



J&K JUDICIAL ACADEMY e-NEWSLETTER



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LEGAL JOTTINGS

“Children are not only the future citizens but also future of the earth. Elders in general, and parents and teachers in particular, owe a responsibility for taking care of the well-being and welfare of children. The world shall be a better or worse place to live according to how we treat the children today.”

R.C. Lahoti, J.

In Rohit Singhal v. Jawahar N. Vidyalaya,
(2003) 1 SCC 687, para 6

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From the Editor's Desk

Hon'ble Dr. Justice D.Y. Chandrachud, the 50th Chief Justice of India speaking at a felicitation function organized by the Supreme Court Bar Association, said "*I think we have fostered a culture of subordination. We call our district judiciary as the subordinate judiciary. I make a conscious effort not to call district judges as subordinate judges. Because they are not subordinates. They belong to district judiciary*". The paradigm of the Indian Judicial system is testimony to the fact that we inherited a well-entrenched system of Judicial administration from the Britishers, but Alongside also imbibed the archetypal imperial comportment which does not distinguish between prominence of hierarchy in the echelons of our legal system on one hand and subservience and inferiority on other hand, the latter concept being a downright antithesis to our own Constitutional edict of equality and ethos of Indian culture. The judicial system in India is integrated and pyramidal in structure with the Supreme Court at the top followed by the High Court and then the District Courts. The hierarchical structure ensures that jurisdiction or authority of any kind by one Court over another must always be by the strength of statutory authority and not by praxis terminology that is indicative of a colonial hangover, that requires immediate weeding out. The recent emphasis on the use of "district judiciary" as an appropriate term instead of "subordinate judiciary" signifies the exact locus of the third tier of judicial administration in the entire structure of the hierarchy and the exercise of its juridical function of administering justice at the district level.

The Indian legal system is at the cusp of a change in terms of institutional reforms, innovations, and technological expertise. But it would be appropriate to say that realization must precede change. While the overall desirable transformations take time to hatch into a working reality, let us constantly be influenced by the formative thought that the court is a microcosm of society, and the manner and process of judicial decision-making directly and fundamentally affects the lives of people and reciprocally, the ability of the judicial institutions to thrive and flourish is decided by the trust and confidence that it generates in the minds of the people. It is a concept that occasions the necessity of augmentation of our resources at hand, both qualitatively and quantitatively. Notwithstanding the numerous constraints and challenges linked with the dispensation of Justice, constant efforts must be aimed at maintaining the rule of law. Then, of course, the precepts of Court Craft and Court Conduct supplemented by the elements of honesty, integrity, knowledge, and discernment which are inalienably linked to the entire process of administration of justice must be integral to our professional disposition. These attributes are the badges of a Judge who must wear them proudly on his chest with a sense of attainment, almost at all times. It is a truism to say that the Judiciary has been scrupulously and zealously guarding the rights of people. The vision of the Hon'ble Chief Justice of India for a modern and equal judiciary and also the necessity for inculcating the feeling of self-worth in the District Judiciary must be taken as an elixir for enhancing productivity and efficiency with a greater sense of urgency and dedication so as to ensure that the institution always rates high on the scales of public esteem and overall, successfully achieves the target of dispensing Justice, and that too with distinction!



Criminal Appeal No(S). 2060 of 2022

Ramesh Chandra Gupta v. State of U.P. & Ors.

Decided on: November 28, 2022

Hon'ble Supreme Court Bench of Justices Ajay Rastogi and CT Ravikumar while hearing appeals filed against the judgment passed by the High Court of Judicature at Allahabad dismissing the criminal miscellaneous application of the appellants while referring to State of Haryana vs Bhajan Lal reported in 1992 Supp. (1) 335, observed that the criminal proceedings can be quashed when the complaint on the basis of which FIR was registered does not disclose any act of the accused or their participation in the commission of crime.

Criminal Appeal No. 1981 of 2022

Xyz v. State of Karnataka & Anr.

Decided on: November 17, 2022

Hon'ble Supreme Court Bench of Justices MR Shah and Hima Kohli while setting aside a bail granted to a rape accused, observed that the relevant aspects which are required to be kept in mind while considering the bail application are the seriousness of the offence alleged; material collected during the investigation; statement of the prosecutrix etc. but the need of further custodial trial is not relevant aspect while considering the bail application under Section 439 of Cr.P.C.

Criminal Appeal No. of 2022 (@ Slp (Crl.) No(S). 5241 Of 2016)

Jain P. Jose v. Santosh & Anr.

Decided on: November 10, 2022

Hon'ble Supreme Court Bench comprising of Justices Sanjiv Khanna and J.K. Maheshwari while hearing an appeal against the judgment passed by the High Court of Kerala at Ernakulam reiterated the legal provision that the presumption under Section 139 of the Negotiable Instruments Act includes a presumption that there exists a legally enforceable debt or liability. Referring to *T. Vasanthakumar Vs. Vijaykumari* (2015) 8 SCC 378, *Rangappa vs. Sri Mohan* (2010) 11 SCC 441 and *Kalamani Tex vs. P. Balasubramanian* (2021) 5 SCC 283, it was observed, "This decision, refers to an earlier judgment of this Court in "*Rangappa vs. Sri Mohan*" (2010) 11 SCC 441, which elucidating on the presumption under Section 139 of the N.I. Act, observes that this includes a presumption that there exists a legally enforceable debt or liability. However, the presumption under Section 139 of the N.I. Act is rebuttable and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested."

Contempt Petition (C) No.555 Of 2022

Abc v. M. Mahender Reddy & Ors

Decided on: November 01, 2022

Hon'ble Supreme Court Bench of CJI UU Lalit and Justice Bela M. Trivedi while considering a contempt petition which highlighted the violation of mandatory directions

issued in *State of Karnataka by Nonavinakere Police vs. Shivanna alias Tarkari Shivanna – (2014) 8 SCC 913* and *A vs. State of Uttar Pradesh – (2020) 10 SCC 505* observed that a rape victim's statement made under Section 164 CrPC should not be disclosed to any person including the accused till charge-sheet/final report is filed. The Hon'ble Court also suggested every High Court that the appropriate modifications/amendments be made to the Criminal Practice/Trial Rules incorporating provisions consistent with the directions issued by the apex Court in the decisions in *Shivanna alias Tarkari Shivanna and A vs. State of Uttar Pradesh and Another*.

CIVIL

Special Leave to Appeal (C) No(s). 19654/2022

Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors.

Decided on: November 18, 2022

Hon'ble Supreme Court Bench of Justices KM Joseph and Hrishikesh Roy while hearing the complaint of the petitioner that the Execution Court is not abiding by the directions issued by the Apex Court in the decision in *Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.*, reported in (2021) SCC 41 observed that the Execution Court must dispose of the execution proceedings within six months from the date of filing and it is duty bound to record reasons in writing when it is unable to dispose of the matter. It was observed, " *This means that it becomes the duty of the Execution Court to dispose of the execution proceedings at the earliest and since this Court has directed that the Execution Court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time limit and the Execution Court should have reasons for not being able to dispose of the execution petition. The Execution Court is duty bound to record reasons in writing when it is unable to dispose of the matter.*"

Petition for Special Leave to Appeal (C) No. 19018/2022;

Gurdev Singh v. Harvinder Singh

Decided on: November 11, 2022

Hon'ble Supreme Court Bench comprising Justices MR Shah and MM Sundresh in an appeal against the order of the High Court of Punjab & Haryana at Chandigarh in an application preferred by the petitioner to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, observed that a plaint cannot be rejected under Order VII Rule 11 CPC merely on the ground that 'the plaintiff is not entitled to any relief in the suit. It was observed." *It is the case on behalf of the petitioner that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 of the CPC. The learned Trial court has rightly rejected the application under Order 7, Rule 11 of the CPC, which is rightly not interfered with by the High Court.*"

Civil Appeal No. 7774 of 2022

Sumer Corporation v. Vijay Anant Gangan & Ors.

Decided on: November 09, 2022

Hon'ble Supreme Court Bench of Justices MR Shah and MM Sundresh explained the method to determine the compensation for the use and occupation of the tenancy premises by a tenant who suffered an eviction decree. Referring to the case law *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., (2005) 1 SCC 705* and *State of Maharashtra and Anr. Vs. SuperMax International Private Limited and Ors., (2009) 9 SCC 772*, it was held that in a revision/appeal preferred by the tenant, who has suffered an eviction decree, the appellate/revisional court while staying the eviction decree can direct the tenant to pay the compensation for use and occupation of the tenancy premises upon the contractual rate of rent and such compensation for use and occupation of the premises would be at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises.

Civil Appeal Nos. 8050-8051 of 2022

V.S. Ramakrishnan v. P.M. Muhammed Ali

Decided on: November 09, 2022

Hon'ble Supreme Court bench of Justices MR Shah and MM Sundresh observed that a specific issue on readiness and willingness on the part of the plaintiff must be framed by the trial court in a suit for specific performance. It was observed, "Such a finding could not have been given by the learned Trial Court without putting the plaintiff to notice and without framing a specific issue on the readiness and willingness on the part of the plaintiff. There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that the parties to the suit can lead the specific evidence on the same."

Civil Appeal No. 8104 of 2022

Maringmei Acham v. M Maringmei Khuripou

Decided on: November 03, 2022

Hon'ble Supreme Court Bench of Justices KM Joseph and Hrishikesh Roy observed that the impleadment of the legal representative(s) by an Appellate Court in an appeal from an interlocutory order will ensure the proceedings in the suit itself. Hon'ble Court was hearing an appeal against the order passed in a Civil Revision Petition wherein the High Court had found that in view of the fact that the suit, filed by the appellant's late father who had died and as no steps had been taken to implead his legal representatives, had abated, the result of the abatement of the suit filed by the appellant's father, was that the civil miscellaneous appeal filed under Order XLIII Rule 1 of the Code of the Civil Procedure against an order refusing temporary injunction would no longer have to be proceeded with.



CRMC No. 144/2013

Kamlesh Devi & Ors. v. State of J&K & Ors

Pronounced on: November 29, 2022

Hon'ble Single Bench of High Court of J&K and Ladakh in a petition seeking quashment of an order passed by Learned Judicial Magistrate (Special Mobile Magistrate Passenger Tax and Shops Act) Jammu, in a final report, whereby the learned Magistrate has directed the Sr. Superintendent of Police (Crime Branch) Jammu, to re-investigate the matter against the petitioners for the commission of offences punishable under sections 420,467,468,471 RPC and also for quashing the FIR and the charge sheet arising therefrom examined the scope whether a judicial Magistrate is competent to transfer the investigation of the case from local police station to Crime Branch of the police agency and referred to Vinay Tyagi v. Irshad Ali reported as Chandra Babu @ Moses v. State through Inspector of Police & Ors. reported as to clarify that no other Court except the Superior /Constitutional Courts is vested with the powers to order reinvestigation or transfer investigation of a case from one agency to another, to secure the ends of justice. Hon'ble Court also determined that the crime branch can register and investigate only those crimes that either find a place in the annexure to the notification or have been ordered to be investigated by the Govt. or by the Director General of Police.

CRM(M) No. 232/2022

Ajay Partap v. UT of J&K and others

Pronounced on: November 28, 2022

Hon'ble High Court of J&K and Ladakh in a petition seeking quashment of FIR and the consequent proceedings emanating from therein explained the power of investigation as given by the Code of Criminal Procedure, 1973 and the province of investigation as provided in the Evidence Act,1872 . It was observed," *While the power of investigation is given by the Code of Criminal Procedure, 1973, the province of investigation is provided by the Indian Evidence Act, 1872. Section 3 of the Indian Evidence Act, 1872 provides when a "Fact" is to be held Proved/Disproved and Not proved before a Court of law. It is by this principle of proof that a court of law enables itself to make verdict in a case/cause, be it a civil or criminal cause getting trial before it. It is through the field of facts as envisaged under the Indian Evidence Act, 1872 that the police investigation has to charter itself to identify the true facts of accusation. The very definition of "Fact in Issue" & "Relevant Fact as given in the very opening of section 3 of the Indian Evidence Act, 1872 are encyclopaedic of what is to come out before a court of law either in a civil case or criminal case before it in which a court of law has to make an adjudication. It is with respect to this definition of "Fact" that definition of expressions "Proved, Disproved and Not Proved" come into play through judgment making of a court of law dealing with trial of case/cause. The Police Investigation has to be led and driven by the domain concepts of "Facts in Issue" and "Relevant Facts."*

CRA No. 33/2014(O&M)

Parvez Ahmed and others v. State of J&K

Pronounced on: November 18, 2022

Hon'ble Division Bench of High Court of J&K and Ladakh while considering an appeal against the judgment of conviction passed by the learned Sessions Judge, Poonch discussed the law relating to related and interested witnesses. Referring to *Bhaskarrao v. State of*

Maharashtra, and Md Jabbar Ali & Ors versus State of Assam reported in MANU/SC/1351/2022, Hon'ble Court observed," Normally a close relative will not shield the real culprit but equally true is that the witness having an interest in the outcome may exaggerate or may depose in a partial manner. The proper balance is required to be maintained between the two conflicting and diametrically opposite considerations, by appreciating the evidence of such witness cautiously." Hon'ble Court also noted the principles laid down by Apex Court while evaluating the ocular evidence in *Shahaja v. State of Maharashtra, 2022*.

Criminal Appeal No. 1928 of 2022

The State of Jammu & Kashmir (Now U.T. Of Jammu & Kashmir) & Ors v. Shubam Sangra

Decided on: November 16, 2022

Hearing an appeal preferred by the State of Jammu & Kashmir directed against the order passed by the High Court of Jammu & Kashmir by which the High Court rejected the Criminal Revision Application filed by the appellant State thereby affirming the order passed by the Chief Judicial Magistrate, Kathua holding the respondent accused herein to be a juvenile on the date of the commission of the alleged offence, the Supreme Court Bench of Justices Ajay Rastogi and Justice JB Pardiwala directed that the said accused Shubham Sangra should be tried as an adult. It was opined that the correct way of looking at the core issue is to closely examine whether there is any cogent or convincing evidence as regards the correct date of birth of the respondent accused and after ascertaining the same, reach to an appropriate conclusion. If, there is any doubt in this regard, there is no good reason why the matter should not be referred to a duly constituted medical board which shall, in turn, record its findings and submit to the Juvenile Justice Board." 42. *The plain reading of Section 8 referred to above indicates that whenever a claim of juvenility is raised before any court or the court is of the opinion that the accused person was a juvenile on the date of the commission of the offence, then it is mandatory for the court to make an inquiry and in the course of such inquiry, the court may take such evidence as may be necessary, however, not an affidavit, so as to determine the age of such person. At the end of the inquiry, if the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1) of Section 8, then in such circumstance, the court is obliged in law to forward the juvenile to the Juvenile Justice Board for passing appropriate order and the sentence."*

CRR No.60/2015 IA No.1/2015

Sanjay Raina v. State of J&K & Anr.

Pronounced on: November 17, 2022

Hon'ble High Court of J&K and Ladakh, while considering a revision petition filed against the order passed by the Court of learned 2nd Additional Sessions Judge, Jammu whereby order passed by learned Chief Judicial Magistrate, Jammu, whereby the appellant was not found to be a juvenile and the charge sheet was committed to the Court of learned Principal Sessions Judge, Jammu for trial, as a sessions trial case, referred to Section 8 of the Juvenile Justice Act and Rule 74 of the Rules framed under the Act, and placed reliance on AIR 2012 SC 3437 titled *Vijay Singh V/s State of Delhi, Ashwani Kumar Saxena V/s State of M.P.* reported as (2012) SCC 50 and *Jodhbir Singh V/s State of Punjab* reported as (2012) Supreme (SC) 854 ,and reaffirmed that when the law gives prime importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, there is no question of placing reliance on the

certificate issued by the village Chowkidar.

Crl A(D) No. 9 of 2022 (O&M)
National Investigation Agency v. Jaffar Hussain
Pronounced on: November 09, 2022

Hon'ble Division Bench of High Court of Jammu & Kashmir and Ladakh, in an appeal in terms of Section 21 of the National Investigation Agency Act 2008, filed against the order of discharge passed by the Court of learned Special Judge, NIA (3rd Additional Sessions Judge), J&K at Jammu, explained the concept of framing of charge/discharge of accused and the guidelines deducible from judicial precedence in regard to evaluation of material for such purpose. Hon'ble Court referred to *Niranjan Singh Karam Singh v. Jatinder Bhimaraj and other* reported in AIR 10 SC 12, *State of Bihar v. Romesh Singh* reported in (1978) 1 SCR 257 and *Sajjan Kumar vs. CBI* reported in (2010) 3 SCC (Cri) 1371 and reiterated that the Court while considering whether to frame charges against an accused or discharge him is required to evaluate the material and documents on record in order to find out whether the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offences or not. The Court may, at this stage, sift the material for such limited purpose and marshalling of evidence with a view to separate the grain from the chaff is not permissible.

CIVIL

CM No.1870/2022
Mohammad Shaban Sheikh v. Abdul Rashid Malik and Ors
Decided on: November 30, 2022

Hon'ble High Court of J&K and Ladakh, in an application under Order I Rule 10(2) of CPC, filed on behalf of the petitioner seeking impleadment as respondents in place of respondent No.2, observed that the provision of Order XXII Rule 4 of the CPC applies only in a case where death of one of the several defendants or the sole defendant occurs during the pendency of the suit. If the death of the defendant has taken place prior to the filing of the suit, taking resort to the provisions contained in Order XXII Rule 4 of the CPC may not be appropriate. Hon'ble Court referred to case law *Bhagwan Swaroop v. Mool Chand* (1983) 2 SCC 132 and *Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya* (2017) 9 SCC 700 and observed that in those circumstances the correct course would be under the provision enumerated under Order I Rule 10 CPC." 12. *From the foregoing, enunciation of law on the subject, it is clear that in case a defendant has expired prior to the filing of the proceedings, there is no legal impediment in impleading the legal representatives of the deceased respondent/defendant under Order I Rule 10 of the CPC for the simple reason that the petitioner/plaintiff could have instituted a fresh suit/petition against these legal representatives on the date he moved application for making them as parties. "*

CFA No. 27/2008
Defence Estate Officer v. Beli Ram (D) through his LRs & Ors.
Pronounced on: November 29, 2022

Hon'ble Single Bench of High Court of J&K and Ladakh while considering two appeals arising out of common judgment passed by the Court of Learned 2nd Additional District Judge Jammu in two references made by Collector Land Acquisition, referred to *State of*

Punjab vs. Qaiser Jehan Begum reported as 1963 AIR (SC) 1604 and observed that literal and mechanical construction of the words “six months from the date of the Collector’s award” occurring in the second part of clause (b) of the proviso would not be appropriate and “the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression used in the proviso must mean the day and date when the award is either communicated to the party or is known to him either actually or constructively and that knowledge of the award must mean knowledge of the essential contents of the award. Hon’ble Court also referred to *SKUAST & Ors. Vs. B.V. Sharma* reported as 2008 (2) JKJ (HC) 28 to say that an Additional District Judge who is exercising the same jurisdictional functions/powers is not inferior in grade to that of Principal Civil Court of original jurisdiction, as such, the Additional District Judge is not statutorily incompetent or inferior to the Principal District Judge.

CFA No. 34/2018

Hafiza Begum and Ors. v. Shams Din Bhat and Ors.

Pronounced on: November 16, 2022

Hon’ble High Court of J&K and Ladakh, while considering an appeal directed against the order passed by the Principal District Judge, Srinagar whereby the plaint of the appellant was rejected under Order VII Rule 11 CPC, referred to Order VII Rule 11 CPC, as also the position of law propounded by the Apex Court in various judgments reiterated that the plaint can be rejected only when the averments made in the plaint does not disclose any cause of action for the reliefs sought for in the plaint and a plaint cannot be rejected in part. Hon’ble Court also relied on *A.B.C Laminart Private Limited Vs. A. P. Agencies, Salem* reported in 1989 (2) SCC 163 to explain the scope of the word “cause of action”. *It was observed that, “ 11. As has been noticed in the preceding paras, the settled principles law laid down by the Apex court for rejection of plaint and also as envisaged under Order VII Rule 11 clause (a) has been that a plaint shall be rejected where it does not disclose a cause of action. No ground like the one defectively pleaded cause of action has been either provided in order VII Rule 11 CPC or else in any of the pronouncements of the Apex court (supra) for rejection of the plaint.”*



ACTIVITIES DURING THE MONTH

Two days State Level Consultation on “Implementation of POCSO Act-2012”

Day-1

Two days consultation on the implementation of POCSO Act 2012, organised by Juvenile Justice Committee, High Court of J&K and Ladakh in collaboration with the Department of Social Welfare, Govt. of UTs of J&K and Ladakh and supported by UNICEF was inaugurated at Police Auditorium, Gulshan Ground Jammu on 12th November, 2022 by Hon’ble Mr. Justice Ali Mohammad Magrey, Chief Justice, High Court of J&K and Ladakh, who was Chief Guest on the occasion while Hon’ble Mr. Justice Tashi Rabstan, Chairman, Juvenile Justice Committee, Hon’ble Mr. Justice Rajnesh Oswal and Hon’ble Mr. Justice

Mohammad Akram Chowdhary, Members, JJ Committee were the Guests of Honour.



Speaking on the occasion Justice Magrey delved into the journey of the juvenile justice system and also POCSO Act, 2012, in the Country especially the UTs of J&K and Ladakh and said the system in J&K and Ladakh is gaining pace and have arrived at satisfying results in implementing POCSO Act in letter and spirit. He said that due to efforts of JJC of Supreme court of India and

JJC of J&K and Ladakh, the UTs of J&K and Ladakh are not lagging with the rest of the country, but a lot is required to be done by creating a robust mechanism.

Hon’ble Mr. Justice Tashi Rabstan urged the Govt. to organize more such consultations not only at State Level but at the District and Block levels also to make the people aware about the provisions of the legislation. He said that the aim of this conference is to review the working of various institutions involved in carrying out the provisions of the Act.



Ms. Sheetal Nanda, Commissioner Secretary Social Welfare Department also emphasized the need for holding awareness camps to make not only the children but the parents also to sensitize them about the behavior and attitude of the people who are likely to commit offences against the children. She further said that the conference is a welcome opportunity where all the stakeholders can deliberate upon the provisions of the POCSO Act.

Ms. Soledad Herrero, Chief of Child Protection UNICEF India commended the High court of J&K and Ladakh for playing a proactive role in implementing not only the Juvenile Justice Act but also POCSO Act. She said that there is a need for greater deliberations over the issues of victims of child abuse.

Mr. Amit Gupta, Member Secretary, Juvenile Justice Committee in his welcome address gave an overview of the programme. He said that this is for the first time that consultations on POCSO Act are being organized by the JJ Committee because earlier all the four Round Table Conferences were on the Juvenile Justice (Care & Protection) Act. Vote of thanks was proposed by Ms. Harwinder Kour, Mission Director Vatsalya, J&K.

The Inaugural Session was followed by three technical sessions. The second session dealt with "Prevention, Rehabilitation and Re-integration of POCSO survivors". This session was chaired by Hon'ble Mr. Justice Wasim Sadiq Nargal, Whereas, Mr. Miguel Das Queah, Director UTSAH was the resource person.

The third session on the topic "Capacity Building of Justice for children workforce: Institutionalizing Capacity Building Initiatives", was chaired by Hon'ble Mr. Justice Rahul Bharti, whereas, Ms. Harvinder Kour, Mission Director, Vatsalya J&K was the resource person.

The last session of the day dealt with "Child Friendly Court Procedures". This session was chaired by Hon'ble Mr. Justice Mohammad Akram Chowdhary, whereas, Ms. Bharti Ali, Director HAQ was the resource person.

The inaugural session was attended by Hon'ble Judges of the High Court, Shri. D. C Raina, Advocate General, Shri. Achal Sethi, Law Secretary, Shri. Sanjeev Gupta, Registrar General and other officers of the Registry, Officers from Civil and Police administration, judicial officers and delegates from different institutions like police, social welfare,



judiciary, legal services, education and health both physically and virtually.

Day-2

Two days consultation on Implementation of POCSO Act, 2012 organized by Juvenile Justice Committee, High Court of J&K and Ladakh in collaboration with the department of Social Welfare UTs of J&K and Ladakh and supported by UNICEF India concluded today at Police Auditorium Jammu.

The brain storming deliberations of day one had already set the tone and tenor of the second day consultations. Today, fifth session of the conference, on a very important topic relating to mental health and psycho-social support to the survivors and their families was chaired by Hon'ble Ms. Justice Sindhu Sharma, Chairperson, J&K Judicial Academy in which Mr. Saurabh Sashi Ashok, NIMHANS Bangalore was the resource person. While addressing the participants through virtual mode from Bangalore he shared his experiences with the child victims of intellectual disability. Hon'ble Ms. Justice Sindhu Sharma, in her deliberations emphasised on providing psycho-social support not only to the victims but also to their families particularly parents.

In the last technical session the topic for discussion was the “Role of the Police in the investigation of POCSO cases and intersection of POCSO and Juvenile Justice Act”. This session was presided over by Hon’ble Mr. Justice Rajnesh Oswal, Member, Juvenile Justice Committee. Mr. Anant Kumar Asthana, a prominent Child Rights Lawyer from New Delhi was the resource person. While speaking on the occasion, the resource person informed the delegates that recently the POCSO Act of India has been rated as one of the best



legislations in comparison to similar legislations enacted by some developed countries like U.K and Sweden. He also stressed upon the grant of compensation to the child victims under the POCSO Act, which is the sole discretion of the Judge dealing with the POCSO cases. Hon’ble Mr. Justice Rajnesh Oswal, highlighted the grey areas in the legislation and stressed upon the need for having separate agency and institution to

deal with the POCSO related crimes. The queries raised by the delegates were responded satisfactorily by the resource persons as well as the Chairpersons.

The closing session was also attended by Hon’ble Mr. Justice Tashi Rabstan, Chairperson, Juvenile Justice Committee, who impressed upon the participating delegates to make best use of the techniques gained during the conference in their day to day working vis-à-vis the cases relating to POCSO Act. Hon’ble Mr. Justice Rajnesh Oswal, Hon’ble Mr. Justice Rahul Bharti and Hon’ble Mr. Justice Rajesh Sekhri also remained present during the course of deliberations of the day.

The programme concluded with the vote of thanks proposed by Mr. Amit Kumar Gupta, Member Secretary, Juvenile Justice Committee. The proceedings of the programme were conducted by Ms. Swati Gupta, Senior Civil Judge.



One Day Seminar for Young Advocates on “Role and Responsibilities of Advocates as officers of Court in Civil and Criminal Trials with special emphasis on Advocates Act”

J&K Judicial Academy organized One Day Seminar for Young Advocates on “Role and Responsibilities of Advocates as officers of Court in Civil and Criminal Trials with special emphasis on Advocates Act” at Judicial Academy, Jammu on 19th November, 2022.

The training programme was inaugurated by Hon’ble Mr. Justice Sanjeev Kumar, Judge, High Court of J&K and Ladakh in the presence of Mr. Vikram Sharma, Sr. Advocate, High Court of J&K and Ladakh. Mr. Kikar Singh Parihar, Former District & Session Judge was the resource person in the programme.



In the inaugural session, Mr. Vikram Sharma, in his keynote address said that the legal profession has been placed at the highest pedestal due to its nobility carrying attributes of fairness, honesty, etiquettes, mannerism supplemented by correct aptitude within its ambit. A

lawyer being a responsible citizen is under an obligation to set highest standards of professional conduct in his private and public life. He stated that Lawyers must know how to be assertive in the court and not to be aggressive.

In his inaugural address, Hon’ble Mr. Justice Sanjeev Kumar, Judge, High Court of Jammu & Kashmir and Ladakh emphasized the important role of Lawyers and described the lawyer’s profession as tough and challenging. He added that everybody is the student of the law and nobody can claim as the master of law. He described a lawyer should be litigant friendly and work as the agent of clients. He deliberated that the duty of a lawyer towards

the court is to present the facts in a fair and dignified way. He also specified that the lawyers should be able to draw a line between aggression and assertion in order to succeed in life. He remarked that a lawyer must work with perseverance and dedication, which is the key to success in this profession and must learn the art to recognize their



weaknesses and convert them into strengths. If a lawyer imbibes the ethics of professional standard, then sky is the limit. He also deprecated the tendency of going on strikes and advised to look for solution by engaging with the stakeholders.

Mr. Shahzad Azeem, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. He stated that the legal profession is a noble calling to serve and ensure composite justice to various sectors of the society and adherence to norms of professional ethics and performance of duties with sincerity is imperative.

Mr. D.C. Raina, Ld. Advocate General in the first technical session addressed the young Advocates on the concept of ethics which is integral to the Lawyers profession. He described the duties of advocates in detail while dealing with matters of court. He advised young advocates to follow the procedural codes in letter and spirit and adopt a sensible approach as the officers of the court.

Mr. Kikar Singh Parihar, Former District & Session Judge who was the resource person in the technical sessions delved into the concepts of role and responsibilities of Advocates as Officers of Court and stressed upon the vital role of an Advocate in the entire case management. He stressed that the communication & behavioural Skills of the Advocate would be the guiding factor during the entire trial. He stressed upon the duties of advocates towards self development for better service to the clients and society. He advised the participants to inculcate the standards of professional ethics. He also underlined the conduct of Advocates under the Advocates Act, 1961 and the rules governing the Advocates under Part VI & VII of Bar Council of India Rules.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.

One day workshop and special skill enhancement training programme on “Leadership role of the judge in the Court Management including Case and Time Management, Control of Docket Flow, Managing Stress; Canons of Judicial Ethics and Behaviour; Bangalore Principles of Judicial Conduct, Code of Conduct, Qualities of a Judge, Communication skills and Personality development”

To commemorate the spirit of Constitution on the occasion of Constitution Day, J&K Judicial Academy organized one day workshop and special skill enhancement training programme on “Leadership role of the judge in the Court Management including Case and Time Management, Control of Docket Flow, Managing Stress; Canons of Judicial Ethics and Behaviour; Bangalore Principles of Judicial Conduct, Code of Conduct, Qualities of a Judge, Communication skills and Personality development” for Civil Judges (Sr./Jr. Division) of Jammu Province at Judicial Academy, Jammu on 26th November, 2022.



The training programme was inaugurated by Hon’ble Ms. Justice Sindhu Sharma, Chairperson, Governing Committee for Judicial Academy in the presence of Hon’ble Mr. Justice Rahul Bharti, Judge, High Court of J&K and Ladakh who was also the resource person for the workshop.

In the inaugural session, Hon’ble Mr. Justice Rahul Bharti, in his special remarks described the judicial officers as being the mainstay of the entire judicial system and emphasised the important role of district judiciary as torch bearers of the administration of justice system. He also called upon the judicial officers to discharge their duties with utmost sincerity and commitment.

In her inaugural address, Hon’ble Ms. Justice Sindhu Sharma emphasized the qualities of compassion, performance of duty and impartiality as being the hallmark of judicial conduct which must be of impeccable character. She exhorted the judicial officers to ensure

that the cause of justice should not suffer. She described the legal profession as a divine duty and called upon the judicial officers to exhibit the highest standards of ethics, compassion and courteousness in their professional conduct since they at the first interface with the public.

Mr. Shahzad Azeem, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. He said that the judges being at the pivot of the temple of justice must exhibit the highest standards of personal and professional conduct and must inspire the trust and confidence of people through his ability and efficacy. He



also referred to the qualitative traits of civility, integrity, honesty and discernment as being integral for the holistic achievement of justice.

On the occasion, the Preamble reading ceremony was also held which was led by Hon'ble Ms. Justice Sindhu Sharma in august presence of Hon'ble Mr. Justice Rahul Bharti to commemorate the adoption of the Constitution of India.

In the first technical session, Justice Rahul Bharti delved into the concept of Leadership role of the judge in the Court Management including Case and Time Management. He laid stress on inculcating the virtues of independence and impartiality, ethics, time management, punctuality, empathy, and precision in pursuit of Justice. He called on the Judicial Officers to maintain the utmost standards of conduct in both their professional and personal lives. He referred the Judges as being pain-relievers for the people in stress and encouraged them to uphold the vision of justice.

In the second technical session, Justice Rahul Bharti deliberated upon the canons of judicial ethics and behaviour in reference to the Bangalore Principles of Judicial conduct. He discussed the code of conduct of judicial officers and the qualitative skills of communication and management for effective management of the court system.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.



CYBER CRIME-SHADES AND CHECKS

Cybercrime in a narrow sense (computer crime) means any illegal behaviour directed by means of electronic operations that targets the security of computer systems and the data processed by them and Cybercrime in a broader sense (computer-related crime) means any illegal behaviour committed by means of, or in relation to, a computer system or network, including such crimes as illegal possession and offering or distributing information by means of a computer system or network. Any activities which basically offend human sensibilities can be included in its ambit. Child Pornography on the Internet constitutes one serious Cybercrime. Cybercrimes can be basically divided into three major categories being Cybercrimes against persons, property and Government.

Cybercrimes committed against persons include various crimes like transmission of pornography, harassment of any one with the use of a computer such as e-mail, and cyber-stalking, trafficking, distribution, posting, and dissemination of obscene material, indecent exposure, and child pornography, constitutes one of the most important Cybercrimes known today. The potential harm of such a crime to humanity can hardly be overstated. This is one Cybercrime which threatens to undermine the growth of the younger generation as also leave irreparable scars and injury on the younger generation, if not controlled. Similarly, Cyber harassment is a distinct Cybercrime. Various kinds of harassment can and does occur in cyberspace, or through the use of cyberspace. Harassment can be sexual, racial, religious, or other. Persons perpetuating such harassment are also guilty of cyber-crimes. Cyber harassment as a crime also brings us to another related area of violation of privacy of netizens. Violation of privacy of online citizens is a Cybercrime of a grave nature. No one likes any other person invading the precious and extremely touchy area of his or her own privacy which the medium of internet grants to the netizens. Another Cybercrime against persons is that of Cyber stalking. The Internet is a wonderful place to work, play and study. The Net is no more and no less than a mirror of the real world. And that means it also contains electronic versions of real life problems. Stalking and harassments are problems that many persons especially women, are familiar with in real life. These problems also occur on the Internet, in what has become known as "Cyber stalking" or "on-line harassment".

The second category of Cybercrimes is that of Cybercrimes against all forms of property. These crimes include unauthorized computer trespassing through cyberspace, computer vandalism, and transmission of harmful programs and unauthorized possession of computerized information. Hacking and cracking are amongst the gravest Cybercrimes known till date. It is a dreadful feeling to know that someone has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information. Coupled with this, the actuality is that no computer system in the world is hacking proof. It is unanimously agreed that any and every system in the world can be hacked. Using one's own programming abilities as also various programmes with malicious intent to gain unauthorized access to a computer or network are very serious crimes. Similarly, the creation and dissemination of harmful computer programs which do irreparable damage to computer systems is another kind of

Cybercrime. Software piracy is also another distinct kind of Cybercrime which is perpetuated by many people online who distribute illegal and unauthorized pirated copies of software.

The third category of Cybercrimes relate to Cybercrimes against Government. Cyber Terrorism is one distinct kind of crime in this category. The growth of Internet has shown that the medium of Cyberspace is being used by individuals and groups to threaten the international governments as also to terrorize the citizens of a country. This crime manifests itself into terrorism when an individual "cracks" into a government or military maintained website. Since Cybercrime is a newly specialized field, growing in Cyber laws, a lot of development has to take place in terms of putting into place the relevant legal mechanism for controlling and preventing Cybercrime.

We, in India deal with Cyber Crimes under Information Technology (IT) Act, 2000, Indian Penal Code, 1860 and other laws. The cases registered under IT Act 2000 include Hacking- Sec. 60(2), Damage or Loss of utilities of Computer or its resource- Sec. 66(7), E-Obscenity- Sec. 67 145, Fail to comply with the order of certifying authority- Sec. 68, The Unauthorized access of Computer system- Sec. 70, Misrepresentation of Information- Sec. 71, Forged or Fake digital publication & signature- Sec. 73 & Sec. 74, Breach of confidentiality and Privacy- Sec. – 72, Other IT based or involved crimes. Ministry of Home Affairs had advised Union Administrations and State Governments to tackle Cyber crime cases by establishing Cyber Cells equipped with latest modern technical structures. These include Cyber Police Stations, Experienced/trained Cyber Analysts/ Experts for Cyber Crime detections and filing of cases, Expert Cyber Prosecutors, plan for expansion of Cyber - forensics tools and establishing Cyber- forensics labs. Department of Electronics & Information Technology, Ministry of Communications & Information Technology established CERTIN (Indian Computer Emergency Response Team) that issues advisories on regular basis for the common use of Mobile Phone & Data Security, Desktop Security, Broadband Internet Security, USB and Storage devices Security, Secure use of Debit/ Credit Card and phishing of Accounts, which are disseminated through the portals. Through the web portals or any other portal made in this behalf like

www.secureyourelectronics.in, www.secureyourpc.in, www.cert-in-org.in, Indian Computer Emergency Response Team (CERT-IN). Whenever any Incidents relating to Computer Security occurs then we can report to CERTIN, the National Agency. Section 70-B of Information Technology Act, 2000 and IT Amendment Act, 2008 designated CERT-IN to serve us with following objectives in fields of: 1. Dissemination and Analysis of the information on Cyber incidents 2. To Alert and Forecast of Cyber Security incidents 3. Cyber Security 4. Urgent and Emergency measures for handling incidents of Cyber Security. 5. Coordination with Cyber incident response activities 6. Issue Advisories, guidelines, vulnerably Notes and White Papers relating to information security, practice, prevention, procedure reporting and response of Cyber incidents. The System Administrators and users can report Computer Security incidents and vulnerabilities to CERT-IN. The CERT-IN provides technical assistance for denial and disruption of services, Storage and processing of data by unauthorized use of Computer system, Gain or attempts to gain unauthorized access to a system in India, Issues related with Electronic mail security, Mail bombing, spamming etc. Cyber Victims can report Cyber related incident by

filling up online form, Electronic Mail, by Fax or Telephone hotline or by postal services.

The most appropriate way for reporting crime is to follow the procedure enshrined in Sec. 69-A.

Sec. 69-A: Power to issue directions for blocking for public access of any information through any computer resource (1) Where the Central Government or any of its officer specially authorized by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the 147 read with Procedure and Safeguards for Blocking for Access of Information by Public Rules, 2009 of IT Act, 2000. It empowered the Central Govt. to issue directions for blocking public access of any information through any Computer resource and Sec. 79(3) (b) exempt liability of intermediary in certain cases with regard to particular E-record including telecom service, network service, internet service, web-hosting service, search engines, E- payment sites, E-auction sites, Cyber cafes and E-market places.

Another way for protection and detection of Cyber crimes in India is Crime and Criminal tracking system, which is approved by Central Govt. in 2009 under national E-Governance project to detect Cyber Crimes in India by using IT enabled tracking and Crime detection system. But unfortunately, till today it is not completed by majority of States of India. There are different ways to deal with detection of different Cyber crimes. These Cyber crimes can broadly divided in to two parts: 1 Cyber crimes, where Computer is target for Cyber Offence. 2 Cyber crimes, where Computer is used as a means for commission of crime. The Investigation process of such crimes is often not exactly similar as other crimes. Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource. The procedure and safeguards subject to which such blocking for access by the public may be carried out shall be such as may be prescribed. The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine. The Information Technology Act, 2000 (Act 21 of 2000) Sec. 79 :Exemption from liability of intermediary in certain cases. - (1)..... (2) (3) The provisions of sub- section (1) shall not apply if- (a) The intermediary has conspired or abetted or aided or induced, whether by threats of promise or authorize in the commission of the unlawful act; (b) Upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that resource without vitiating the evidence in any manner. Explanation Sec. 2(1)(w) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers,

webhosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes. Cyber Crimes usually transgress geographical hurdles. Cyber crime is a fast-growing meadow of crimes. The Cyber criminals are exploiting speed barriers and anonymity of internet for commission of different types of criminal activities. No border, virtual or physical, can cause serious harm and rise real threat to worldwide victims other than Cyber crimes. In order to deal with issues of cyber crimes, the Criminal Investigation Department (CID's) of various cities established, Cyber Crime Cells (CCC) in various parts of the country. The IT Act, 2000 made it clear that 'whenever a Cyber crime has been committed, it has a global jurisdiction and hence a complaint can be filed at any Cyber cell'. Therefore to combat Cyber crimes, the CBI (Central Bureau of Investigation) has created specialized units: Cyber Crimes Investigation Cell (CCIC): The CCIC was established in Sep. 1999. The CCIC has jurisdiction in all over India. It acts as a part of division of economic offence. CCIC is empowered to investigate all cyber crimes under IT Act, 2000. CCIC also acts round the clock as Nodal point of contact Interpol to report Cyber crimes in India. The CCIC of India is also a member of 'Cyber crimes Technology Information Network System, Japan.

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