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LEGAL JOTTINGS

"Earlier, the focus was on punishment and penal aspects. Now, the focus is on ensuring justice. Therefore, citizens have a sense of assurance rather than fear."

Prime Minister Narendra Modi, February 3, 2024 during inauguration of the Commonwealth Legal Education Association (CLEA) - Commonwealth Attorneys and Solicitors General Conference (CASGC) 2024 at Vigyan Bhawan in New Delhi

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From the Editor's Desk

The three new legislations viz: Bhartiya Nyaya Sanhita, Bhartiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Sanhita are slated to replace with the three pre-independence laws; (1) the Indian penal Code 1860 (2) the Code of Criminal Procedure 1898 and (3) Indian Evidence 1872 with effect from 01st of July 2024. These three criminal laws received the assent of Her Excellency the president of India and were published in the Govt. gazette on 25th of December 2023, but were not affect to instantly in order to give sufficient time to all the stakeholders to update and prepare themselves and also to create the paraphernalia. Therefore, J and K Judicial Academy, like many other institutions of like nature undertook to impart suitable training to the Judicial officers and other stake holders and organized two of such programmes; one at Jammu and the other at Srinagar Campuses.

The passing of the three new laws, in the words of Hon'ble Prime Minister, Shri Narendra Modi 'is a watershed moment in the history of India and would mark the end of laws of colonial era and beginning of a new era' of modernization of our legal, policing and investigative system consistent with the soul of India and also with the greater use of technology and forensic science to bring it at par with that of the most advanced countries of the world. The new laws align with the spirit of the constitution and have been enacted keeping in mind the welfare of the citizens. With the coming into force of these laws would mark the end of more than one and half centuries old and British-era laws which were primarily aimed at protecting foreign rule. The soul of the new laws is Indian and for the first time our criminal justice system will be governed by the laws made in India by Indians and for the Indians. The new laws, as aptly described by the Hon'ble Home Minister while tabling the three bills on the flower of house, are intended to be victim centric with the rehabilitation of the victim as primary concern.

The new criminal laws are welcome step but that alone wouldn't be enough. It is equally important to revisit overhaul the workforce the infrastructure. Extraordinary problems call for out of window thinking and solutions. The ever-mounting backlog arrears steer at us and we need to innovate and give a try to way and means to tackle the same. Ours is a country, where laws are enacted without any assessment of the corresponding litigation impact resulting into manifold increase in the workload of the existing workforce. Many of the legislations passed in the recent past like the Prevention of Domestic Violence Act, Prevention of Children from Sexual Offences Act, Commercial Courts Act etc. have led to an exponential rise in the workload of the already overburdened courts. The new Bhartiya Nyaya Sanhita, with many newly added offences would certainly add to the workload of courts. It is therefore, paramount address these genuine concerns also. It may involve revisiting of the working strength of court-staff. The citizens deserve a robust, responsive and cost as well as time effective legal frame work and for that there must be a strong and effective Law Enforcement System and Judiciary to apply the laws. It is also equally important that the Criminal Justice process must be fair and civilised. By pursuing these progressive steps, we as a nation would be marching towards a criminal justice system that upholds the rule of law, protects human rights, and effectively serves the needs of its diverse population particularly the poor and the marginalized.

Citation: 2024 LiveLaw (SC) 235

Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr

Decided on: March 15, 2024

The Supreme Court observed that mere filing of the cheque dishonor complaint under the Negotiable Instruments Act would not grant a right to a complainant to seek interim compensation under Section 143A (1) of the N.I. Act, as the power of the court to grant interim compensation, isn't mandatory but discretionary and needs to be decided after prima facie evaluating the merits of the case.

“Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word “may” used in the provision cannot be construed as “shall”. The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word “may” used in Section 143A, cannot be construed or interpreted as “shall”. Therefore, the power under sub-section (1) of Section 143A is discretionary.”, the Judgment authored by Justice Abhay S. Oka said.

The broad parameters for exercising the discretion under Section 143A

The Court laid down the following parameters :

- i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defense pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.
- ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.
- iii. If the defense of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.
- iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.
- v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

Citation: 2024 LiveLaw (SC) 232

Srikant Upadhyay v.. The State of Bihar

Decided on: March 14, 2024

The Supreme Court held that an accused would not be entitled to pre-arrest bail if the non-bailable warrant and the proclamation under Section 82(1) Cr.P.C. is pending against him.

“Thus, it is obvious that the position of law, which was being followed with alacrity, is that in cases where an accused against whom the non-bailable warrant is pending and the process of proclamation under Sections 82/83, Cr.PC is issued, is not entitled to the relief of anticipatory bail.”, the Bench comprising Justices C.T. Ravikumar and Sanjay Kumar observed.

Mere Filing of Anticipatory Bail Application Cannot Be Said To Be Appearance By The

Accused Under The Proclamation

It is worthwhile to mention that the accused had filed an anticipatory bail for registering attendance in obedience to the proclamation under Section 82 Cr.P.C. However, deprecating such an approach, the Supreme Court held that filing of an anticipatory bail through an advocate would not and could not be treated as an appearance before a court by a person against whom proclamation proceedings are pending.

Filing of Anticipatory Bail Application Couldn't Be A Bar To Proceedings Under Section 82 Cr.P.C.

It was specifically pleaded by the Accused that the proceedings under Section 82 Cr.P.C. wouldn't have any effect on the accused as the application seeking anticipatory bail was filed before the issuance of the proclamation, and since the High Court should have granted the interim order protecting the arrest of the accused. However, rejecting such a contention the Supreme Court held that in the absence of any interim order, the pendency of an application for anticipatory bail shall not bar the Trial Court from issuing/proceeding with steps for proclamation and in taking steps under Section 83, Cr.P.C, by law.

Citation: 2024 LiveLaw (SC) 227

Dablu Kujur v.The State of Jharkhand

Decided on: March 12, 2024

The Supreme Court on Tuesday (March 12) observed that police officers submitting the police report/chargesheet to the magistrate as per the State Police Manual shall abide by the particulars of Section 173 (2) and directed the officers in charge of every police station across the country to strictly comply with the mandatory requirements of Section 173 (2) of Cr.P.C. failing which it shall be strictly viewed by the concerned courts i.e., where the chargesheet/police report is filed.

"We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the chargesheet/Police Report do not comply with the requirements of the said provision. Though, indeed, the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the Police Report/Chargesheet are laid down in Section 173, more particularly sub-section (2) thereof.", the Bench comprising Justices Bela M. Trivedi and Pankaj Mithal observed.

Therefore, keeping its directions to be in line with Section 173 (2) Cr.P.C., the Supreme Court directed that the officer in charge of the police stations in every State shall strictly comply with the following directions while submitting the chargesheet/police report, and the non-compliance thereof shall be strictly viewed by the concerned courts in which the Police Reports are submitted.

"(i) A report in the form prescribed by the State Government stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

- (d) whether any offense appears to have been committed and, if so, by whom;*
- (e) whether the accused has been arrested;*
- (f) whether he has been released on his bond and, if so, whether with or without sureties;*
- (g) whether he has been forwarded in custody under section 170.*
- (h) Whether the report of medical examination of the woman has been attached where the investigation relates to an offense under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860).*
- (ii) If upon the completion of the investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr.PC.*
- (iii) When the report in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, all the documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.*
- (iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub-para (i) to (iii)."*

Citation: 2024 LiveLaw (SC) 210
Vinod Katara v. State of UP 2024
Decided on: March 05, 2024

The Supreme Court, while denying the plea of juvenility preferred by a convict in a murder case, observed that to determine age, the ossification test stands last in the order of priorities. Pertinently, Section 94(2) of the Juvenile Justice Act 2015 provides for the mode of determination of age. As per this provision, priority should be given to the date of birth certificate. In the absence of this, the birth certificate given by a corporation shall be preferred. Only in the absence of both categories can an ossification test determine age.

"In the order of priorities, the date of birth certificate from the school stands at the highest pedestal whereas the ossification test has been kept at the last rung to be considered, only in the absence of the criteria Nos. 1 and 2, i.e. in absence of both certificate from school and birth certificate issued by a Corporation/Municipal Authority/Panchayat.," the Court stated in its judgment.

"Having minutely perused the inquiry report and the evidence led during the inquiry, we think that the conclusions drawn by the learned Additional District and Sessions Judge that the actual date of birth of the accused petitioner is 2nd July 1960 and the opinion of the Medical Board that estimation of age based on X-ray examination becomes uncertain after 25 years is apropos and deserves to be accepted.," the Court held.

Citation: 2024 LiveLaw (SC) 193

Shazia Aman Khan and Another v. The State Of Orissa and Others

Decided on: March 04, 2024

The Supreme Court, while granting custody of a minor child to her aunt despite opposition from the father, held that the personal law or statute couldn't override the welfare of the child while deciding the custody of the child.

"Given our aforesaid discussions, we find that the welfare of the child lies in her custody with the appellants and respondent No. 10 (aunt). This is coupled with the fact that even she also wishes to live there. Keeping in view her age at present, she is capable of forming an opinion in that regard. She was quite categorical in that regard when we interacted with her. She cannot be treated as a chattel at the age of 14 years to hand over her custody to respondent No. 2 (the minor's biological father), where she has not lived ever since her birth. Stability of the child is also of paramount consideration.", the Bench comprising Justices C.T. Ravikumar and Rajesh Bindal said.

Rejecting such contention of respondent no. 1/biological father, the Supreme Court observed that the question of custody is different from guardianship, therefore the paramount consideration should be given to the welfare of the child while deciding the question of the child's custody.

"The statutory provisions dealing with the custody of the child under any personal law cannot and must not supersede the paramount consideration as to what is conducive to the welfare of the minor. No statute on the subject can ignore, eschew or obliterate the vital factor of the welfare of the minor."

"This Court opined that the child is not a chattel or ball that it is bounced to and fro. The welfare of the child is the focal point.", the court said.

Diary No. 42984 - 2023, Citation: 2024 LiveLaw (SC) 213

Ramesh Kumar Bung & Ors., State Of Telangana & Anr.

Decided on: March 04, 2024

The Supreme Court, in its recent order, has stated that the directions passed by it in the decision of Mrs. Priyanka Srivastava & Anr. v. State of Uttar Pradesh & Ors. (2015) 6 SCC 287, are mandatory.

The Division bench of Justices Sanjiv Khanna and Dipankar Datta was hearing a criminal appeal arising from the Telangana High Court's order. The High Court had refused to quash the FIR registered against the accused. Several provisions of the Indian Penal Code of 1860, including cheating, were invoked against the accused. While doing so, the High Court also noted that non-filing the affidavit does not vitiate the proceedings to quash the entire complaint.

When the matter came before the Apex Court, it was observed that the informant had furnished the affidavit 'belatedly.' In the light of that, the Court recorded in its order:

"We believe that the directions given by this Court in Mrs. Priyanka Srivastava & Anr. v. State of Uttar Pradesh & Ors. are mandatory. However, in the facts of the present case, we find that the informant had furnished the affidavit, though belatedly."

Citation: 2024 LiveLaw (SC) 258

Bloomberg Television Production Services India Pvt Ltd and others v. Zee Entertainment Enterprises Ltd

Decided on: March 22, 2024

The Supreme Court has urged the trial courts to be cautious while granting pre-trial injunctions against the publication of media articles and journalistic pieces in defamation suits.

An interim injunction to take down an article not only impacts the author's right to publish but also the public's right to know, reminded the Court. The Court also urged the trial courts to take note of the trend of SLAPP (Strategic Litigation Against Public Participation) whereby entities with vast economic resources use litigation to prevent the public from knowing about their operations involving public interest.

The Court stated that the three-fold tests for grant of interim relief - (i) a prima facie case, (ii) balance of convenience, and (iii) irreparable loss or harm - must not be applied mechanically, to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public.

Additional consideration of balancing the fundamental right to free speech

"Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind. The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions," the Court stated.

Appellate Courts must interfere if interim injunctions are granted arbitrarily

The grant of an interim injunction is an exercise of discretionary power and the appellate court will usually not interfere with the grant of interim relief. However, the appellate courts must interfere with the grant of interim relief if the discretion has been exercised "arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions.

The Supreme Court faulted the High Court also for not interfering with the trial court's order. "This being a case of an injunction granted in defamation proceedings against a media the impact of the injunction on the constitutionally protected right of free speech further warranted intervention," the Court stated.

Civil Appeal No(S). 7293-7294 Of 2010

Srinivas Raghavendrarao Desai (Dead) By Lrs. v. V. Kumar Vamanrao @ Alok And Ors.

Decided on: March 04, 2024

The Supreme Court observed that the evidence which was not a part of the pleadings couldn't be led in the trial.

"There is no quarrel with the proposition of law that no evidence could be led beyond pleadings. It is not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with

that evidence. In the case at hand, a specific amendment in the pleadings was sought by the plaintiffs concerning the 1965 partition but the same was rejected. In such a situation, the evidence concerning the 1965 partition cannot be considered.”, the Bench comprising Justices C.T. Ravikumar and Rajesh Bindal observed.

The Supreme Court held that the High Court committed a grave error in placing reliance upon the partition allegedly effected in the year 1965, as it is not even the pleaded case of the plaintiffs in the suit that there was any partition of the family properties in the year 1965.

Civil Appeal No. 8935 of 2011

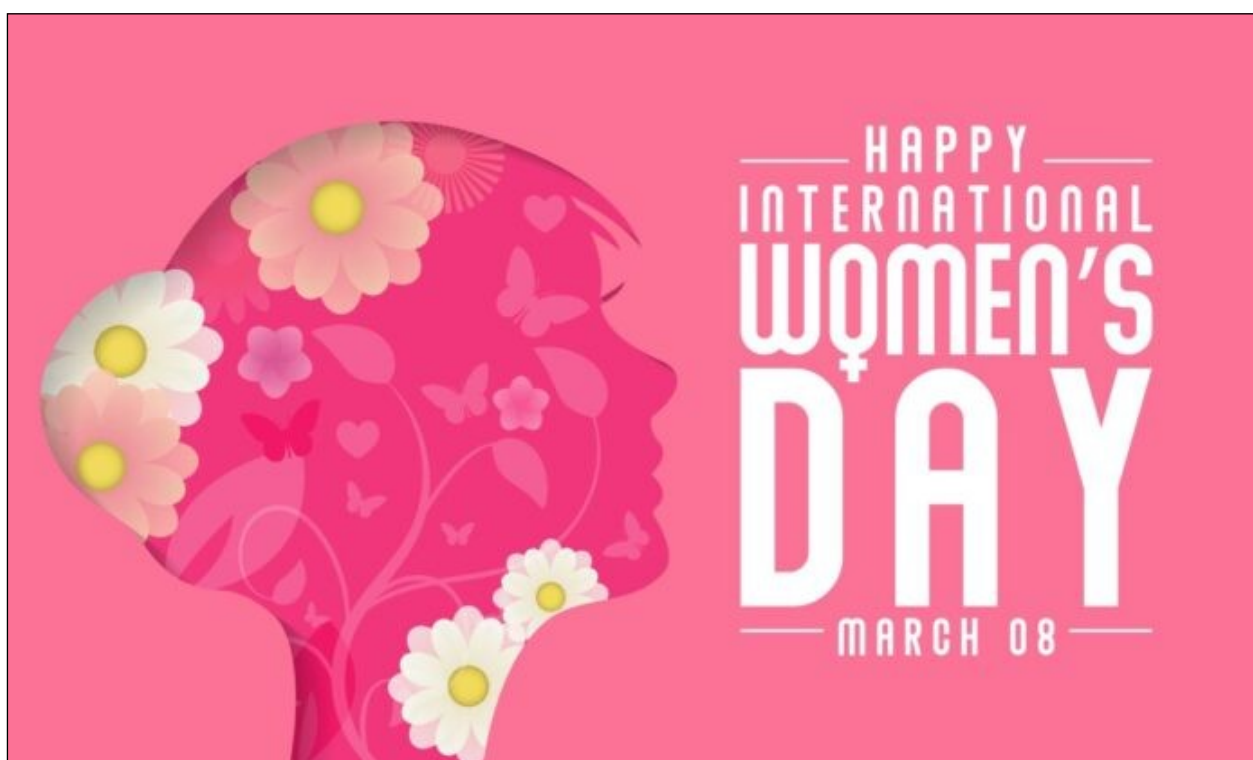
Thangam and Another v. Navamani Ammal

Decided on: March 04, 2024

The Supreme Court observed that the failure of the defendant to give para wise reply against the claim made by the plaintiff would make the allegations made in the plaint as admitted against the defendant.

“Order VIII Rules 3 and 5 CPC provide for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion, the Court may require those facts to be proved. This is an exception to the general rule. The general rule is that the facts admitted, are not required to be proved.”

After finding that there is no specific admission or denial by the appellant/defendant concerning the allegation in different parts of the plaint, the Judgment authored by Justice Rajesh Bindal observed that in the absence of a para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed.



Citation: 2024 LiveLaw (JKL)

Vijay Singh v. Surjit Singh

Decided on: March 25, 2024

Clarifying property rights of co-sharers, the Jammu and Kashmir and Ladakh High Court has ruled that a mere assertion that the property is undivided doesn't restrict a co-sharer from construction on their portion.

A bench of Justice Puneet Gupta maintained that mere raising of construction by one co-sharer in the property does not mean that the other co-sharer will lose his interest in the same because of the aforesaid fact if the property where the construction has been raised on partition otherwise falls in his share.

The case originated with Petitioner Vijay Singh filing a suit in the trial court against Surjit Singh and others. Singh claimed that they jointly owned a piece of land in Samba district, which was yet to be partitioned. He argued that the defendants were constructing on the land and this would change its nature, causing him harm when the land is eventually divided.

The defendants contested this claim. They argued that an agreement dividing the property already existed and Singh had his share. They also presented a report by the Tehsildar acknowledging an oral partition.

The trial court, considering that the property awaited partition issued a status quo order restraining any construction activity. The defendants challenged this order before the appellate court, which modified it and allowed them to construct on the land. Dissatisfied with the appellate court's order the petitioner filed the instant petition before the High Court.

Justice Puneet Gupta, while acknowledging that every co-sharer has the right to enjoy the entire undivided property, observed that this right shouldn't come to the detriment of others.

"Every co-sharer has right in the property till the same is partitioned and can enjoy every inch of the same also. Where the parties are in settled possession of the property, they can enjoy the same but not to the detriment of the other co-sharers. The co-sharer can also sell his share in the property and hand over the possession to the purchaser though the purchaser cannot claim that he is entitled to a certain specific piece of property as his entitlement to enjoy the property will depend upon the partition as and when it takes place", the bench recorded.

The bench further clarified that construction by one co-sharer doesn't affect another's interest in the land, especially if the constructed portion falls under the latter's share during partition.

Justice Gupta remarked, *"Mere assertion in the suit that the property is un-partitioned and therefore the defendant cannot raise construction in any portion of the land is without any basis. Mere raising of construction by one co-sharer in the property does not mean that the other co-sharer will lose his interest in the same because of the aforesaid fact if the property where the construction has been raised on partition otherwise falls in his share."*

Given the said considerations, the court upheld the appellate court's decision to allow the defendants to construct on their portion of the land, with the caveat that no

construction be made beyond their possession and that no portion of the land be disposed of during the pendency of the suit.

Citation: 2024 LiveLaw (JKL) 48

Shani Devi v. Fr. Tomi Principal Christ School

Decided on: March 20, 2024

The Jammu and Kashmir High Court has clarified that under the J&K Transfer of Property Act 1977, the execution of a contract for sale or agreement to sell does not automatically transfer ownership rights to the buyer. Instead, the title remains with the seller, even if the buyer has taken possession of the property, emphasized.

Justice Javed Iqbal Wani highlighted that possession by the buyer under such agreements is permissive and does not constitute a transfer of an interest in the property. This means that until the property is registered under the Registration Act, the buyer does not acquire ownership rights, he underscored.

"..Under the Act of 1977 after the execution of a contract for sale/agreement to sell, the title resides in the vendor and even though he may have parted with possession, the possession of the proposed vendee is under the agreement and not a transfer of interest and is permissive", Justice Wani recorded.

Observations Of The Court:

After considering the rival contentions Justice Wani agreed with the petitioner's contention and pointed out that the appellate court had committed a "patent error" by misconstruing the applicable law.

"It would be significant to note here that Section 53-A of the Act of 1882 admittedly did not apply to the case in hand on the date of passing of the impugned order by the appellate court, instead Transfer of Property Act, Svt., 1977 (for short "Act of 1977") was applicable wherein there has been no such provision of Section 53-A in place. The appellate Court, thus, has patently and grossly misdirected itself".

Clarifying the mandate of the Act of 1977 that applied to the instant case the court clarified that under the Act of 1977 upon execution of a sale agreement, ownership remains with the seller (vendor) even if possession is handed over to the buyer (vendee). The buyer's possession is considered permissive and does not transfer any ownership rights until the property is registered under the Registration Act, it added.

Deliberating on the concept of part performance, as embodied in Section 53-A of the Act of 1882, the court said,

"..that under the Act of 1977 applicable to the case in hand neither the principle of part performance as contained in Section 53-A of the Act of 1882 nor the principle of equitable estoppels akin to it could be invoked by a party to its aid seeking relief against third-party".

The bench further noted that the appellate court had exceeded its jurisdiction by expressing an opinion on the merits of the case during an appeal on an interim relief order. The court remarked,

"..the appellate court has fallen in grave error while wrongly passing the impugned order not only while placing reliance on Section 53-A of the Act of 1882, but also while expressing an opinion to the merits of the case which the appellate court could not have done while deciding a miscellaneous appeal arising out of an order passed in an application for interim relief, in that, the powers of an appellate court deciding a miscellaneous appeal are

limited and circumscribed”.

Consequently, the High Court set aside the appellate court's order. It directed both parties to maintain the existing status quo regarding possession of the land until the trial court reaches a final verdict in the suit.

Citation: 2023 LiveLaw (JKL) 45

Union of India v. Chain Singh & Ors.

Decided on: March 15, 2024

The Jammu and Kashmir and Ladakh High Court, while addressing the ramifications of the abatement of an appeal due to the demise of certain respondents, has ruled that proceeding with an appeal against the surviving respondent(s) is untenable hence leading to a dismissal of the appeal in its entirety.

Spelling out the reasons for the same Justice M A Chowdhary observed,

“..The basic reason being that in the absence of the legal representatives of the deceased respondent, the appellate Court cannot determine between the appellant and the legal representatives anything which may affect the rights of the legal representatives”.

These observations came while hearing an appeal filed by Appellant-Union of India through the medium of which it challenged an Award passed by the Arbitrator (District Judge, Udhampur) whereby the Arbitrator had assessed the compensation of the acquired land @ Rs.30,000/- per kanal along with interest @ 9% per annum from the date of Reference till final realization of the awarded sum.

Observations Of The Court:

At the outset, Justice Chowdhary acknowledged the Union's decision to forgo challenging the compensation rate in light of a similar case settled by the Supreme Court. However, the court focused on the abatement issue due to the absence of legal representatives for the deceased respondents.

Extensively examining the relevant legal provisions and precedents the court noted the provisions of Order XXII of the Code of Civil Procedure (CPC), which deal with the consequences of death during legal proceedings. While Rule 1 states that a suit does not abate due to the death of a party if the right to sue survives, Rule 2 lays down the procedure for continuing the case with surviving parties, the court said while underscoring that this order i.e. Order XXII applies to appeals mutatis mutandis.

However, referencing *State of Punjab v. Nathu Ram (AIR 1962 SC 89)* which explained the principles of abatement and the challenges arising from a joint and indivisible decree the court highlighted the reasoning behind dismissing an appeal against surviving respondents when the appeal against deceased respondents abates. The appellate court cannot adjudicate matters impacting the rights of unrepresented deceased parties, the bench emphasized.

“..The decree between the appellant and the deceased respondent becomes final and the appellant Court cannot, in any way, modify that decree directly or indirectly. ..the question of whether a Court can deal with such matters or not, will depend on the facts of each case and, therefore, no exhaustive statement can be made about the circumstances when this is possible or is not possible”, said the court.

Deliberating on the principle that conflicting decrees the bench cited *Sunkara v. Sage Subha Raju & Ors. (2019)* and observed that conflicting decrees in the same case are not

permissible and emphasized that the absence of legal representatives for deceased respondents could prevent the court from adjudicating the appeal against surviving respondents altogether, leading to the dismissal of the entire appeal.

Considering the precedents and the absence of legal representatives for deceased respondents, the court ruled that the appeal abated as a whole. Consequently, the court upheld and maintained the impugned arbitration award.

Citation: 2024 LiveLaw (JKL) 36

Gulab Singh v. Kuldeep Singh

Decided on: March 13, 2024

The Jammu and Kashmir & Ladakh High Court has said that ordinarily the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court.

However clarifying the circumstances under which an appellate court can allow parties to introduce new evidence during an appeal **Justice Javed Iqbal Wani** observed,

“Normally an appellate court should not allow additional evidence to be produced and decide an appeal based on the material on record...yet said Order 47 Rule (27) proceeds to carve out exceptions and enumerates the circumstances in which an appellate court can permit leading of additional evidence under clause (a), (aa) or (b) of sub-rule (1) of Rule 27”

Observations Of The Court:

Upon meticulous consideration of rival contentions Justice Wani reiterated that the admission of additional evidence is not a matter of right but is subject to the discretion of the court. Examining the provisions of Order 41 Rule 27(1) of the CPC, the court explained that the said provision lays down three circumstances when an appellate court can permit additional evidence.

Refusal of Evidence by Trial Court (Clause (a))

The court clarified that the appellate court can only admit evidence if the trial court unjustifiably refused to admit relevant evidence presented during the trial.

Undisclosed Evidence Despite Due Diligence (Clause (aa))

A party can introduce new evidence if they can prove it was not within their knowledge or could not be produced at trial despite exercising due diligence.

Evidence Needed for Judgment or Substantial Cause (Clause (b))

The appellate court itself can order the production of additional documents or examination of witnesses if deemed necessary to deliver a judgment or for any other significant reason.

Scrutinizing the defendants' application and the evidence presented before both courts the bench found that the defendants failed to demonstrate any of the three conditions under Order 41 Rule 27(1) to justify admitting new evidence.

The court noted that the defendants did not claim the trial court refused relevant evidence, nor did they establish that the new evidence was unavailable during the trial despite due diligence. Additionally, the court determined that the existing evidence on record was sufficient for the appellate court to pronounce judgment.

In light of said observations, the court declined to exercise its supervisory jurisdiction and upheld the appellate court's order dismissing the application for additional evidence.

Citation: 2024 LiveLaw (JKL)

Ghulam Nabi Khanday v. Mushtaq Ahmad

Decided on: March 06, 2024

Clarifying the applicability of the bar under Order 23 Rule 3-A of the Civil Procedure Code (CPC) to challenge compromise decrees the Jammu and Kashmir and Ladakh High Court has recently ruled that said bar does not apply to non-party challengers of compromise decrees, provided they are not claiming any right through a party to the compromise decree.

Order 23 Rule 3-A of the Civil Procedure Code (CPC) is a legal provision that discourages multiple lawsuits over the same issue. It essentially states that once a court issues a decree based on a lawful compromise between parties in a dispute, neither party can file a separate lawsuit to challenge the validity of that compromise decree.

Justice Rajnesh Oswal made these observations while hearing a plea in terms of which the petitioners had challenged an order passed by the Court of Munsiff, Pulwama, dismissing their application under Order 7 Rule 11 CPC for rejection of the plaint.

They contended that the respondents, who were not parties to the compromise decree, had no standing to file a suit challenging the said decree. On the other hand, the respondents argued that as legal representatives of the deceased plaintiff, they had the right to initiate the suit.

After meticulously analyzing the provisions of Order 23 Rule 3 and Rule 3-A of the CPC and referring to various legal precedents including *Triloki Nath Singh Vs. Anirudh Singh and Pushpa Devi Bhagat (Dead) through LR Sadhna Rai (Smt) vs. Rajinder Singh*, the court emphasized that a party challenging a compromise decree must approach the court that recorded the compromise.

Expounding on the circumstances as to when a consent decree can be avoided by a party to a consent decree the Court referenced the judgments in *Pushpa Devi Bhagat (Dead) vs. Rajinder Singh and R. Janakiammal vs. S.K. Kumarasamy* which highlighted that a party to a compromise decree can only challenge it through an application under Order 23 Rule 3-A if their consent was not freely obtained.

Deliberating further on the matter the court highlighted that the bar under Order 23 Rule 3-A does not apply to individuals who are not claiming any right through a party to the compromise decree and added,

“The learned trial court has rightly concluded that neither the original plaintiff nor her predecessor-in-interest was party to the compromise decree as such the bar contained under Order 23 Rule 3-A was not applicable in the case”.

The bench further went on to record,

“This Court is of the considered view that the bar contained under Order 23 Rule 3-A of CPC shall not apply to a stranger to the compromise decree challenging the compromise decree provided he is not claiming any right through a party to the compromise decree. The learned trial court has rightly concluded that neither the original plaintiff nor her predecessor-in-interest was party to the compromise decree as such the bar contained under Order 23 Rule 3-A was not applicable in the case”.

In light of the said legal position, the petition was dismissed hence affirming the

ACTIVITIES DURING THE MONTH

Two-Days Orientation Programme on “Wildlife and Forest Conservation Laws”

J&K Judicial Academy in collaboration with WWF-India, organized Two-Days Orientation Programme on “Wildlife and Forest Conservation Laws” for Judicial Officers and officers of J&K Forest Department across the Jammu Province at J&K Judicial Academy, Janipur, Jammu on 2nd & 3rd of March, 2023.



The orientation programme was inaugurated virtually by Hon’ble Mr. Justice N. Kotiswar Singh, Chief Justice, High Court of J&K and Ladakh in presence of Hon’ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of Fiji, Former Judge, Supreme Court of India along with Hon’ble Mr. Justice Sanjeev Kumar, Chairman, Governing Committee for J&K Judicial

Academy, and Sh. Roshan Jaggi, IFS, Principle Chief Conservator of Forest & HoFF, Chairman, J&K Biodiversity Council, Govt. of J&K. Dr. Saket Badola, IFS, CCF, Uttarakhand, Dr. M.K. Kumar, Chief Conservator of Forest, Jammu East, Ms. Moulika Arabhi, Advisor, Centre for Environmental Law, WWF India. Dr. Amit Dubey, Head-Wetlands, WWF India, Mr. Tejas Singh Kapoor, Centre for Environmental Law, WWF India and Mr. Rohit Rattan, WWF India were also present during the inaugural session who happened to be the resource persons in the Two-Days Orientation Programme.

Hon’ble Mr. Justice N. Kotiswar Singh in his inaugural address, highlighted that environmental degradation is mostly a result of human activities such as deforestation, vehicular pollution, and industrialization which has led to environmental pollution and loss of biodiversity. He emphasised that educating the masses about the importance of protecting the environment is an effective way to restore the ecological balance. He stated that the infrastructural and industrial growth in Kashmir has boosted its economy but at the same time air is getting polluted since brick kilns in many districts of J&K are adding to air pollution. He added that global warming in J&K has led to a change in snowfall patterns and warmer winters, affecting the ecosystem at large. He emphasised to act responsibly towards the environment and strike a balance between economic growth and environmental protection, J&K will stay beautiful, befitting its nickname, Paradise on Earth.

In his special address, Hon’ble Mr. Justice Sanjeev Kumar emphasised said that our connection with nature is as old as our civilization. India has a rich ancient tradition of protecting the environment which in turn, has made the people of India worship and embrace nature in every way possible. He stated that the principle of sustainable development is to meet the needs of the present without compromising the ability of future generations to meet their own needs. Thus, the longer we continue to pursue unsustainable



development, the more severe will the consequences be. One of the most common to face is climate change which is being debated widely worldwide. So, the need of the hour is sustainable development. He added that the doctrine of Sustainable development was first applied by the Supreme court in the case of *Vellore Citizen Welfare Forum v. Union of India (1996 5 SCC 650)*, the Supreme Court while maintaining the principle of Polluter Pay and Pecuniary Principle as a piece of ecological law articulated that securing the damaged piece of the climate is the an integral part of the course of sustainable development, and subsequently in the current case, the polluter was held responsible to pay harms to the concerned victims just as harms for the recuperation of the damaged climate. He also discussed upon 'Swachh Bharat Abhiyaan', a scheme under Govt. of India that emphasizes on ushering in a behavioural change among people, for healthy sanitation practices and the importance of it. Justice Kumar stressed on the ways we must all develop to meet our needs so that our future generations can inherit a healthier and greener planet.

Shri Roshan Jaggi IFS, Pr. Chief Conservator of Forests & Chairman Biodiversity Council in his keynote address shared details of actions being taken by J&K Forest Department to enhance forest cover Conserve Water Resources and protect Wildlife. He informed that scale of afforestation has been increased three times in last four years and increased participation of PRI representatives and local people has been yielding encouraging results in the form of rehabilitation of degraded forests, creating livelihoods for local people and sustained supply of forest based raw material to wood based industries to generate employment opportunities to unemployed youth in rural areas.

Ms. Moulika Arabhi, Advisor, Centre for Environmental Law, WWF India gave an introduction of the Two-Days Orientation Programme. She said that there is a need of dedicated environmental courts. She added that environmental Laws are the body of laws, which is a system of complex and interlocking statutes, common law, treaties, conventions, regulations and policies which seek to protect the natural environment which may be affected, impacted or endangered by human activities. She said the every state should have a cordial relationship between the judiciary and the Forest department for effective implementation of a better environmental well being.

Mr. Y.P. Bourney, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. India has always had a rich ancient tradition of protecting the environment which in turn, has made the people of India worship and

embrace nature in every way possible. Trees, water, animals, land have an important mention in ancient Indian texts. Hymns in the four Vedas, reveal full consciousness of the undesirable effects of climate change, distortion in ecological balance, and environmental degradation and appropriately caution against them. He stated that in today's emerging Law world, environmental rights are considered as third generation rights. He added that J&K although known as heaven on earth for its breathtaking natural beauty, has been facing a multitude of environmental challenges that threaten its ecological health and well-being. He stressed upon the need to take proactive measures and foster collaboration between various stakeholders for preserving its unique natural heritage for the coming generations. He emphasised that invests in capacity building is necessary to equip all the key players with the necessary skills for effective implementation of the Forest Conservation Laws.

The first session was chaired by Mr. M.K. Kumar, Chief Conservator of Forest, who gave an overview on environmental issues and challenges in Jammu. He said that Jammu and Kashmir is a popular travel destination and the tourism industry has led to the economic growth of this state. Infrastructural development and industrialization have got a boost after the removal of Article 370. He underlined that these factors have also increased the environmental problems in J&K. He added that industrial growth and the rising population have resulted in environmental pollution and climate change.

Dr. Amit Dubey, Head-Wetlands, WWF India who was the resource person for the second session, deliberated on the importance of high-altitude wetlands and their governance. He said that High-altitude wetlands, often referred to as Himalayan High Altitude Wetlands (HAWs) in the context of Asia, are more than just bodies of water at high elevations. They are the lifeblood of the mountains, playing a crucial role in various aspects of the environment and human well-being. He stated that governing high-altitude wetlands (HAWs) presents a unique set of challenges due to their remote locations, harsh environments, and the diverse stakeholders involved. He added that by addressing the diverse aspects and fostering collaboration among stakeholders, we can navigate the complexities of high-altitude wetland governance and ensure the long-term sustainability of these vital ecosystems.

In third session, the resource person Dr. Saket Badola, IFS gave an overview on illegal wildlife trade scenarios in India. He said that illegal wildlife trade is a major threat to global biodiversity, driving many species to the brink of extinction. It involves the capture, trade, and possession of animals and plants in violation of national and international laws. He stated that this illicit activity is fuelled by high demand for wildlife products, often fuelled by myths and cultural beliefs, and generates billions of dollars annually for criminal



organizations. He emphasised that illegal wildlife trade (IWT) transcends the immediate threat of pushing species towards extinction and acts as a potent cocktail, poisoning the well of biodiversity with a range of devastating consequences. He added that illegal wildlife trade isn't just about pushing species to extinction; it's a multifaceted problem with far-reaching consequences that threaten the very fabric of our natural world. He demanded that addressing this issue requires a multi-pronged approach, tackling the root causes of demand, strengthening law enforcement, promoting sustainable alternatives, and fostering global cooperation to protect our precious biodiversity.

The fourth session was chaired virtually by Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of Fiji, Former Judge, Supreme Court of India and an eminent environmentalist. The Hon'ble resource person underlined that 'Environment' is a very comprehensive term and is clearly at risk from a variety of reasons, mostly of human origin and in order to tackle this problem it is important to develop strategies for modifying human behaviour towards environmentally benign practices and shun away environmentally damaging ones. Justice Lokur highlighted that our constitution talks considerably about protection of environment and highlighted the five basic principles of law evolved over the years as sustainable development, precautionary measures, principal of polluter pay, rectification and public participation so as to put in place an effective ecosystem to tackle any action potentially harmful to the flora and fauna. Citing a number of live examples and rulings of the high courts and Apex Court in recent years, he emphasised that environmental law has become a critical means of promoting sustainable development. He highlighted that there has been considerable experimentation in the search for more effective methods of environmental control beyond traditional "command-and-control" style regulation. He added that Eco-taxes, tradable emission allowances, voluntary standards and negotiated agreements are some of these innovations. The resource person gave various environment-threatening illustrations which has been a



matter of concern. He added that substantial improvement of the current trajectories of development requires 'system innovation', a fundamental change in the systems of goods provision, by using different resources, knowledge and practices which in turn requires replacement of old outcome-based planning with reflexive and adaptive planning.

A plantation drive in association with J&K Forest Department was also conducted on day 1 at J&K Judicial Academy, Jammu campus in which different saplings were planted by Hon'ble dignitaries.

The brain storming deliberations of day one had already set the tone and tenor of the second day orientation. On the second day, the first session was jointly conducted by Ms. Moulika Arabhi and Mr. Tejas Singh Kapoor, CEL, WWF-India, who gave a legal and policy overview on Environment, Forest and Wildlife. They said that there have been three forest policy announcements in independent India; the Forest Policy of 1952, the National Commission on Agriculture, 1976 (NCA) and the 1988 Forest Policy. The policy emphasised scientific conservation and emphasis was laid on the conversion of low value mixed forests to high value plantation of commercial species.

Mr. Rohit Rattan, Associate Coordinator, Western Himalayas Program, WWF-India chaired the second session. The resource person deliberated on conservation issues and challenges in Jammu. He said that the twin UTs of J&K and Ladakh are divided into three main geographical regions namely the Pir Panjal, the Zaskar and the middle mountain of Lesser Himalaya and it supports the vegetation from sub-tropical zone to alpine zone and forms a complex habitat which supports a number of rare, endemic and threatened plants. He added that the local inhabitants over exploits some of the commercially viable medicinal plants for personal gains which are traded either in the local or outside the UTs markets. He emphasized that Central and UT/State Governments have attempted for the in-situ conservation of biological resources all over India and at present, the UTs of J&K and Ladakh comprises one Biosphere Reserve, 4 National Parks and 15 Wildlife Sanctuaries for the in-situ conservation of biological diversity. These protected areas cover different altitudinal zones ranging from tropical to alpine. He stated that development of conservation technologies of threatened/economically important plants will not only help in promoting mass cultivation in farmers fields but also, help in reducing pressure on wild stock.

All the sessions were interactive during which all the participants actively participated and shared their experiences, and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the worthy resource persons.

Two-Days Training Programme on "New Criminal Laws"

J&K Judicial Academy organized Two-Days Training Programme on "New Criminal Laws" at J&K Judicial Academy, Janipur, Jammu for Judicial Officers, Prosecution Officers, Police Officers and Officers from Forensic Science Laboratories of Jammu Province including Research Assistants of High Court of J&K and Ladakh at Jammu Wing on 09th & 10th of March, 2024.

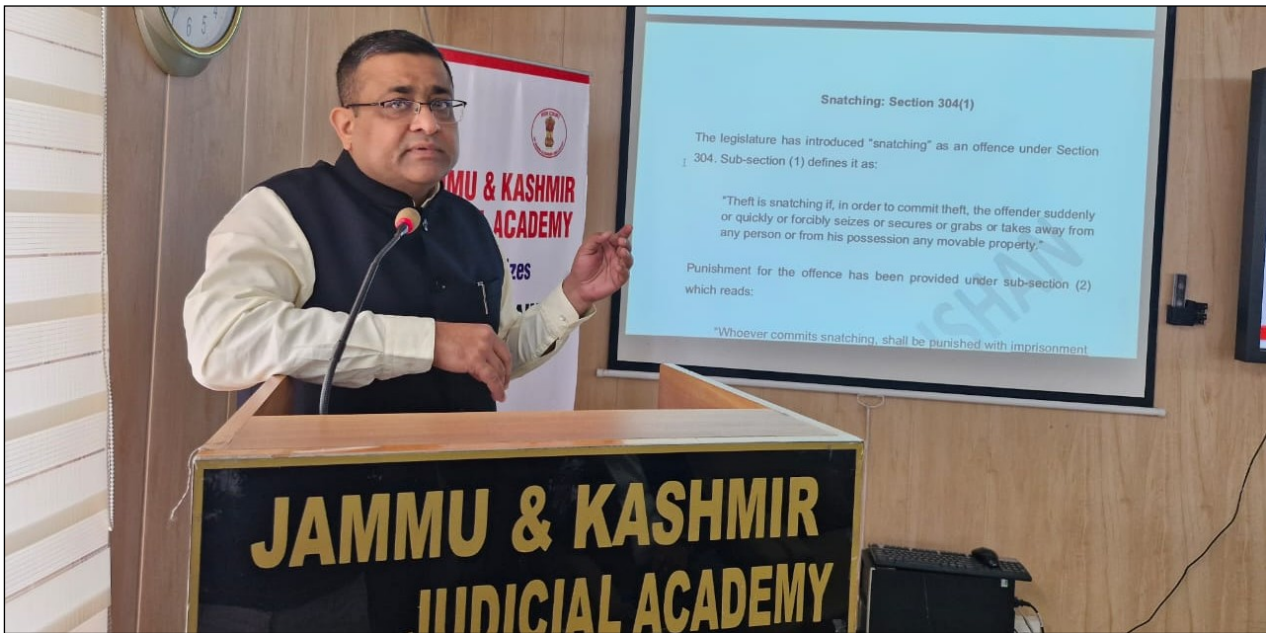
The training programme was inaugurated by Hon'ble Mr. Justice Sanjeev Kumar, Judge, High Court of J&K and Ladakh in presence of Mr. Sakal Bhushan, an eminent lawyer



from Jammu now practising in Supreme Court of India who happens to be the resource person in the Two-Days Training Programme.

Hon'ble Mr. Justice Sanjeev Kumar, in his inaugural address pointed out that earlier Indian Penal Code, as the name itself suggested, was introduced with a view to penalize the Indians. He also gave an overview of the three new laws; Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Sakshya Adhinyam, 2023 (BSA) and Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) and highlighted that these new laws are in tune with the spirit of the Constitution and have been introduced in keeping with the aspirations of 'we the people'. Elaborating further Justice Kumar said that British-era is punishing and enforcing allegiance to foreign rule whereas, the soul of new laws is Indian and for the first time our criminal justice system will be governed by the laws of India, made by the Indians and for the India. He further highlighted that these new laws are not just to punish but to impart justice with equal consideration to the rehabilitation of the victim and provide justice to one and all particularly the marginalized. Justice Kumar further added that the new way of inflicting punishments like community service reflects changing sentiments of public. It's not just about punishing people but also about making them do something constructive for the community. He emphasised that idea is to make them learn from their mistakes and contribute positively to the society. He described the BNSS to be aimed at providing faster and more efficient justice system to address the issues of delays, huge pendency, low conviction rates, minimal use of technology in legal system and inadequate use of forensics. Hon'ble Chairman further lamented that all these changes in laws would not work unless there was corresponding upgradation in the infrastructure.

Mr. Y.P. Bourney, Director, J&K Judicial Academy presented the welcome address and highlighted the core of the programme. He said that Bharatiya Nyaya Sanhita Act, 2023 was presented in the Lok Sabha on August 11, 2023, with the primary goal of overhauling



the existing Indian Penal Code, 1860, as well as two other bills aimed at replacing the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. He emphasised that Act proposes significant changes, including streamlining certain IPC provisions to reduce its length. It also introduces new offenses such as hate speech and terrorism. Additionally, the Act replaces the sedition with a more stringent offence of treason (Desh Droh or Rashtarya Droh). He described that BNS, 2023, not only replaces the old Penal Code but also consolidates legal provisions making the crimes against women and children to be more stringent for better administration of justice. In short, the passing of the new laws in the words of Hon'ble Prime Minister, Shri Narendra Modi '*is a watershed moment in the history of free India*' and would mark the end of laws of colonial era and beginning of a new era of modernization of our legal, policing and investigative system consistent with the soul of India and also with the greater use of technology and forensic science to bring it at par with that of the most advanced countries of the world. With the coming to force of these laws, there would be uniform justice system throughout the country. He went on to add further that by pursuing these progressive legislations, we as a nation can work towards a criminal justice system that upholds the rule of law, protects human rights, and effectively serves the needs of its diverse population particularly the poor and the marginalized. We at the judicial academy are committed to the cause of justice and are doing our bit to the best of our ability.

The working sessions on the first day were chaired by Mr. Sakal Bhushan, Advocate, who gave an overview on additions, deletions, modifications and reorganization of chapters and sections under Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS). The learned resource person lay threadbare and discussed various newly added provisions and those amended provisions for the benefit of the participants.

The brain storming deliberations of day one had already set the tone and tenor of the second day orientation. The second day's sessions were continued by Mr. Sakal Bhushan, an eminent jurist and son of the soil, now practising in Supreme Court of India, and Delhi High Court who dissected various additions, alterations and amendments in the three laws for the benefit of the participants and analysed in detail vis-à-vis the old laws in



light of the rulings of the Hon'ble Apex Court. The learned resource person deliberated that Bharatiya Nyaya Sanhita (BNS), 2023 represents a path breaking and transformative overhaul of the legal framework in India. The key provisions and changes in the BNS highlight a shift towards modernization and responsiveness to societal needs. He stated that BNS, 2023 addresses various aspects, from offenses against women, children, and murder to tackling organized crime, terrorism, and exploitation. It removes outdated terms, introduces gender-neutral provisions, and aligns with evolving societal norms. He underlined that the Bharatiya Nyaya Sanhita, 2023, embodies a progressive and comprehensive legal framework, reflecting a commitment to justice, fairness, and the evolving needs of society. It stands as a testament to the nation's dedication to shaping a legal system that is both robust and responsive to the challenges and values of the contemporary era.

In the second and last session, the resource person educated the participants about the important changes made in the Bhartiya Sakshya Adhiniyam (BSA), 2023. He highlighted that most of the core principles that formed a part of India's evidence jurisprudence e.g., burden of proof, admissions, relevancy of facts, etc. remain unchanged under the BSA. With significant emphasis being accorded to electronic records and their treatment, the enactment of the BSA is certainly a significant step forward for aligning India's legal system to contemporary technological advances.

Learned Resource Person encouraged the participants in all the sessions to ask as many questions as they had and all the sessions remained very interactive during which all the participants actively participated and shared their difficulties, past experiences, and also asked questions on various aspects of the subject topics. All their queries were answered in detail by the worthy resource person.

One Day Refresher Programme (ECT-9-2024)

J&K Judicial Academy organized One Day Refresher Programme (ECT-9-2024) in collaboration with eCommittee, Supreme Court of India at J&K Judicial Academy, Janipur, Jammu for staff members of District Courts of Twin UT's of J&K and Ladakh on 16th March, 2024.

The training programme was inaugurated by Hon'ble Mr. Justice Sanjeev Kumar, Chairman, Governing Committee for Judicial Academy in presence of Mr. Anoop Sharma,



Registrar Computer, High Court of J&K and Ladakh, who happens to be the resource person in the Day long Programme.

Hon'ble Mr. Justice Sanjeev Kumar, in his inaugural address observed that the technology has proved a great accelerant in almost all aspects of human lives including dispensation of justice. He further noted that e-courts represent a more viable alternative to conventional courts, harnessing technology to expedite legal proceedings. He highlighted that Court Staff forms the backbone of our judicial system and any shortcoming at their part adversely impacts a judge's ability to deliver justice. Elaborating further Justice Kumar said that in J&K 15-16 courts are paperless now wherein entire records are digitized but still we are facing difficulties because of reluctance of the staff in adapting to the new technology. He advised the participants to transform their mindset and switch over to technology for the larger benefit of the society. Hon'ble Chairman further highlighted that e-Courts have the potential to revolutionize the administration of justice particularly for underprivileged and marginalized communities facing barriers to traditional court systems by reshaping access to justice and enhancing efficiency, transparency and fairness.

Mr. Y.P. Bourney, Director, J&K Judicial Academy presented the welcome address and highlighted the core of the programme. He stated that e-Courts Project was conceptualised on the basis of "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary-2005" submitted by the e-Committee of the Hon'ble Supreme Court of India. The e-Courts National portal (ecourts.gov.in) was launched by Hon'ble the Chief Justice of India on 07th August, 2013 which provides case status, daily cause-list, cases filed, and cases registered through the CIS software. He emphasised on the objectives, services and benefits of e-Courts. He stated that digitization has bridged the gap between the court and the litigant, ensuring justice not only at the door step of the citizens but at their fingertips.

The first technical session was conducted by Mr. Anoop Sharma, Registrar Computer who gave an introduction to e-Courts Project. He acquainted the staff about various e-court initiatives & services including their role in the implementation of e-Court services of CIS, NSTEP, Virtual Courts, e-filing, etc. He again briefed about defacing & locking mechanism of eCourt Fee. The learned resource person also explained the procedure of digitization of Court Case Record & DMS and discussed the role & responsibilities of staff.

Mr. Rajeev Gupta, Senior System Officer and Mr. Faheem Manzoor, System Officer jointly conducted the second technical session. They gave a practical knowledge of various

tools and gave live demonstration on CIS, NSTEP, Virtual Courts, e-filing & other eCourt Services. All the sessions remained very interactive during which all the participants actively participated and shared their experiences, difficulties and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the worthy resource persons.

One-Day Sensitization Programme on the topic “Mediation & Role of Referral Judges in the Process of Mediation”

One-Day Sensitization Programme for nominated Referral Judges of Jammu Province of UT of J&K on the topic “Mediation & Role of Referral Judges in the Process of Mediation” was organised by Mediation & Conciliation Committee, High Court of J&K and Ladakh in collaboration with J&K Judicial Academy and J&K Legal Services Authority which was inaugurated at J&K Judicial Academy, Jammu today by Hon’ble Mr Justice Tashi Rabstan, Judge, High Court of J&K and Ladakh and Chairman, Mediation & Conciliation Committee, High Court of J&K and Ladakh in the presence of resource person Mr. Vinay Kumar Gupta,



Former Principal District & Session Judge, a trained Mediator from MCPC, Supreme Court of India, Mr. Yash Paul Bourney, Director, J&K Judicial Academy, Mr. Rajinder Saproo, Coordinator, Mediation & Conciliation Committee, Mr. Amit Kumar Gupta, Member Secretary, J&K Legal Services Authority and Mr. Prem Sagar, Secretary, High Court Legal Services Committee.

While delivering the inaugural address, Justice Tashi highlighted that the mediation embodies principles of cooperation and consensus-building. He said that by prioritizing relationships and collaboration, mediation transcends the limitations of the courtroom and offers a more holistic approach to conflict resolution. He added that mediation empowers individuals to resolve their conflicts swiftly, amicably, and on their own terms. He underlined that the referral judges must possess a thorough understanding of the principles and practices of mediation, as an effective alternative dispute resolution tool in their hands. Justice Tashi stressed that referral judges play a pivotal role in promoting the use of mediation as an alternative to traditional litigation and huge responsibility lies on their shoulder to make mediation successful. Referring to the dismal figures of cases referred for mediation by the District Judiciary in the UT of J&K during the year 2023, Justice Tashi observed that we are lagging far behind than other States. He strongly urged

all the participating referral judges as also the trial judges as a whole to embrace the principles of mediation to foster a legal system that is not only efficient and equitable but also conducive in nurturing harmonious relationships and promoting social cohesion.

Mr. Yash Paul Bourney, Director, J&K Judicial Academy in his welcome address gave an overview of the programme. Quoting Hon'ble Chief Justice of India, Justice Dr. D. Y. Chandrachud he said that Mediation offers citizens a forum to not only determines the outcome of their disputes, but also to determine the criteria and standards by which those outcomes are evaluated. He highlighted that mediation as an Alternate or Additional Dispute Resolution mechanism, is not new to India and has been existing as part of dispute resolution mechanism since times immemorial. He added that mediation in its present form is a much refined and structured concept for effective resolution of disputes with the help of a third neutral person who assists the disputant parties to resolve their differences amicably. He reflected that benefits of mediation are manifold. Firstly, it offers a cost-effective and time-efficient alternative to traditional litigation, sparing parties from protracted court battles and exorbitant legal fees. Secondly, mediation promotes flexibility and autonomy, allowing parties to retain control over the outcome of their dispute rather than surrendering it to a judge and moreover, mediation promotes confidentiality, preserving the privacy of sensitive information and mitigating reputational risks. Mr. Rajinder Sapru, Coordinator, Mediation & Conciliation Committee, High Court of J&K and Ladakh, proposed the vote of thanks and also conducted the proceedings of the day-long programme.

The Inaugural Session was followed by working sessions during which the Mr. Vinay Kumar Gupta, Former Principal District & Session Judge, Delhi deliberated on the topics of ADR, Code of Civil Procedure 1908, and Mediation Act 2023. The Learned resource person also highlighted the role of referral judges and discussed various guidelines for referral judges. All the sessions were highly interactive during which the participants actively participated and shared their experiences, difficulties and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the worthy resource person.

Two-Days Training Programme on “New Criminal Laws”

J&K Judicial Academy organized Two-Days Training Programme on “New Criminal Laws” at J&K Judicial Academy, Mominabad, Srinagar for Judicial Officers of Kashmir Province and UT of Ladakh, Prosecution Officers, Police Officers and Officers from Forensic Science Laboratories of Kashmir Province including Research Assistants of High Court of J&K and Ladakh at Srinagar Wing on 30-31 March, 2024.

The training programme was inaugurated by Hon'ble Mr. Justice Sanjeev Kumar, Judge, High Court of J&K and Ladakh in presence of Mr. Sakal Bhushan, an eminent lawyer from Jammu now practising in Supreme Court of India who happens to be the resource person in the Two-Days Training Programme.

Hon'ble Mr. Justice Sanjeev Kumar, in his inaugural address pointed out that earlier Indian Penal Code, as the name suggested, was to penalize the Indians. He said that overhauling of these laws was a long pending demand of the society and the Govt. Thought that this is the right time to revoke these laws. The Govt. entrusted the job to reform



criminal laws to Professor Ranbir Singh, founder Vice Chancellor of National Law University, Delhi, who happened to be the Chairperson of Committee for reforms in Criminal Laws. The Committee was made to focus on safety, security and welfare of Indians and integrity of the nation. He also gave an overview of the three new laws; Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Sakshya Adhiniyam, 2023 (BSA) and Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) and highlighted that these new laws are in tune with the spirit of the Constitution and have been introduced in keeping with the aspirations of 'we the people'. Elaborating further Justice Kumar said that laws of British-era were aimed at punishing and enforcing allegiance to foreign rule whereas, the soul of new laws is Indianess and for the first time our criminal justice system will be governed by the laws of India, made by the Indians and for the India. He further highlighted that these new laws are not just to punish but to impart justice with equal consideration to the rehabilitation of the victim and provide justice to one and all particularly the weak and marginalized. Justice Kumar further added that the new way of inflicting punishments like community service reflects changing sentiments of public. It's not just about punishing people but also about making them to realise and do something constructive for the community. He emphasised



that idea is to make them learn from their mistakes and contribute positively to the society. He described the BNSS to be aimed at providing faster and more efficient justice system to address the issues of delays, huge pendency, low conviction rates, minimal use of technology in legal system and inadequate use of forensics. Hon'ble Chairman further lamented that all these changes in laws would not work unless there was corresponding upgradation in the infrastructure.

Mr. Y.P. Bourney, Director, J&K Judicial Academy presented the welcome address and highlighted the core of the programme. He said that Bharatiya Nyaya Sanhita Act, 2023 was presented in the Lok Sabha on August 11, 2023, with the primary goal of overhauling the existing Indian Penal Code, 1860, as well as two other bills aimed at replacing the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. He emphasised that Act proposes significant changes, including streamlining certain IPC provisions to reduce its length. It also introduces new offenses such as hate speech and terrorism. Additionally, the Act replaces the sedition with a more stringent offence of treason. He described that BNS, 2023, not only replaces the old Penal Code but also consolidates legal provisions making the crimes against women and children to be more stringent for better administration of justice. The passing of the new laws in the words of Hon'ble Prime Minister, Shri Narendra Modi *'is a watershed moment in the history of free India'* and would mark the end of laws of colonial era and beginning of a new era of modernization of our legal, policing and investigative system consistent with the soul of India and also with the greater use of technology and forensic science to bring it at par with that of the most advanced nations of the world. He added further that by pursuing these progressive legislations, we as a nation can work towards a criminal justice system that upholds the rule of law, protects human rights, and effectively serves the needs of its diverse population particularly the poor and the marginalized.

The working sessions on the first day were chaired by Mr. Sakal Bhushan, Advocate, who in his very opening remarks said that he is not here only to address participants but expects questions from them regarding the subject programme. He gave a detailed overview of the additions, deletions, modifications and reorganization of chapters and sections under Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS). The learned resource person lay threadbare and discussed various newly added provisions and those amended provisions for the benefit of the participants. All the sessions remained very interactive during which all the participants actively participated and shared their experiences, difficulties and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the worthy resource person.

