



J&K JUDICIAL ACADEMY e-NEWSLETTER



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Patron-in-Chief

**Hon'ble Mr Justice
N. Kotiswar Singh
Chief Justice**

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Sindhu Sharma**

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**Mr. M.K. Sharma
Director**

**Composed by
Ms. Vishali Razdan**

LEGAL JOTTINGS

“A judge must be of sterner stuff. His mental equipoise must always remain firm and undeflected. It is essential that a judge should not allow his personal prejudice to go into the decision-making.”

S. Mohan, J.

In *Mangilal v. State of M.P.*,
(1994) 4 SCC 564, para 5

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From the Editor's Desk

"If you would not be forgotten as soon as you are dead and rotten, either write things worth reading or do things worth writing."

..... Benjamin Franklin

Another month has rolled by yielding place to the new and here is a new issue of J&K Judicial Academy's e-newsletter with a fresh refurbished look. With the ever increasing count of events and activities and academic pursuits, Academy has been realising the words of Benjamin Franklin.

Writing editorial for e-newsletter of the academy has instilled in me a sense of pride. Each issue aims at highlighting the activities carried out in the Academy and also latest pronouncements of the Hon'ble Supreme Court and High Court of J&K and Ladakh. But the word accomplishment always echoes words of bard in my mind: "The task stands accomplished. Nay! It has just begun. It is not a question of what stands accomplished. It is a question of what still remains to be done."

This spirit makes us all moving and venturing in J&K Judicial Academy.

The month of February, 2023 was yet another eventful month for the High Court of Jammu & Kashmir and Ladakh in general and Jammu & Kashmir Judicial Academy in particular when Hon'ble Mr. Justice N. Kotiswar Singh took oath as Chief Justice of the High Court of Jammu & Kashmir and Ladakh on 15th February, 2023 who would be Ex-Officio Patron-in-Chief of Jammu & Kashmir Judicial Academy. Hon'ble Mr. Justice N. Kotiswar Singh is one of the most distinguished jurists of India. He served as Chief Justice (Acting) of the High Court of Manipur and Gauhati High Court before his appointment as Chief Justice of the High Court of J&K and Ladakh, where His Lordship rendered many path breaking judgments.

I am hopeful that under the visionary patronage of Hon'ble Mr. Justice N. Kotiswar Singh and guidance of Hon'ble Ms. Justice Sindhu Sharma, Chairperson & Members of Governing Committee, J&K Judicial Academy would grow manifold in the days to come.

With many milestones to be unveiled, I wish all a happy reading experience and productive and prosperous month ahead.



CrA 581 of 2023

Sarabjit Kaur v. State of Punjab

Decided on: March 01, 2023

Law Point:

A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning.

Facts of the case: Appellant had entered into an agreement to purchase a plot measuring 1 (Kanal) on 27.05.2013 with Malkit Kaur. On the basis thereof appellant had entered into an Agreement to Sell the same to Sarabjit Kaur wife of Darshan Singh (respondent No.2) on 18.11.2013. The date for execution of sale deed was fixed as 25.06.2014. It was categorically mentioned in the Agreement to Sell that at present the vendor was not the owner of the property. The Appellant had received a sum of ₹ 5,00,000/- as earnest money and the date of registration of sale deed was fixed as 25.06.2014. The date for execution of sale deed was extended to 24.12.2014 on receipt of additional sum of ₹ 75,000/-. On failure to execute the sale deed, a complaint was filed by Darshan Singh (complainant/ respondent No.2), son of Jangir Singh on 30.09.2015 with reference to the same alleged Agreement to Sell however against property dealers Manmohan Singh, son of Prakash Singh and Ranjit Singh alias Billa, son of Pal Singh. In the aforesaid complaint, reference was made to two other transactions entered into by Darshan Singh and prayer was that an amount of ₹ 29,39,500/- be got recovered from the property dealers. The aforesaid complaint was investigated and finally on 18.05.2016, it was opined that the dispute being civil in nature, no police action was required. Darshan Singh made another complaint on 05.10.2016 with the same allegations without disclosing the fate of his earlier complaint. Referring to the earlier enquiry made, the aforesaid complaint was consigned to record on 23.01.2017. Thereafter, another complaint was made by Darshan Singh against the appellant, Ranjit Singh and Manmohan Singh. It is on the basis thereof that F.I.R. in question was registered under Sections 420, 120-B and 506 IPC against the appellant, Manmohan Singh and Ranjit Singh. Accordingly, appellant had filed a petition U/S 482 CrPC for quashment of FIR against him. The petition was dismissed and consequently appellant had filed appeal before Hon'ble Supreme Court against the same.

Decision :- A bench of the Supreme Court comprising of Hon'ble Mr. Justice Abhay Oka and Hon'ble Mr. Justice Rajesh Bindal allowed the appeal and held that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings - The criminal Courts are not meant to be used for settling scores or to pressurize parties to settle civil disputes.

CrA 657-664 of 2023

BLS Infrastructure Limited v. Rajwant Singh

Decided on: March 01, 2023

Law point:

It is not proper to acquit the accused merely for non-appearance of Complainant U/S 256 who has already been examined before Court.

Facts of the Case: Appellant had filed eight complaints against the respondents under Section 138 of the Negotiable Instruments Act, 1881. Out of the aforesaid eight complaints, in Complaint Case Nos. 621742/16, 621743/16 and 621744/16 the complainant was subjected to cross-examination. On 26.10.2017, the learned counsel for the accused made a statement before the learned Magistrate that the cross-examination of CW-1 (the complainant), as made in the above three cases be adopted in the remaining complaints. On the basis of the above statement, the complainant's evidence was closed and the cases were directed to be listed for recording of defence evidence. At that stage, an application was filed by the complainant under Section 311 of the Code for summoning certain witnesses. While the matter was pending at that stage, according to the appellant, appellant's counsel misled the appellant into a belief that appellant's presence is not required as a settlement was being negotiated. It is the case of the appellant that in these circumstances, the appellant did not appear and ultimately the complaints were dismissed for non-appearance vide order dated 25.01.2019. The order dismissing the complaints for non-prosecution was subjected to challenge before the Hon'ble Delhi High Court through eight separate petitions which came to be dismissed by a common order dated 07.11.2019 impugned in these appeals.

Decision: A bench of the Hon'ble Supreme Court comprising of Hon'ble Mr. Justice Sudhanshu Dhulia and Hon'ble Mr. Justice Manoj Misra, held that it was not proper to acquit the accused by taking recourse to Section 256 Cr.P.C, when the complainant had already been examined.

Cr. Appeal No . 205/2023

Talat Sanvi v. State of Jharkhand & Anr

Decided on: January 24, 2023

Law Point:

The question of interim victim compensation cannot form part of the bail jurisprudence.

Decision: A division bench of the Hon'ble Apex Court comprising of Hon'ble Mr. Justice Sanjay Krishan Kaul and Hon'ble Mr. Justice Abhay S. Oka while considering the question whether the condition imposed in the bail order "to pay interim compensation to victim" was legal, has held that the objective of payment of victim compensation is clear that in cases of offences against body, compensation to the victim should be methodology for redemption. Similarly, to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such compensation can hardly be determined at the stage of grant of bail. The Court held that imposition of such a condition amounts to infraction of law.

Civil Appeal Nos. 1363-1364 of 2023**P. Shyamala v. Gundlur Masthan****Decided on: February 24, 2023****Law Point:**

Court cannot as a matter of course allow extension of time for making payment of balance amount of consideration in terms of a decree as the power under Section 28 of the Specific Relief Act is discretionary and be exercised by the Court only for meeting the ends of justice.

The original plaintiff had instituted a Civil Suit against the original defendant i.e. mother of the appellant, for specific performance of an agreement to sell dated 09.05. 2012. In the agreement, the original plaintiff had agreed to sell the suit property for a total sale consideration of Rs. 23 Lakhs. Plaintiff had already paid Rs. 8 Lakhs as advance. In the suit, learned trial Court had passed an ex-parte judgment and a decree for specific performance of the agreement to sell and had directed the original plaintiff to deposit the balance sale consideration of Rs. 15 Lakhs within two weeks. However, the original plaintiff had failed to pay the balance sale consideration as ordered. Subsequently, after 853 days, the original plaintiff had filed an application under Section 148 of the Code of Civil Procedure r/w Section 28 of the Specific Relief Act seeking extension of time to deposit the balance sale consideration. The Trial Court allowed the plaintiff to deposit the balance amount with an interest of 18%, within one month. Revision petitions moved before the High Court came to be dismissed and consequently appellant challenged the order passed by the High Court before the Hon'ble Supreme Court.

Decision: A Bench of Hon'ble Mr. Justice MR Shah and Hon'ble Mr. Justice CT Ravikumar referring to *V.S. Palanichamy Chettiar judgement*, observed that the provisions to grant specific performance of an agreement are quite stringent and therefore, it was not correct on the part of the Trial Court to condone a delay of 853 days which the plaintiff had taken to move an application seeking extension of time to pay the balance amount of a sale consideration. It was held by the Hon'ble Apex Court, the power under Section 28 of the Specific Relief Act is discretionary and the Court has to pass an order as the justice may require. The application filed by the plaintiff under Section 148 CPC and Section 28 of the Specific Relief Act seeking extension of time to deposit the balance consideration was hopelessly time barred therefore, the trial Court had failed to exercise the discretion judiciously in favour of the defendant.

Civil Appeal No. 1491 of 2023**Sirajudheen v. Zeenath and Ors.****Decided on: February 27, 2023**

Law Points:

- 1. Appellate Court Can't Remand Suit for De Novo Trial merely because A particular piece of Evidence has not been adduced (Or. 41 R 23-A CPC).**
- 2. The scope of remand in terms of Rule 23 of Order XLI CPC is extremely limited.**
- 3. The necessary requirement for remand under Order 41 Rule 23A CPC is that decree should be reversed and the remand order should be based on cogent reasons.**

Facts of the Case: A civil suit was filed by plaintiff namey Zeenath against one Sirajudheen and her four sisters. The suit property was originally owned by Zeenath's father and after his demise a partition deed was executed amongst the respondents to run the cinema theatre on the premises. Plaintiff was asked, by the husbands of three of her sisters, to reach to the office of Sub Registrar for execution of a security bond in favour of a film distributor which accordingly, was executed by her. Later, plaintiff came to know that her share in the property had been sold as she had been made to execute a sale deed instead of a security document. Another civil suit was filed by plaintiff for a decree of permanent prohibitory injunction. Both the suits were decided together and dismissed by a common judgment..Two partition suits filed by plaintiffs Sister regarding the cinema theatre and the shopping complex on the suit property were decreed in favour of the sisters. Plaintiff accordingly, had challenged the four decisions of the Trial Court in appeal. The High Court was of the opinion that sufficient evidence was not on record for the Trial Court to reach a conclusion and the High Court considered it appropriate to give an opportunity to adduce further evidence for fresh consideration. The order passed by the Hon'ble High Court was challenged in the Supreme Court.

Decision: A Bench of the Hon'ble Supreme Court comprising of Hon'ble Mr. Justice Dinesh Maheshwari and Hon'ble Mr. Justice Sudhanshu Dhulia after referring to Rule 23 of Order XLI CPC, held that the scope of the rule was narrow and cannot be applied to the present case as the suit has not been disposed of on a preliminary point. The Court observed that if the remand was under Rule 23A then the necessary requirement that "the decree is reversed in appeal and a re-trial is considered necessary" had to be fulfilled. The Supreme Court noted that the High Court has not specified as to why it opined that the findings of the Trial Court were unjustified. The Supreme Court was of the view that if courts find evidence in possession of a party that has not been produced it can assume that production of the the same would be un-favorable to the person who withholds it as per illustration (g) of Section 114 of the Evidence Act. However, on the basis of the fact that an evidence that ought to have been adduced was not adduced, the High Court cannot remand the matter.

Civil Appeal No. 3936 of 2013

Ananta Chandrakant Bhonsule (D) By Lrs. and Anr. v. Trivikram Atmaram Korjuenkar (D) By Lrd. and Anr.

Decided on: February 09, 2023

Law Point:

A Decree validly passed by a Civil Court before ouster of its Jurisdiction cannot be annulled for the reason that ouster of jurisdiction cannot be applied retrospectively.

Facts of the Case: The Respondents-landlords had filed a civil suit way back in the year 1970 seeking eviction of the original appellant. By a judgment and decree dated 21.4.1975, the Trial Court had decreed the suit and directed delivery of possession. The original Appellant/Defendant had filed a First Appeal before the District Court at Panaji. The appeal was dismissed by the first appellate court by a judgment and decree dated 10.3.2008 which was challenged by the Appellant by way of a second appeal before the High Court of Bombay at Goa. The High Court dismissed the second appeal on the short ground that there was no perversity in the appreciation of evidence by both the courts below and that there was no substantial question of law arising in the second appeal. It is the said judgment which the Appellant had assailed before the Hon'ble Apex Court. The main thrust of the argument of the learned counsel for the Appellant before the Hon'ble Apex Court was that under Section 31(2) of the Goa, Daman and Diu Mundakars (Protection from Eviction) Act, 1975 (hereinafter referred to as 'Act'), the jurisdiction of the Civil Court was barred. It is the contention of the learned counsel for the Appellant that the fact that the Appellant was a mundkar, within the definition of expression under Section 2(p) of the Act, is admitted even by the Respondent-the original owners and that, therefore, all the three courts exercised a jurisdiction completely contrary to Section 31(2) of the Act.

Decision: A Division Bench of the Supreme Court comprising of Hon'ble Mr. Justice V. Ramasubramanian and Hon'ble Mr. Justice Pankaj Mithal observed that though, at the first blush, the said argument appears to be well-founded, it is seen from admitted facts that the Respondent filed the suit for declaration and eviction way back in the year 1970. The Trial Court decreed the suit on 21.4.1975. It was during the pendency of a revision petition arising out of the execution petition that the Act came into force on 12.3.1976. In other words, the Act under which the civil court's jurisdiction was barred, came into force after the decree was passed by the Trial Court in the suit for eviction filed by the Respondent. The Court accordingly, reiterated that ouster of jurisdiction of civil court can be expressed or implied, but it cannot have retrospective effect annulling a decree validly passed by the civil court. Hon'ble Apex Court accordingly, has dismissed the appeal.



CRM(M) No. 158/2022

Khazir Mohammad Naikoo v. UT of J&K

Decided on: December 30, 2022

Law Point:

Section 311 CrPC (540 of old code) is meant to ensure that there is no failure of Justice on account of mistake of parties in bringing valuable evidence on record.

Facts of the case: Respondent No. 2 was facing trial before the trial court in a case arising out of FIR No.95/2014 for offences under-Section 302, 307, 109 RPC and 7/25 Arms Act registered with Police Station, Sopore. During the trial of the case, the petitioner, who happened to be complainant and a prosecution witness had filed an application before the trial Court under Section 540 of J&K Cr. P. C (311 New) seeking permission to summon and examine five witnesses, namely, Manzoor Ahmad Naikoo, Fayaz Ahmad Naikoo, Rafiq, Mst. Fazi and Superintendent of Police, Sopore, Mr. Abdul Qayoom on the ground that the witnesses sought to be summoned were acquainted with the facts of the case as the witnesses viz. Manzoor Ahmad Naikoo, Fayaz Ahmad Naikoo, Rafiq and Mst. Fazi were present on spot when the occurrence took place whereas Superintendent of Police, Sopore, Mr. Abdul Qayoom had deposed about the occurrence in a press conference. Learned trial court vide the impugned order, had allowed the application to the extent of witness, namely, Fayaz Ahmad Naikoo but had declined to summon and examine the other witnesses and therefore, petitioner had approached the Hon'ble High Court.

Decision: Hon'ble Mr. Justice Sanjay Dhar after referring to the provision of Section 540 Cr.PC (311 new) observed that a Criminal court has unfettered powers to exercise its jurisdiction under Section 540 of J&K Cr. P. C at any stage of the proceedings. The powers can be exercised even after the conclusion of the trial and before passing of the final judgment. The proceedings come to an end only after the judgment is pronounced. The aforesaid provision is in two parts. The first part is discretionary in nature whereas the second part is mandatory in nature. Thus, a Court may, in its discretion, summon and examine any person as a witness who has not been summoned as a witness or recall/re-examine any person already examined and in case evidence of such person appears to the Court essential to the just decision of the case, it is the bounden duty of the Court to exercise its power under this provision. The object underlying Section 540 of Cr. P. C is that there should be no failure of justice due to mistake of either party in bringing the valuable evidence on record. The Court noted that trial court had not assigned any reason for declining the application and evidently, examination of two of the four remaining witnesses was essential for just decision of the case. Hon'ble Court accordingly, allowed the petition and directed the trial Court to summon the said two witnesses and to decide the case expeditiously preferably within two weeks.

CRM(M) No. 223/2022

Ruqaya Akhter v. UT Through Crime Branch

Decided on: December 23, 2022

Law point:

Requirement of reporting seizure of property by Police Officers forthwith to Magistrates U/S 102(3) CrPC is only directory and not mandatory in nature.

Facts of the case: The petitioner had challenged order dated 24.03.2022 passed by Special Judge, Anti-Corruption, Kashmir, Srinagar, whereby application of the petitioner for de-freezing of her bank account had been partly allowed and she had been permitted to operate salary transactions from her account but at the same time the amount that stood to the credit of her bank account on the date of freezing of her account had been allowed to remain frozen. Aggrieved by the order petitioner had challenged the same before the Hon'ble High Court on the ground, that the requirements of Section 102(3) of the Cr. P. C have not been adhered to by the respondent before freezing the account of the petitioner, in as much as the matter has not been reported to the concerned Magistrate.

Decision of the Court: The bench of the High Court comprising of Hon'ble Mr. Justice Sanjay Dhar while considering the answer to the question as to whether reporting of seizure to Magistrate U/S 102(3) Cr.PC is mandatory or directory and referring to the divergent views taken by various High Courts of the Country, has held that once the consequences of non-adherence are not given in the statute, it is to be inferred that the statute is directory in nature. The Court accordingly, held reporting of seizure U/S 102(3) Cr.PC is directory and not mandatory.

CIVIL

WP(C) 1534/2022

Rajesh Gupta v. Union of India and Anr.

Decided on: November 23, 2022

Law Point:

Mere registration of an FIR or pendency of Investigation is no ground to refuse, issue or renewal of Passport for the reason that it in no way brings the case of the petitioner within four corners of Section 6(2)(f) of the Passport Act. 1967.

Facts of the Case: Petitioner had applied for renewal of his Passport but the renewal of his passport was delayed by the respondents and finally he was informed that police has submitted adverse report against him that a case under FIR No. 3 has been registered by the respondent against him and that he was required to obtain a no objection from the Court. Since, the petitioner was not able to get the "No Objection Certificate" the respondent had informed the petitioner that for want of "no objection Certificate" the case for re-issue/renewal of passport in his favour was closed. Feeling aggrieved the petitioner filed a writ

petition before the Hon'ble High Court for issuance of Writ of Mandamus and Certiorari against the respondents.

Decision: A Bench of the Hon'ble High Court comprising of Hon'ble Mr. Justice Sanjeev Kumar allowed the writ petition and held that the ground on which the request for re-issue of passport has been rejected is totally untenable and unsustainable in law. That respondent cannot insist for production of NOC from the Criminal Court by the petitioner when there are no proceedings pending in any competent Court of Criminal jurisdiction.

M.A No 375/2017

Rakesh and another v. M/S Irshad Hussain Wani & Co and others

Decided on: September 19, 2022

Law point:

A non-party to an arbitration agreement cannot be roped in as respondent in a proceeding initiated by one of the parties against another party under the Arbitration agreement unless and until the case would fall in the frame as envisaged by the Supreme Court in the Judgment Chloro Controls (I) P. Ltd v/s Severn Trent Water Purification Inc. and others reported as 2013 (1) SCC 641.

Facts of the case: Appellants and respondent No. 2 had executed a agreement containing an arbitration clause contemplating that any dispute arising between the parties would be referred to arbitration for resolution of the dispute. Respondent No. 1 was having business dealings with Respondent No. 3 Ericson India Pvt. Ltd prior to the Execution of the agreement. The appellants and respondent No. 1 had executed the agreement for the purpose of working investments to be made from their respective ends for enabling the respondent No. 1 to carry out the business engagements of the respondent No. 1 with the respondent No. 3 and therefore, respondent No. 3 had no concern with the agreement executed by the appellants and respondent No. 1. In Clause 4 of the Agreement it was specifically provided that appellants had to have no concern with the respondent No. 3. Subsequently, Appellants and respondent No. 1 had executed a supplementary agreement on 22.03.2017. As some dispute had arisen between the parties as such appellants had taken recourse to Section 9 of the J&K Arbitration and Conciliation Act, 1997 as was then in force in erstwhile State of Jammu & Kashmir for seeking interim relief from the Court of learned District Judge Jammu. In the application appellants had not only impleaded respondent No. 1 but also respondent No. 3 who was a non-party to the Agreement Containing Arbitration Clause and the relief sought in the application was to direct the respondent No. 3 not to release payment in favour of respondent No. 1. Application was rejected by the Learned 1st Addl. District Judge, Jammu. Appellants accordingly, had challenged the order passed by the ld. 1st Addl. District Judge Jammu by filing an appeal U/S 37 of the Arbitration & Conciliation Act.

Decision: A Single bench of the Hon'ble High Court comprising of Hon'ble Mr. Justice Rahul Bharti dismissed the appeal and held that if a stranger to an arbitration agreement between two parties can have no locus to invoke the provisions of the Arbitration & Conciliation Act

so is the inverse situation that a Stranger to an arbitration agreement cannot be located as a respondent in the proceeding initiated by one of the parties against another party under the arbitration agreement unless and until the case would fall in the frame as envisaged in the Supreme Court judgment referred above.

CM(M) No. 118/2022

Sharad Kapoor v. Mani Chopra and another

Decided on: November 17, 2022

Law Point:

Power of the Court U/S 152 CPC is not restricted to the correction of clerical errors that occur due to accidental slip or omission but can be invoked for correction of errors that may emanate from the pleadings and travel to the judgment and decree passed by the civil court.

Facts of the case: An application U/S 152 of CPC was moved by the petitioner before the trial Court for correction of error in the judgment & decree dated 01.04.2022 which was dismissed by the Id. trial court on the ground that error pointed out is not attributable to the court and therefore, not covered by the provisions of Section 152 of the Code of Civil Procedure. Aggrieved by the order petitioner/applicant had challenged same by filing a petition under Article 227 of the Constitution of India.

Decision: A Single Bench of the Hon'ble High Court comprising of Hon'ble Mr. Justice Sanjeev Kumar allowed the writ petition and held that power under Section 152 CPC also extends to correction of errors that may have emanated from pleadings and travelled to the judgment and decree. The Hon'ble Court further held that under section 151 CPC, civil court has inherent power to undo the injustice that has occasioned to the parties due to clerical mistakes and arithmetic errors due to accidental slip or omission.



ACTIVITIES DURING THE MONTH

Two days Training Programme for Legal Aid Defence Counsels (LADCs)

Two days Training Programme for Legal Aid Defence Counsels on 4th & 5th February, 2023, organised by J&K Legal Services Authority in collaboration with the J&K Judicial Academy was inaugurated at J&K Judicial Academy, Jammu by Hon'ble Mr. Justice Tashi Rabstan, Chief Justice (Acting), High Court of J&K and Ladakh, Patron-in-Chief/Executive



Chairman, J&K Legal Services Authority.

Delivering the inaugural address Justice Tashi said that, this programme has been titled as Training Programme but I think the delegates attending the programme don't require any training as such, because, they have already been working as lawyers and defending accused in criminal cases. Through this two days programme we would just like to guide and sensitize all the delegates and give a broad overview of the duties and responsibilities. He further stated that the most important aspect which LADCs have to consider while defending the needy persons is not only the enforcement of their legal rights but also deal with them with a personal human touch. They should feel comfortable and confident in reposing full trust and faith on LADCs; only then we will be able to achieve the purpose and object for which the Scheme has been designed.

Mr. Shahzad Azeem, Registrar General, High Court of J&K and Ladakh, in his welcome address stated that the pristine academic environment of Jammu & Kashmir Judicial Academy shall serve as the perfect backdrop for this capacity building initiative that has provided an opportunity to train and generate an effective workforce of Legal Aid Defence Counsels who are infused with sterling qualities of intelligence, commitment, character and of course an unwavering verve and devotion for providing quality legal services which shall holistically strengthen the legal aid regime which is committed towards ensuring the best interest of the underprivileged and the marginalized.

Mr. M.K. Sharma, Principal Secretary to Hon'ble the Chief Justice, and Incharge Director, J&K Judicial Academy gave an overview of the Legal Aid Defence Counsel Scheme. He highlighted some of the perceived advantages of the LADC vis-à-vis Assigned Counsel System. He said that the objectives of the LADC system are to provide qualitative and competent legal services in criminal matters to eligible persons and to manage and

implement legal aid system in professional manner in criminal matters.

Mr. Amit Kumar Gupta, Member Secretary, J&K Legal Services Authority proposed the vote of thanks and also conducted the proceedings of the day long programme.

The Inaugural Session was followed by four technical sessions. The first session was on the topic “Overview of the programme and Self-Introduction and Ice breaking” wherein, Mr. M.K. Sharma, Principal Secretary to Hon’ble the Chief Justice, and Incharge Director, J&K Judicial Academy and Mr. Prem Sagar, Secretary HCLSC, Jammu were the resource persons. The second session dealt with “Legal Aid Services in the Criminal Justice System”



wherein, Mr. M.K. Sharma, and Mr. Yahya Firdous, Secretary DLSA, Jammu were the resource persons. The third session was on the topic “Leadership & Team Building, Administration and Management of Resources”, wherein, Mr. Y.P Bourney, Registrar Vigilance, High Court of J&K and Ladakh and Mr. Amit Kumar Gupta, Member Secretary, J&K Legal Services Authority were the resource persons. The last session of the day dealt with “Interview with the UT/convict, Prison visits, Office culture and Handling interpersonal” wherein, Mr. Rajinder Sapru, Registrar Rules, High Court of J&K and Ladakh and Mr. Mirza Saleem Ahmad Beig, Superintendent, District Jail Jammu were the resource persons.

On the second day of the programme, 04 Technical Sessions were held. The first session was on the topic “Advocacy Skill – Drafting”, wherein, Ms. Mandeep Reen, Advocate and Panel Lawyer, HCLSC was the resource person. While addressing the participants she shared her experiences and deliberated upon bail applications, miscellaneous applications, appeals, which was followed by open house discussion.

The second session was on the topic “Advocacy Skill (Session/Magistrate Trial), wherein, Sh. Ashok Parihar, Advocate High Court of J&K and Ladakh, was the resource person. During his deliberation, he focused on witness examination and addressing arguments. Mr. Parihar very diligently replied to all the queries of the participants. In the third session, legal assistance at pre-arrest/ arrest/ remand stage and citizen services through digital platform were discussed in detail, wherein, Sh. M.S. Parihar, District & Session Judge (Retd.) was the Resource Person.

Sh. P.D. Kotwal, District & Sessions Judge (Retd.) & President, District Consumer Commission, Jammu was resource person for the 4th session which focused on advocacy and professional ethics. Both these sessions were followed by a healthy discussion amongst the participants.

This training programme is a part of the Legal Aid Defense Counsel Scheme launched by NALSA in 350 districts of the country under phase-I including 10 districts of UT of J&K. The objectives of this scheme are to provide qualitative and competent legal services in criminal matters to eligible persons and to manage and implement legal aid system in professional manner in criminal matters. The participating advocates were educated about different tricks of dealing with the criminal matters at various levels of courts.

Three Days Customized Training Programme for Officers of the Labour Department

The Jammu & Kashmir Judicial Academy at Jammu organized a three-day customized training programme for the officers of the Labour Department, w.e.f. February 28, 2023 to March 02, 2023. The program aims to increase the efficiency, knowledge and skills of the officers in discharging the quasi-judicial functions while presiding over the courts under various legislations concerning labour laws.



The training programme was inaugurated by Hon'ble Mr Justice N. Kotiswar Singh, Chief Justice, High Court of J&K and Ladakh and Patron-in-Chief of J&K Judicial Academy in the august presence of Hon'ble Ms Justice Sindhu Sharma, Chairperson, J&K Judicial Academy, Hon'ble Mr Justice Rahul Bharti, Judge, High Court of J&K and Ladakh and Hon'ble Mr Justice Bansi Lal Bhat, Former Judge, High Court of J&K and Ladakh. Besides, Officers of the Registry and Officers of the

Labour Department participated in the Inaugural function.

Delivering the inaugural address Justice Kotiswar Singh stated that to achieve continuous improvement in any activity involving human effort and skill, giving training to those who are required to execute/ perform the activity plays an important role in achieving the goal in a desired manner, as the object of training is to bring a systematic development of the knowledge, skills and attitudes required by an individual to perform a given task or job effectively. He complimented the Jammu & Kashmir Judicial Academy for organising this customized special programme to sensitize the officers of the Labour department on the issue of Labour law jurisprudence and the welfare schemes meant for the marginalized section of society. Justice Kotiswar Singh further stated that while adjudicating, the Labour Officers assume the role of a Judge and become part of the judicial system so they should be fair, transparent and stick to the rules while deciding a case.

In her special address Justice Sindhu Sharma stated that with the initiation of

the concept of a welfare State in the early realm of independence of our country, various legislative efforts have made their first move in the direction of welfare, equitable rights,



social justice, social equity and equitable participation of the labour as a stakeholder at parity. A plethora of labour laws have been enacted to ensure elevated health, safety, and welfare of workers; to protect them against oppressive terms as an individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike. She further stated that the relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in various provisions in the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

Mr M.K. Sharma, Director, J&K Judicial Academy in his welcome address underscored the need of organising this program. Ms. Veenakshi Koul, Deputy Labour Commissioner, Jammu proposed vote of thanks. Hon'ble Mr Justice Bansi Lal Bhat, Former Judge of the High Court of J&K and Ladakh , Mr. Y. P. Bourney, Registrar Vigilance, Mr Pawan Dev Kotwal, District & Sessions Judge (Retd.), Mr. K.S. Parihar, District & Sessions Judge (Retd.), Mr. M.S. Parihar, District & Sessions Judge (Retd.) and Mr. Ashish Gupta, Addl. Secretary, Law Department, J&K were the resource persons in the training programme.

The three-day training program was a significant initiative by the Jammu & Kashmir Judicial Academy to provide valuable insights and enhance the capacity of officers in the Labour Department. The academy's efforts to promote continuous learning and development among professionals are commendable and are in alignment with the vision of creating a knowledgeable and skilled workforce.



CONSTITUTIONAL OBLIGATION AND PROTECTION OF BLEEDING RIGHTS OF WOMEN IN DISTRESS

There is no denial that women of today are equal to men and so are her rights as guaranteed by the Constitution and in other statute books. Infact, the mission and vision of Indian judiciary is to give effect to the constitutional vision of justice. Women too have equal access to justice as their male counterparts have. Despite plethora of laws and constitutional assurances there is a growing violence and intolerance. Infact we just need a 'Road Map' to enhance the real spirit of justice and access to it. It is reiterated that Article 15 of Constitution of India explicitly speaks about prohibition of any discrimination on the basis of race, caste and sex meaning thereby that women shall not be discriminated at any level so far as her constitutional rights are concerned. A woman with a voice is a strong woman and is a potential peace builder above all more 'social connector'.

Thumb Rule is that "no one can make you inferior without your consent". Today, women's hygiene and Mental Health issues are of Prime concern besides crimes like Rape, Molestations, Acid attacks, Sexual Harassments at work Place, Gender inequality etc. Unfortunately a woman is still struggling to strike a balance both at work place as well as at domestic front and further subject to Emotional abuse at time.

Sadly despite 17 most powerful rights for women incorporated in constitution and statute books, still safety of women in present scenario is a matter of concern with everyday rise in cases of violence against women. Despite special provisions in Constitution of India and amendments from time to time in law still women is vulnerable.

Basic Human and Environmental Rights of women are to be taken care of for overall progress and development of society

1. Right to good health and medical aid;
2. Right to be protected in the office (sexual harassment);
3. Right to equality before law;
4. Right to privacy and safe environment;
5. Right to free legal aid in case the woman is having insufficient means to survive and his spouse is incapable of managing the financial aid;
6. Right to victim's compensation;
7. Right to property;
8. Right to Franchises (vote);
9. Right to maintenance in case of desertion by husband;
10. Right against not to be treated as properly;
11. Right against Honour killings; and
12. Right against forced abortion and sterilization.

But still there are lot of hurdles for enforcement of these rights due to cumbersome procedure. To seek justice for these victims is an herculean task, so its onerous duty on courts is to enforce these rights according to established procedure of law as "Courts are doctors of Bleeding Rights of Women in distress".

Due to Environmental hazards women around the entire Globe are disproportionately affected by Climate change

The moot question before us in the changing scenario is protection of women at workplace as well as at domestic front too and further handling survivors of sexual violence. Women face many hurdles at their workplaces too. It is alarming that women stand up for their Rights, Dignity and Safety at workplaces.

The narratives of women with mental illness are invisible and so is their agony. Mental cruelty/Mental torture/inequality and Gender disparity are major factors for deteriorating condition of helpless women and her rights legal/constitution are violated/infringed and situation is an alarming to protect these Bleeding Rights.

There is a still marginalization of mentally ill women and there is a dire need for enabling environment for Women's Access to Justice as equal Access to Education, Health,

Citizenship and Participation in Decision making process.

Article 142(i) and Article 39 (a) are promoting “Access to justice” and “Equal Justice” and from Legal Aid. The main ingredient of Rule of Law is Access to justice. People in distress need to be able to access the courts for protection of their legal rights.

To me, “Notion of Access to Justice” should be part of the regulatory objective of Legal Service Authority Act 2007. All women too with mental illness have same right to medical and social care. Women’s Human Rights are to be protected at all levels and yelling is required to be depreciated into. For working women too, safe, congenial and sustainable environment is need of the Hour. Whenever and wherever there is an infringement of legal rights of women there should be complete protection of them through law enforcing agency.

Deeply entrenched Gender biased attitudes Prevent women from accessing Justice. It is imperative to address to personal hygiene, Mental health issues besides her Right to property, Maintenance and Safety issues. There is a need for integration of all the above referred issues for overall well being of women besides attitudinal change to give Healing Touch to them. Boredom, Loneliness in a person in distress is uncertainty of life is haunting & motivational interaction is a sine qua non. Moral Boosting, Avoiding social isolation is imperative for healthy mind of a woman.

Pro-Bono Aids are to be given to victims in need. Victims of crimes have constitutional Rights as well. Victims do not have to be notified of court proceedings. There is a victim’s compensation scheme for rehabilitation of victims which is for frontline Professional towards securing justice for victims.

Role of judiciary in Ensuring Rights of victims and for Healing Touch to Bleeding Rights is a sine-qua-non. Hence justice needs to be expanded. Endeavour must be made to inspire the confidence of witnesses for conviction of the guilty and particularly the victims of crime.

Relationship status of a women who was living with a man without marrying him for last so many years has been legalized by Top court in many cases through their remarkable judgments as it was earlier considered Taboo. It is held that “Law leans in favour of legitimacy and frowns upon bastardly. Therefore Children born out of such marriages are legitimate.

There is a complete social transformation with evolution of law through amendments and judgments passed by High Courts as well as by Top Court of country. It is emphasized that women of today need to break the ‘Glass Ceiling’ as law in different forms is protecting them from all evils while giving healing touch to their woes and miseries.

Author’s View:

“Protection of Constitutional Rights and safe/Congenial Environment for women is need of the Hour for ‘Self esteem’ of a woman for protection of their Bleeding Rights by giving Healing Touch through Legal Recourse.

***-Contributed by:
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