



J&K JUDICIAL ACADEMY e-NEWSLETTER



Official Newsletter of Jammu & Kashmir Judicial Academy

Volume 6

Monthly

April 2023



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LEGAL JOTTINGS

“A word, it is said, defines a universe. Words symbolise the human effort to contain the infinity which dwells in human relationships into finite boundaries which distinguish the known from the unknown, the familiar from the unfamiliar and the certain from the uncertain.”

Dr. D.Y. Chandrachud, J.
In *Abhiram Singh v. C.D. Commachen*,
(2017) 2 SCC 629, Para 90

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From the Editor's Desk

The Jammu & Kashmir Judicial Academy is evolving rapidly and is open to new and exciting ideas. We are working consistently to impart the best of training and grow academically in a vibrant sustainable way by introducing new programmes not only for the Judicial Officers but for other stakeholders including Lawyers, Police and Prosecution Officers and the officers performing quasi judicial functions.

The Resource Persons in various programmes organised during the month have expressed their thoughts and ideas in a creative manner. These programmes are intended to widen mental and intellectual horizons of the participants.

However, in an age when we are enmeshed in a culture of selfies, nonversion and textpectation we need to look beyond ourselves to our larger environment. From youinverse to universe, from I to others, we need to connect; with each other, with the community, with the environment, with the world. It is not enough to have a good mind, the main thing is to use it well, in the service of our community and nation.

I would like to place on record my gratitude to Hon'ble Ms. Justice Sindhu Sharma, Chairperson and all the Members of the Governing Committee of the J&K Judicial Academy for guiding us to put together the newsletter. However, enlightening remarks and wise suggestions are solicited from all the readers to make this e-newsletter interesting and worth reading.



Cr. Appeal No's. of 2023

Mohd Muslim @ Hussain v. State (NCT OF DELHI)

Decided on: March 28, 2023.

Law Point: Bail in NDPS cases can be granted on the ground of undue delay in trial despite stringent conditions of Section 37 being attracted.

Facts of the Case: It was the prosecution case that on 28.09.2015 on receiving secret information a raid was conducted by police, leading to arrest of four accused persons i.e. Nitesh Ekka, Sanjay Chauhan, Sharif Khan, and Virender Shakiyar/Sakyabar @ Deepak, who were found in possession of 180 kilograms of Ganja. During investigation, accused Nitesh Ekka was taken to Chhattisgarh for identification of co-accused persons and at his instance, the appellant namely Mohd. Muslim was arrested in the intervening night of 03/04.10.2015. Pursuant to further investigation, three other co-accused namely Virender Singh @ Beerey, Shantilal Tigga @ Guddu, and Nepal Yadav @ Tony Pahalwan) were also arrested. It was alleged by prosecution that Virender Singh @ Beerey used to purchase ganja and to make transfer of money in the bank accounts belonging to Mohd. Muslim, Shantilal Tigga @ Guddu and Nitesh Ekka, and their friends and families, before further supplying same to Nepal Yadav @ Tony Pahalwan. After completion of investigation, police had filed chargesheet against accused person on 29.02.2016 under Sections 20/ 25/ 29 of the NDPS Act and Section 120B IPC. Thereafter, on 05.07.2016 the trial Court had framed charges against the appellant and other co-accused. Two supplementary charge sheets had also been filed by police on 01.08.2016 and 08.11.2017 respectively. Appellant had moved a bail application before the learned trial Court but same was rejected on the ground of gravity and severity of offence and the role attributed to the appellant. Being aggrieved appellant had challenged the rejection order before the High Court but his bail application was also rejected by the High Court by observing that there was a prima-facie material to show that accused was involved in the commission of offence alleged as appellant had remained in continuous touch with the co-accused and that there was also money transaction in his bank account. Feeling aggrieved the appellant had challenged the order of the High Court by filing an appeal before the Hon'ble Supreme Court.

Held: Allowing the appeal Hon'ble Bench of the Supreme comprising of Hon'ble Justice S. Ravindra Bhat and Hon'ble Justice Dipankar Dutta held that a plain and literal interpretation of the conditions under Section 37 would show that Court should be satisfied that the accused is not guilty and would not commit any offence but same would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters, is where the court is reasonably satisfied on a prima facie look at the material on record that the accused is not guilty. Any other, interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

The Court held that the standard to be considered is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The Court also observed that its judgments have, therefore, emphasized that the satisfaction which courts are expected to record i.e ***the accused may not be guilty***, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik 19). Lastly, Court also held that Grant of bail on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra).

Cr. Appeal No's. 701-702 of 2020

Enforcement Directorate v. Kapil Wadhawan

Decided on: March 27, 2023

Law Point: The day on which the Magistrate has remanded the accused to custody is to be counted for the purpose of grant of default bail.

Facts of the case: A division bench of the Supreme Court comprising of Hon'ble Justice Sanjay Kishan Kaul and Hon'ble Justice Hrishikesh Roy had referred the question-whether the day of remand is to be included or excluded, for considering a claim for default bail- for decision by larger bench as the referring bench had noticed that, in State of M.P. Vs. Rustom & Ors. 995 (Supp) 3 SCC 221, Ravi Prakash Singh Vs. State of Bihar (2015) 8 SCC 340 and M. Ravindran Vs. Intelligence Officer, Director of Revenue Intelligence, it was held that the date of remand is to be excluded for computing the permitted period for completion of investigation whereas, the judgments in Chaganti Satyanarayan Vs. State of Andhra Pradesh (1986) 3 SCC 141 , CBI Vs. Anupam J Kulkarni (1992) 3 SCC 141 , State Vs. Mohd. Ashraft Bhat (1996) 1 SCC 432 , State of Maharashtra Vs. Bharati Chandmal Varma (2002) 2 SCC 121, and Pragyna Singh Thakur Vs. State of Maharashtra (2011) 10 SCC 445, have held that the date of remand must be included for computing the available period for investigation for determining entitlement to default bail.

Held: A larger bench of the Supreme Court comprising of Hon'ble Justices K.M Joseph, B.V Nagrathna and Hrishikesh Roy while answering a reference held that the day of remand is to be included for computing the total period of remand for considering a claim for default bail of accused person.

Cr. Appeal No. 230 of 2010

Pawan Kumar Chourasia v. State of Bihar

Decided on: March 14, 2023

Law point: Evidentiary Value of Confessions also depends on the person to whom such confession has been made.

Facts of the Case: Appellant was prosecuted along with four others for the offences punishable under Section 302 read with Section 34 as well as, for Section 201 of the Indian

Penal Code (for short, 'IPC') and convicted for the same. He was sentenced to undergo life imprisonment. High Court had confirmed the conviction of the appellant, but acquitted the remaining accused.

Held: In the appeal preferred by the appellant/convict, a bench of Supreme Court comprising of Hon'ble Justices Abhay S. Oka and Rajesh Bindal held that a confession which does not inspire confidence of Court cannot form basis for conviction. Bench held that conviction on the basis of extra-judicial confession can be sustained only if the confession is proved to be voluntary and truthful and free of any inducement. Court held that the evidentiary value of such confession also depends on the person to whom it is made as going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility. Appeal was accordingly, allowed and the appellant was acquitted of offences alleged.

CIVIL

Civil Appeal No (s). 7300/2022

State Bank of India v. Rajesh Agarwal and ors.

Decided on: March 27, 2023

Law point: Borrowers are required to be heard before their accounts are classified as fraud.

Facts of the case: In this case Hon'ble Supreme while hearing an appeal challenging the 2016 Directions (Frauds Classification and Reporting by Commercial Banks and Select FIs) issued by the Reserve Bank of India in which it was contended by the appellant that borrowers had not been given any opportunity to present their cases before their accounts were classified as fraudulent, was confronted with the question-as to whether a borrower is required to be given an opportunity of being heard before his Account is classified as fraudulent or not.

Decision: A bench of Hon'ble Supreme Court comprising of the Hon'ble the Chief Justice Dr. D.Y Chandrachud and Hon'ble Justice Hima Kohli held that a borrower has the right to be heard before his account is classified as a fraud, and any decision to classify the account as fraudulent must be backed by a reasoned order. The court observed that RBI's Master Directions do not give any opportunity of hearing to the borrower and therefore, the principle of audi-alteram was not adhered to. Court, accordingly, held that the principle must be read into the provisions to safeguard borrowers from arbitrariness. The Court also observed that in accordance with principles of natural justice, the borrowers must be given an opportunity by serving a notice to explain the conclusions in the audit report, and also to be allowed to represent their case before the banks before their accounts are classified

as fraud.

Civil Appeal No. 7775 of 2021

Ashutosh Samanta (D) by Lrs. & Ors. v. Smt. Ranjan Bala Dasi & Ors

Decided on: March 14, 2023

Law Point: Presumption of genuineness cannot be attached to a will for the mere fact that it is 30 years old.

Facts of the Case: Facts of the case in brief are that one Gosaidas Samanta (“testator”) had three sons – Upendra, Anukul and Mahadev. He died, survived by his three sons and widow Bhagbati Das, and left behind a will dated 16.11.1929. The testator had bequeathed his estate among three heirs – his sons Anukul and Mahadev, and his grandson. Shibu, the son of Upendra was not granted any share. On 21.02.1945, a partition deed was drawn between these three co-sharers. This arrangement was apparently accepted by Upendra, who had executed a disclaimer document, in respect of one part of the properties, sold by Shibu, out of his share. In 1952, alleging that he was in occupation of a part of the properties owned by the testator, and that he had purchased them from Upendra, the present appellant filed a suit for partition and possession. The suit was dismissed on the finding that the present appellant had no title. That judgment was however reversed by the appellate court which passed a preliminary decree for partition. Upon a further appeal by the present respondent (the son of Mahadev), the High Court noticed that although the will had been relied upon, it was neither probated nor were letters of administration sought in respect of it. The High Court accordingly, had cast doubts about the possession of the respondent herein. Having regard to the High Court’s finding, especially the absence of a probate or letters of administration, the respondents herein had approached the competent court for letters of administration. At the time of trial, none of the attesting witnesses was alive. The trial court therefore, relied upon the depositions of two of the sons of the testator as well as, the deposition of one Surendra Nath Bhowmick who had deposed to have seen the testator duly sign the will. The administration proceedings were contested by the present appellant, i.e., the purchaser of the properties from Upendra. He contended that the proceedings were not maintainable as relief was sought after an inordinately long period of time. The trial court relied upon the depositions of witnesses as well as, the documents produced which included the registered deed of partition, dated 21.02.1945, which expressly mentioned the will in question. The trial court also relied upon a document, i.e., deed executed by Upendra, which also contained a reference to the will. Having regard to the materials, the court recorded a finding that the respondent was entitled to letters of administration. An appeal against that judgment was rejected by the High Court. Accordingly, the defendant had presented the appeal before the Hon’ble Supreme Court. The main argument of the appellant in the appeal was that the application for letters of administration was made after a considerable delay, and that the courts below should not have relied on Section 90 of the Evidence Act, 1872.

Held: A bench of Supreme Court comprising of Hon’ble S. Ravindra Bhat and Hon’ble Justice Hima Kohli following its decision in M.B. Ramesh (D) by L.Rs. v K.M. Veeraje Urs (D) by L.Rs. & Ors Civil Appeal No. 1071/2006, decided on 03.05.2013, held that wills cannot be

proved only on the basis of their age– the presumption under Section 90 as to the regularity of documents of more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Sections 63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872.

Civil Appeal No. of 2023

Ganesh Prasad v. Rajeshwar Prasad &Ors.

Decided on: March 14, 2023

Law Point: Second suit by Mortgagor on dismissal in default of first suit is maintainable- as cause of action in a redemption suit is successive.

Facts of the case: Plaintiffs who are respondent in the appeal had filed a suit before the Judge Small Cause against the appellant defendant and four others praying for relief of declaration to declare plaintiffs as the owners of the suit property and that shop had been let out to the father of defendant/appellant and after the demise of father of the defendant/appellant, defendant has failed to pay the rent and therefore, had also prayed for relief of possession. The said suit was dismissed in default. A fresh suit was filed by the plaintiff praying therein that the Court notice may be given to the Defendant to take mortgage deed amount Rs 700/-and other expenses Rs 5100/- Rs 5,800 within the period prescribed and give possession of the below mentioned room to the plaintiffs with costs of litigation and any alternative relief or other relief that the Plaintiffs are held entitled to. Defendant filed his written Statement to the suit and thereafter, an amendment application was filed by plaintiffs. Civil Judge declined the amendment prayed for and accordingly, had rejected the application. Plaintiff challenged the order before Additional District Judge by way of a Civil Revision which was allowed and consequently amendment prayed was permitted. Defendant being aggrieved, challenged the order of Additional District Judge before High Court under Art 227. High Court dismissed the petition and therefore, defendant preferred the appeal before Supreme Court.

Held: A bench of Hon'ble Supreme Court comprising of Hon'ble Justice Sudhanshu Dhulia and Hon'ble J.B Pardiwal a dismissed the appeal filed by appellant/defendant and held- where the right of redemption is not extinguished the provisions such as Order IX Rule 9 CPC, will not debar the mortgagor from filing a second suit, as the cause of action in a redemption suit is a recurring one. The Court held that cause of action in each successive action, until the right of redemption is extinguished or a suit for redemption gets time barred, is a different one.



RP No 37/2019 CM No 4723/2019

Principal Secretary to Government Estates Department & Others v. Ashok Kumar Sadhotra and Ors.

Decided on: March 27, 2023

Law Point: Law of limitation is to be applied with all its rigour as prescribed by Statute. For Seeking extension of time under Section 5 of the Limitation Act the applicant is required to satisfy the Court that there was a sufficient cause which had prevented him to approach the Court within period of limitation.

Facts: Petitioners had filed a review petition challenging the order/ judgment passed by the Hon'ble High Court dated 04.02.2019 in CDLSW No 2019 dated 04.02.2019 titled State of J&K &Ors v. Ashok Kumar Sadhotra and anr. Along with the review, petitioners had filed an application for condonation of delay seeking to condone delay of 76 days in presenting the review petition.

Decision: A Division Bench of the Hon'ble High Court comprising of Hon'ble Justice Tashi Rabastan and Hon'ble Mr. Rejesh Sekhri following the judgments reported as P.K Ramchandra v. State of Kerala AIR 1998 SC 2276, Perumon Bhagvathy Devaswan v. Bhargavi Amma 2008 (8) SCC 321 and U.O.I v. Central Tibetan Schools Admin & Ors SLP (Civil) Diary No's 19846/2020 decided on 04.02.2021, held that law of limitation is to be applied with full rigour prescribed by Statute. Court further, held that though section 5 of Limitation Act provides for extension of the period of Limitation in certain cases but the applicant seeking such extension is required to satisfy the Court that there has been a sufficient cause for not preferring the appeal or making the application within the prescribed period.

CR No. 08/2023 CM No. 1044/2023

Viram Handa & Anr v. Basketball Association of J&K Th. Kuljeet Singh Jamwal

Decided on: March 10, 2023

Law Point: Trial Court can invoke Section 151 CPC for passing a temporary injunction order during pendency of an application for restoration of suit.

Facts of the Case: A Suit filed by the plaintiff/respondent was dismissed and therefore, respondent had filed an application for restoration of the same. During the pendency of the said application learned trial Court had passed an interim temporary injunction order restraining defendant/appellant from performing the duties as General Secretary and Treasurer of the Basketball Association of J&K. Being aggrieved by the said order petitioner/defendant had challenged the same before the Hon'ble High Court contending that the order impugned has been passed by the learned trial Court in ex-parte and that suit was dismissed in presence of the defendant/petitioner as such, impugned order could also not have been passed trial Court by invoking Section 151 CPC.

Held: A Single bench of the High Court comprising of Hon'ble Mr. Justice Sanjay Dhar observed that contentions raised by the petitioner are without merit and held that order 9

Rule 9(2) CPC does not preclude a Court from passing an order of any other nature without notice to the defendant. Court further held that as in the case in hand learned trial Court could not have invoked order 39 Rule 1 & 2 of CPC, therefore, the only option available with the Court to preserve the subject matter of the lis, was to invoke Section 151 CPC which power is available to the Courts in cases where there is no other specific provision to meet the situation and the Court feels it necessary to pass such an order.

MA No. 9900008/2013

New India Assurance Co. Ltd v. Anita Devi & Ors

Decided on: March 10, 2023

Law point: On transfer of the ownership of vehicle to another person the certificate of Insurance and the policy described in the certificate is deemed to have been transferred in favour of the person to whom the Motor vehicle is transferred to the extent it covers compulsory risks as per Section 147 of M.V Act.

Facts of the Case: One Pritam Lal while working as driver of vehicle bearing No JK02A 3787 had died on 14.10.2005. He was done to death by the conductor as he had denied him the permission to leave the truck midway to destination. Dependents of deceased had filed a claim petition before ALC. Vehicle in question was owned by one Sunita Kumari respondent No 4. Claim petition was contested by the insurance company on the ground that vehicle in question was insured with it w.e.f 30.01.2005 to 29.01.2006 in the name of one Swatanter Singh respondent No. 5 and therefore, it has no legal obligation to indemnify the respondent Sunita Kumari. Swatanter Singh in his reply had submitted that he had transferred the vehicle to his wife Sunita Kumari and had submitted that certificate of insurance had not been transferred from his name. Commissioner finally after appreciating the pleadings and evidence had allowed the claim petition and had awarded a compensation amount of Rs 7,60,651/- in favour of the claimants and against the respondents. Insurer was made liable to pay the awarded amount. Feeling aggrieved the Insurer Company had challenged the order before the Hon'ble High Court.

Decision: A Single Bench of the High Court comprising of Hon'ble Mr. Justice Sanjay Dhar has held that it is immaterial- whether deceased was an employee of respondent Sunita Kumari or Swatanter Singh-so far as the liability of the appellant Insurance company was concerned as on transfer of the vehicle the compulsory risks covered under policy of insurance purchased by Swatanter Singh have got automatically transferred to respondent Sunita Kumari from the date she has become the owner.



ACTIVITIES DURING THE MONTH

One day Seminar on "Principles of Evidence including Electronic, Forensic and Medico-Legal Evidence (Collection, Preservation & Production) with special reference to use of ICT Techniques during investigation and trials, Adopting Strategic Courses and Identifying Best Practices"

Jammu and Kashmir Judicial Academy organized a one day seminar on "Principles of Evidence including Electronic, Forensic and Medico-Legal Evidence (Collection, Preservation & Production) with special reference to use of ICT Techniques during investigation and trials, Adopting Strategic Courses and Identifying Best Practices" on 19th March, 2023. The seminar was inaugurated by Hon'ble Mr. Justice Vinod Chatterji Koul, Judge High Court of J&K and Ladakh and Member, Governing Committee for J&K Judicial Academy. The seminar was designed for Judicial Officers, PPs, Addl. PPs, CPOs, POs, Police Officers, Investigating Officers, and Medical Officers. Mr. Nisheeth Dixit, Advocate and Cyber Law Consultant, Delhi who has delivered several talks on the subject of Cyber Law in various prestigious institutions of India like National Police Academy, Hyderabad, CBI Academy, Ghaziabad, CDTI Jaipur, Ghaziabad and Chandigarh etc. was the resource person.

In his inaugural Address Justice Vinod Chatterji said that in today's techno-savvy



environment, the world is becoming more and more digitally sophisticated and so are the crimes. Internet was initially developed as a research and information sharing tool and in an unregulated manner. As the time passed by, it became more transactional with e-business, e-commerce, e-governance and e-procurement etc. All legal issues related to internet crime are dealt with through cyber laws. As the number of internet users is on the rise, the need for cyber laws and their application has also gathered great momentum. He added that though a crime free society is perfect and exists only in illusion, it should be constant attempt of rules to keep the criminalities lowest. Especially in a society that is dependent more and more on technology, crime based on electronic law-breaking are bound to increase and the law makers have to go the extra mile compared to the impostors, to keep them at bay.

Mr. M.K. Sharma, Director J&K Judicial Academy in his welcome address gave an overview of the programme. He said that Cyber law responds to the unique challenges of the internet and other digital technologies. These technologies have created new

opportunities for criminals, cyber bullies and others who would exploit the technology for their purposes. At the same time, they have also created new ways for people to share information and ideas and connect. He also stated that Cyber laws exist to protect people from online frauds. He further said that in order to sensitize the stakeholders in the administration of justice with regard to principles of evidence including electronic, forensic and medico legal evidence with special reference to use of ICT techniques during investigation and trials, the J&K Judicial Academy has organized this one day seminar.

The day-long seminar was divided into two technical sessions and an interactive session for feedback. The first technical session focused on the principles of evidence, including electronic, forensic, and medico-legal evidence, and the use of ICT techniques during investigations and trials. The second technical session covered adopting strategic courses and identifying best practices for digital forensics.

The seminar concluded with an interactive session during which the participants deliberated and discussed various aspects of the subject topic and raised queries which were satisfactorily settled by the resource person.

One-day Sensitization Programme on the “Provisions of Chapter XI and XII of the Motor Vehicles Amendment Act and the Motor Vehicle Amendment Rules, 2022”

Jammu & Kashmir Judicial Academy organised a one-day Sensitization Programme on the “Provisions of Chapter XI and XII of the Motor Vehicles Amendment Act and the Motor Vehicle Amendment Rules, 2022” for the Presiding Officers of the MACT, Officers of Insurance Companies and Police Department in collaboration with J&K Legal Services Authority. The programme was inaugurated by Hon’ble Ms Justice Sindhu Sharma, Judge, High Court of J&K and Ladakh and Chairperson, Governing Committee for J&K Judicial Academy. The programme aims to enhance the knowledge and skills of Presiding Officers of the MACT, officers of Insurance Companies and Police Department and provide them with a deeper understanding of the provisions of the Motor Vehicles Amendment Act and the Motor Vehicle Amendment Rules, 2022. Mr. R.K. Jain, Sr. Advocate and Mr. Baldev Singh, Advocate, High Court of J&K and Ladakh were the resource persons.

Delivering the inaugural address Hon’ble Ms Justice Sindhu Sharma traced the history as to how the Motor Vehicles Amendment Act and MV Amendment Rules have been brought into force to set up a new regime to deal with the claim cases. She stated that the



programme is subject specific in view of the judgement of Hon'ble Supreme Court in Civil Appeal No. 9322 of 2022, titled Gohar Mohammad v/s Uttar Pradesh State Road Transport Corporation. She emphasised the necessity of insurance, duties specified to the Police Officer, Registering Authority, Insurance Companies and Claim Tribunals to determine just and fair compensation in time-bound manner. She further stated that under the amended Act and Rules, the provisions for grant of compensation under no fault liability have been deleted and the special procedure has been carved out by introducing Section 149.

Mr M.K. Sharma, Director, J&K Judicial Academy in his welcome address underscored the importance of organising this program. He said that based on the guidelines issued by the Hon'ble Supreme Court and Hon'ble Delhi High Court, and on subsequent recommendations made by group of Transport Ministers of States along with other stakeholders, the Union Government with an objective to improve road safety, facilitate citizens in their dealings with transport departments, strengthen rural transport, public transport, last mile connectivity through automation, computerization and online services enacted "The Motor Vehicles (Amendment) Act, 2019, which came into force with effect from 01.04.2022. Vide this amendment, Chapter XI dealing with insurance of motor vehicles against third party risks and Chapter XII dealing with Claims Tribunal were amended. He further said that in order to sensitize the stakeholders in the administration of justice with regard to MACT claims, the J&K Judicial Academy in collaboration with J&K Legal Services Authority has organized this one-day sensitization programme.

Mr. Amit Gupta, Member Secretary, J&K Legal Services Authority while proposing vote of thanks highlighted the importance of the subject and the need for organising the programme.

The day-long sensitization programme was divided into two technical sessions and an interactive session for feedback. The first technical session was chaired by Mr. R. K. Jain Sr. Advocate, who analysed the provisions of Chapter XI and XII of the Motor Vehicles Amendment Act and the MV Amendment Rules, 2022 with special reference to Judgment dated 15.12.2022, passed by the Hon'ble Supreme Court in the Civil Appeal No. 9322 of 2022 in FAFO No. 3303 of 2018 titled Gohar Mohammad v/s Uttar Pradesh State Road Transport Corporation & Ors. He underscored the role of Insurance Companies in assessment and computation of compensation including criteria and principles.

The second technical session was chaired by Mr. Baldev Singh, Advocate who explained the duties of Police Officers in preparation of excellent information report and submission of the same to the Claims Tribunal to facilitate the settlement of claims. He made the participants aware about the latest pronouncements of Hon'ble the Supreme Court and Hon'ble High Court of J&K and Ladakh on the subject.

The sensitization programme concluded with an interactive session during which the participants deliberated and discussed various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.



CONSUMER DISPUTES REDRESSAL MECHANISM IN BANKING INDUSTRY

1.1 Introduction

Only in India Grievance Redressal is employed as a management and governance-related procedure. While the phrase "Grievance Redressal" refers largely to the handling of consumer and citizen complaints, a broader definition includes any action performed in response to a concern they express to more efficiently access services. Private institutions, railways etc. often tend to set up their OTI mechanisms. Government also often accepts the responsibility of consumer protection from private organizations through Legislation as well as setting up Consumer Courts and organizations for Dispute Resolution. Such consumer courts pursue quick action for redress while maintaining affordability and ease to the consumer.

For any company to be successful, customer satisfaction is crucial. In the banking industry, the consumer is at the center of all activity and revenue generating. Therefore, it is important to pinpoint the crucial success elements for customer satisfaction in the banking sector. Resolving client complaints is a good method for better customer care. Any businessman who has a complaint wants it be resolved as soon as possible since unresolved grievances can spiral out of hand. The resolution of client complaints is a requirement for securing customer retention and their ability to meet obligations. When a bank fails to offer a service properly, or on time, a complaint will arise. Customer satisfaction in the banking industry cannot be attained without an efficient process for recording the complaints of disgruntled clients. In today's scenario of the banking sector with a large number of services and huge customer size, it is an accepted fact that growth of customer grievances against the services of banks will be more. An effective grievance redressal system is an important tool that will help managers and banks to increase the satisfaction level of customers.

For the Redressal of grievances of consumer in India, the Consumer Protection Act, 1986 (now repealed by Consumer Protection Act, 2019), is a comprehensive legislation available so far. Hence for the consumers of banks, they have two Redressal mechanisms available to them one under Consumer Protection Act, 1986 and other under banking laws.

The quality of banking services in India has improved as a direct result of the Reserve Bank's efforts to develop and enhance the grievance redressal mechanism. There might be duplication of efforts and responsibilities amongst institutions. Where the customer chooses to complain depends on customer's ease, location. Thus, the grievance redressal mechanisms available to a bank customer/consumer are:

- Under Consumer Protection Act
- Under banking Laws

1.2 Redressal Mechanism under Consumer Protection Act

The Consumer Protection Act of 1986, passed to protect consumers' rights, was a watershed moment in India's legal history. This law was drafted with the intention of giving wronged shoppers a path to quick, cheap, painless, and compensatory justice.

Consumers now feel more comfortable going to Consumer Courts to file complaints and request the remedies provided for under the Act, Consumers Disputes Redressal Machinery entertains and redresses grievances which come under COPRA. To provide for the simple, speedy and in expensive Redressal of consumer grievances, the **Act** envisages three tier quasi-judicial machinery, the district, state and national level. These include the following, District forum established by the state government in each district of the state: a state commission established by the state government by notification, and at the apex level the National Dispute Redressal commission established by the central Government. They are all statutory tribunals with limited jurisdiction.

Basic consumer rights like the right to life and property are safeguarded by consumer protection agencies (against marketing of goods which are hazardous to life and property). Thus, Section 9 of the CPAct, provides for the setting up of three levels of consumer dispute Redressal Agencies (CDRA), namely:

- **District Forum**
- **State Commission**
- **National Commission**

1.2.1 District Forum

Every state government is required to setup a district forum in each of its districts. The forum has been vested with the jurisdiction to entertain such complaints where the value of goods or services and the compensation does not exceed Rs. Twenty lakhs.

With respect to the district forum's territorial jurisdiction, a complaint may be filed before the district forum within whose jurisdiction the opposing party (or each opposing party, where there is more than one) actually and voluntarily resides or conducts business or where the cause of action arises.

Procedure of Filing a Complaint

A complaint in relation to any goods or services can be filed with the district forum by the consumer himself or by any recognized consumer association or one or more consumers or the central government or the state government and should be accompanied by the prescribed fee.

On the receipt of the complaint the district forum may accept it or may reject it. But the complaint can be rejected only after giving the complainant a reasonable opportunity to be heard. To avoid delay the admissibility of the complaint need to be decided in twenty-one days from the date of receiving of the complaint.

Within twenty-one days of the complaint being allowed, the district forum must send a copy to the opposing party, who then has thirty days (or an extended time not exceeding fifteen days) to provide its written version of the case.

If the opposite party denies or contests the charges of the complainant or does not make any reaction to allegations, the district forum has to proceed with the resolution of the consumer dispute.

To conduct proceedings, the district forum has the same powers as that of a civil court

while trying a suit.

If the district forum finds the services complained against are deficient and the complainant has suffered any loss, it can direct the opposite party

- To remove deficiency in services
- To stop offering hazardous services
- To return to the complainant the price or charges paid by him.

Any person aggrieved by an order of the district forum can refer an appeal against such order before State Commission within the period of thirty days from the date of order.

1.2.2 State Commission

A state commission, to be established in every state and union territory, is the next tier of consumer redressal institutions. Furthermore, within its own state, a State Commission has original, revisional and appellate jurisdiction. The original jurisdiction of the state commission refers the power of entertaining complaints directly subject to pecuniary and territorial limits of each commission. It entertains complaints directly on the matters in which the value of goods or services compensation exceeds rupees twenty lakhs but does not exceed rupees one crore. To determine the jurisdiction of the state commission, it must be determined whether the other party, or each of the parties if there are more than one, actually and voluntarily resides or conducts business within the state borders or where the cause of action arises at the time the complaint is filed. In case there are more opposite parties residing or carrying business within the jurisdiction of different state commissions, the complaint can be filed in any of those commissions with the permission of that state commission or after the acquiescence of the other parties. The Commission has the power to hear appeals by any person aggrieved with the order of district forum.

The state commission while exercising revision jurisdiction may call the records of any consumer dispute pending before or decided by any district forum within its limits of jurisdiction if there is material irregularity or illegal exercise of jurisdiction.

Appeal against an order of the state commission may be preferred to the National commission within a period of thirty days from the date of the order Subject to deposit 35,000 Indian rupees or 50% of the ordered sum whichever is less.

1.2.3 National Commission

At the apex of the three tier redressal mechanism provided under section 9 of CP Act, 1986 is the National Consumer Dispute Redressal Commission also known as National commission. It consists of a president and four other members. The president of the commission can be a person who has been a judge of Supreme Court. He is to appointed by the Central Government in consultation with the Chief Justice of India.

The National Commission exercises original, revisional and appellate jurisdiction. The commission has the authority to hear complaints, if the value of the products or services at issue or the amount of compensation sought is more than one crore rupees under its original jurisdiction.

The commission has been given revisional jurisdiction in order to make sure that state commissions utilize their authority within the bounds of the legal framework and is only applicable to situations in which jurisdiction was wrongfully, illegally, or improperly exercised or not exercised. The National Commission can *Suomotu* exercise the power of revision.

Section 21 of the Consumer Protection Act of 1986 specifically limits the appellate power of the Supreme Court to the exercise of jurisdiction over initial complaints made to the national commission when the value of the products and services and the amount of any compensation exceeds Rs. 10 lakhs. Other orders are not made appealable.

1.2.3 (A) Consumer Protection Act, 2019

The Consumer Protection Act 1986 has been amended and repealed by the new Act of 2019 which besides other provisions has created Central Consumer Protection Authority or CCPA which will work towards promoting, protecting, and enforcing the rights of consumers. It can also conduct investigations into violations of consumer rights. This Act was enacted to resolve a large pendency of consumer complaints in Consumer Forums and Courts across the country.

Salient Provisions of the Consumer Protection Act.

As per this Act a person is called a consumer who avails the services and buys any goods for self-use. This definition covers all types of transactions i.e offline and online through teleshopping, direct selling or multi-level marketing.

Central Consumer Protection Authority (Section-10)

The Act proposes the establishment of the Central Consumer Protection Authority (CCPA) as a regulatory authority. The CCPA will protect, promote and enforce the rights of consumers and regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights. The CCPA have the right to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses, impose penalties and file class-action suits.

Consumer Disputes Redressal Commission (Section-28)

The Act has the provision of the establishment of Consumer Disputes Redressal Commission (CDRDs) at the national, state and district levels to entertain consumer complaints. As per the notified rules, the state Commission will furnish information to the Central Government on a quarterly basis on vacancies, disposal, the pendency of cases and other matters. The CDRCs will entertain complaints related to:

- Overcharging or deceptive charging.
- Unfair or restrictive trade practices.
- Sale of hazardous goods and services which may be hazardous to life.
- Sale of defective goods or services.

As per the Consumer Disputes Redressal Commission Rules, there will be no fee for filing cases up to Rs. 5 Lakh.

E-Filing of Complaints: (Proviso to Section 35)

The new Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. Thus is unlike the earlier condition where the consumer has to file a complaint at the place of purchase or where the seller has its registered office address. This Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. Consumer will also not need to hire a lawyer to represent their cases.

Provision for Alternate Dispute Resolution (Section-37)

The new Act provides for mediation as an Alternate Dispute Resolution mechanism. For mediation, there will be a strict timeline fixed in the rules. Wherever scope for early settlement exists and parties agree for it. The mediation will be held in the Mediation Cells to be established under the aegis of the Consumer Commissions. There will be no appeal against settlement through mediation.

Unfair Trade Practice (Section 47)

The Act introduces a broad definition of the Unfair Trade Practices, which also includes the sharing of personal information given by the consumer in confidence unless such disclosure is made in accordance with the provisions of any other law.

The Central Consumer Protection Council (Section-3)

The Consumer Protection Act empowers the Central Government to establish a Central Consumer Protection Council. It will act as an advisory body on consumer issues. As per the notified Central Consumer Protection Council Rules, the Central Consumer Protection Council would be headed by the Union Minister of Consumer Affairs, Food and Public Distribution with the Minister of state as Vice Chairperson and 34 other members from different fields.

Applicability (Section-18)

This Act is applicable to all the products and services, until or unless any product or service is especially debarred out of the scope of this Act by the Central Government.

Empowering consumers (Section-3)

The new Act will empower consumers and help them in protecting their rights through its various rules and provisions.

Inclusion of the e-commerce sector (Section-94)

The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the next Act. **Time-bound Redressal (Section-24)**

A main feature of the Act is that under this, the cases are decided in a limited time period.

Responsible endorsement (Section-38)

The new Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. The new Act would force the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

Simplified process for grievances redressal

The new Act would ease the overall process of consumer grievance redressal and dispute resolution process.

Implementation Challenges:

The existing vacancies at the district commission level would undermine the effective implementation of the new Act. As per the proposed rules for the e-commerce, businesses, companies are not allowed to “manipulate the price” of goods and services offered on their platforms to gain unreasonable profit or discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.

1.3 Redressal Mechanism under Banking Laws

The banking sector, which is a subset of the global service sector, not only contributes to a nation's financial system but also plays a crucial role in the economy of that nation. The banking sector offers both long-term and short-term money for investments and to ensure long-term success of the bank, banks tried to offer their clients high-quality services. Banking is a public utility, and due to the deteriorating quality of services provided to the public as well as the fact that banks frequently provide subpar services thereby putting the public and customers under undue stress without any recourse, it was deemed necessary to establish a separate department to handle complaints of this nature. Although the Consumer Protection Act of 1986 and the courts have addressed it, the consumer forum is currently overburdened due to the alarming increase of claims. The fact that many complaints that banks receive each year are still unresolved at the end of the year shows that the banks' grievance resolution system is ineffective at handling all consumer complaints. In India public sector banks handle more than 70% of complaints received during the year according to the RBI's Report on Trends and Progress of Banking in India (2014–15), while private sector banks received more than 25% of complaints regarding ATMs, credit/debit cards, and violations of the fair practices code, among other things. Various committees, commissions and working group were formed to go issue since 1972. Banking Commission was headed by Sri R. G. Saraiya followed by Sri. R.K. Talwar and lastly report of the Goiporia Committee was a step further as to the sustained anxiety of RBI towards improvement of customer services in banks. The 'Narasimhan' Committee on "Banking and Financial Sector Reforms" examined these critical areas and recommended introduction of the Banking Ombudsman

Scheme 1995" as a part of Financial Sector Policy and Systems Reforms 1991-92 to 1995-96. Along with the scheme there are various other measures taken to improve the quality of Redressal mechanism by the banks for customer satisfaction. Some are Reserve bank Indian's guidelines on customer services (2004), code issued by Indian Banks Association etc. Matrix for financial consumer protection:

- Banking Codes the standards Bureau, India, (BCSBI) or the fair practices code followed by respective banks.
- Code of Conduct issued by Indian Banks Association
- The in-house complaint Redressal mechanism set by banks
- Ombudsman office

1.3.1. Fair Practices Code of Indian Banks Association

The Indian Banks Association's member banks are required to abide by these voluntary norms of fair banking practices while working with certain clients. It offers clients helpful advice for their everyday activities. The Code applies to:

- current, savings and all other deposit accounts
- pension, PPF accounts etc. operated as agents of RBI Government
- collection and remittance services offered by the banks
- loans and over drafts
- foreign-exchange services card products
- Third-party products offered through our network.

As a voluntary Code, it promotes competition and encourages market forces to achieve higher ting standards for the benefit of customers.

1.3.2 Code of Conduct issued by Indian Banks Association

The Indian Banks Association has published a code of conduct on the services provided by banks. It establishes basic requirements for banking practices that banks must adhere to while working with consumers, discusses the expectations for how banks should interact:

- Promote good and fair banking practices by setting minimum standards in talking with you.
- Increase transparency so that you can have better understanding of what you can reasonably expect of the services.
- Encourage market forces, through competition, to achieve higher operating standards
- Promote a fair and cordial relationship between you and your bank
- Foster confidence in the banking system.

Unless otherwise specified, the code applies to all goods and services, whether they are offered in person or through online mode, or by any other means. Current accounts, deposit accounts, and demat accounts, equity, government bonds, checks, wire payments, and demands draughts are among the services covered. Safe keeping service,

Secure deposit box service, loans, overdrafts, etc. It covers both ATM and credit card transactions.

The code also contains the Bank's commitment to other services like 'NO Frill' accounts, dormant/inoperative accounts, and procedure for closing accounts, direct debits and standing instructions, stop payment facility, Procedure for settlements of accounts of deceased account-holders etc.

1.3.3 Charter of the Customer Rights

This is a recent step taken by RBI regarding consumer protection. It includes various principles listed as follows:

- Right to Fair Treatment: Right to treatment of courtesy is with both, service provider as well as with the financial customers. Also, no customer should be discriminated on grounds of age, gender, caste, religion or physical abilities.
- Right to Honest, Transparent, and Fair Dealing: Service provider must make all efforts possible to make sure that contracts framed by it are transparent in nature and are such that can be understood easily by common man. Also customer must not be subject to undue influence, or business practices which are unfair or unjust.'
- Right to Grievance Redressal: The customer has a right to hold the financial services provider answerable for the products offered.
- Right of Suitability: Needs of the customers should be kept in mind while offering products (needs on the basis of financial circumstance of customer).
- Right to Privacy: Personal information of the customer must be confidential unless there is consent or if this information is required as per law.
- Right to Grievance Redressal: The customer has a right to hold the financial service provider answerable for the products offered.

1.3.4 In-house Complaint Redressal Mechanism

The Master circular issued by the Reserve bank of India provides institutional framework for customer services. The Banks are required to have a properly approved Customer Grievance Redressal Policy that is well-documented. The general concepts listed in this Circular's paragraph 16 should serve as the basis for how the Policy is drafted. The complaint handling procedure should be explained to the affected personnel. The grievances resolution institutional framework can be briefly described here under:

i. Customer Service Committee of the Board

This board's sub-committee would be in charge of creating a comprehensive deposit policy that would address matters like how the death of a depositor would affect the operation of his account, the product approval procedure, an annual survey of depositor satisfaction, and a tri-ennial audit of these services. Additionally, the operation of the Standing Committee on Customer Service would be examined by this committee.

Standing Committee on Customer Service

The managing director or executive director of the bank will serve as chairperson of the standing committee on customer service. The committee would also include two to three eminent non-executives from the public in addition to two to three senior bank executives. The committee would review unresolved grievances that were presented to it by the functional heads in charge of redress and provide recommendations. The Committee would be in charge of ensuring that the bank complies with all regulatory directives regarding customer service. The committee would seek the appropriate input from functional heads and zonal/regional managers in order to accomplish this.

Nodal department official for customer service

Each bank is expected to have a nodal department official for customer services in the Head Office and each controlling office, with whom customers with grievances can approach in the first instance and with whom the Banking ombudsman and RBI can liaise.

iv. Branch Level Customer Service Committees

Banks were advised to establish Customer Service Committees at branches in order to encourage a formal channel of communication between the customers and the bank at the branch level. It is desirable that branch level committees include their customers too. The Branch Level customer services Committee may meet at least once a month to study complaints/suggestions by customers/members of the Committee and evolve ways and means of improving customer service.

The Branch Manager is in charge of resolving complaints or grievances regarding customer service provided by the branch according to the process or procedure developed for this purpose. It is his primary responsibility to see that the client's complaint is fully resolved to his or her satisfaction and provide alternative channels to redress the problem in case customer is not happy. Branch managers have the option to send cases to regional or zonal offices for assistance if they believe they cannot resolve issues at their level. Similarly the Nodal Officer may be consulted in such circumstances if the Regional or Zonal office determines that they are unable to resolve the issue.

1.3.5 Banking Ombudsman

Banking Ombudsman is a quasi-judicial authority functioning under India's Banking Ombudsman Scheme, and the authority was created pursuant to the decision by the Government of India to enable resolution of complaints of customers of banks relating to certain services rendered by the banks. An ombudsman is a person who has been appointed to look into complaints about an organization. Using an ombudsman is a way of trying to resolve a complaint without going to court.

The institution of Banking Ombudsman was introduced in 1995 in India, through the Banking Ombudsman Scheme 1995. In the wake of the failure in the efficient services of the banks, the RBI brought the Banking Ombudsman Scheme for

the prompt, efficient services and also to protect the rights of the customers. It was a mechanism to look into the banking customer grievances. After their view of the scheme, a new scheme came into picture in 2002 and further in 2006. Presently the Banking Ombudsman scheme is in operation. Over years the 2014-2015, around 85,131 complaints have been dealt by the Banking Ombudsmen.

The Banking Ombudsman is an official authority to investigate the complaint from the customers and address the complaint and there by bring the solution among the aggrieved parties. So the Banking Ombudsman plays the role of a mediator and serves the purpose of reconciliation. The customer can lodge a complaint on the grounds of deficiency in services with respect to loans, advances, internet banking, and interest rates, Credit card complaints and non-adherence to RBI guidelines etc.

Procedure to file a complaint: Under clause 9 of the BOS, 2006. The complainant can file a complaint either himself or by his authorized representative. The complaint should be duly signed and should be accompanied with the necessary documents the complainant has relied. The scheme also provides for the conditions fulfilled for making a complaint before Banking Ombudsman. The complainant can file his complaint in any form, including online. If the customer is not satisfied with the award of the Banking Ombudsman, he can approach to the RBI, appellate authority called Deputy Governor. Still if he is not satisfied after approaching the RBI, then he can go to the High Court.

Later, the Damodaran Committee (2010) looked into the existing CGRS prevalent in banks, examined the functioning of BOS and recommended the appointment of a 'chief Customer Service Officer' as an 'Internal Ombudsman' for a bank so that routine complaints can easily be handled by banks without any cost and time over runs. According to RBI's annual report released in November 2015 during financial year (FY) 2014-15, a total of 85,131 complaints were received by the various banking ombudsmen. This is an increase of 11.17% over the previous year. The RBI report stated: "the appointment of CCSO (Chief Customer Service Officer) as internal ombudsman in the long run will ensure that only a minimum number of complaints are escalated to banking ombudsman and the role of banking ombudsman would be extended to provide valuable inputs for policy formulation." The internal ombudsman-man operates similar to the banking ombudsman, but it can also deal with complaints that are outside the purview o BOS provided these have been examined by the banks internal grievance Redressal mechanism and left unresolved to the satisfaction of the complainant. If a customer is not satisfied with the bank's resolution (at the complaint redressal level then the internal ombudsman level), she can approach the banking ombudsman, thereafter the appellate tribunal, for resolution.

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