and sustainable environment is the need of the hour as still cases of growing violence and unsafe working environment are reported. Despite NGOs', Women's helpline, still, the intolerance is growing and there are trapped domestic violence victims, due to Covid-19, which affects the mental health of a woman.

The intersection between mental health, disability, and reproductive justice has not merited much attention in India. There is a need for integration of all three for the overall well-being of women and a dire need of attitudinal change to avoid Boredom, loneliness in a person in distress as the uncertainty of life is haunting as sharing of thought process and motivational interaction in *sine qua non* as there is a fear of being isolation, rejection, torture, etc. Women too should not try to squeeze into a glass slipper instead break the Glass ceiling so that nobody can play mind game as the thumb rule as that "No one can make you feel inferior without your consent."

**Author's View:-** *It is imperative to avoid social isolation and negativity as it is linked to mental health problems and unconditional love and moral boosting is need of the hour for a healthy mind.*

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