



J&K JUDICIAL ACADEMY

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From the Editor's Desk

"The children of today will make the India of tomorrow. The way we bring them up will determine the future of the country."

Pt. Jawaharlal Nehru

Every year, we celebrate Children's day on 14th November in commemoration of the birth anniversary of our first Prime Minister, Pandit Jawaharlal Nehru who had an impassioned bond, affection, and fondness for children. It is perceived to be an occasion when we redeem our pledge and promise to promote the holistic welfare and development of children, nationwide. Quintessentially, children are a nation's real strength and the foundation of a stable society. They are a significant constituent of our global population and the bedrock of the entire edifice of our future. Therefore, society is under a fundamental and cardinal obligation to ensure that children grow in a healthy social environment secured by robust and blooming interrelationships. In fact, a society's soul is keenly revealed by the way in which it treats its children and the strategic endeavors that it undertakes, to construct their resolute characters embodied with the roots of responsibility and the wings of independence. It is also our prime responsibility to recognize and foster the concept that every child has human rights and these rights should not be denied to them by anybody. Almost simultaneously, we must be alive to the fact that special attention must be given to the problem of child abuse as well as child delinquency, which, unfortunately, has a brooding pervasiveness in our social setup. The Constitution of India in Part III and Part IV provides special provisions for the welfare and protection of children and women, and positive action is expected from the State, as directive principles, for ensuring the best interest of every child. Addressing the issues of Child abuse and Juvenile delinquency and ensuring the welfare of children and their unique requirements of care and protection through comprehensive legislations is only a part of the process of ensuring the best interest of children in line with the mandate of the Constitution of India and the international conventions. As members of civil society, we have a central function in ensuring that our children thrive and develop in a safe and secure environment with a vista of opportunities for wholesome growth and development thereby equipping them for life roles and enabling them to become capable adults and productive citizens. It may be a coincidence that Children's Day is just around the corner and the Hon'ble Juvenile Justice Committee of High Court of Jammu & Kashmir and Ladakh is organizing "Two days State Level Consultation on implementation of POCSO Act, 2012" on the 12th and 13th of November, 2022, in collaboration with UNICEF and Department of Social Welfare, Government of J&K and Ladakh, an initiative that

would go a long way in laying focus on restorative justice and victim-centric approaches specifically in reference to the POCSO Act, 2012.

Guru Rabindranath Tagore had said a century ago *“Every child comes with the message that God is not yet discouraged of Man.”* The gleaming twinkle in the eyes of every child is a reminder to mankind of the bounden duties that have to be performed for ensuring the overall best interest of the children. The evaluative performance indicators in terms of our duties would be the joyous giggles of these little messengers of God and the gleeful innocence on their faces that would be a resounding promise of a resplendent future for our communities in particular and the nation as a whole.



LEGAL JOTTINGS

“To seek to be wiser than the law, it is said, is the very thing by good laws forbidden. Well trodden path is the best path.

M.N. Venkatachaliah, J., In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, para 117

CRIMINAL

SUPREME COURT JUDGMENTS

Criminal Appeal No. 1441 of 2022
The State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai
Decided on: October 31, 2022

Hon’ble Supreme Court Bench comprising Justices DY Chandrachud and Hima Kohli while restoring the conviction in a rape case, prohibited the "Two-Finger Test" in rape cases and warned that persons conducting such tests will be held guilty of misconduct. The Bench further directed to conduct workshops for health providers to communicate appropriate procedure examining survivors of sexual assault. It was observed, *“62. Whether a woman is “habituated to sexual intercourse” or “habitual to sexual intercourse” is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case. The so-called test is based on the incorrect assumption that a sexually active woman cannot be raped. Nothing could be further from the truth – a*

woman’s sexual history is wholly immaterial while adjudicating whether the accused raped her. Further, the probative value of a woman’s testimony does not depend upon her sexual history. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active.”

Criminal Appeal No. 1834/2022
XYZ v. Arun Kumar C.K & Anr.
Decided on: October 21, 2022

Hon’ble Supreme Court Bench of Justices Surya Kant and JB Pardiwala while considering an appeal filed by the mother of a victim in a POCSO case against the Kerala High Court order that granted anticipatory bail to the accused, observed that anticipatory bail cannot be granted merely because custodial interrogation is not required. It was observed, *“In many anticipatory bail matters, we have noticed one common argument being canvassed*

that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

Criminal Appeal No. 1757 of 2022

Lalankumar Singh & Ors v. State of Maharashtra

Decided on: October 11, 2022

Hon'ble Supreme Court bench of Justices BR Gavai and CT Ravi kumar while setting aside a summoning order of a magistrate in a complaint filed under Drugs & Cosmetics Act, 1940 observed that an order of issuance of process is liable to be set aside if no reasons are given while coming to the conclusion that there is a prima facie case against the accused. It was observed, "28. The order of issuance of process is not an empty formality. The

Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt that the order need not contain detailed reasons."

Criminal Appeal No. 1497 of 2022

Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel &Anr.

Decided on: October 11, 2022

Hon'ble Supreme Court Bench of Justices Dr. Dhananjaya Y. Chandrachud and Hima Kohli observed that no offence for dishonor of cheque under Section 138 of the Negotiable Instruments Act is made out if the cheque is presented for the full amount without endorsing the part-payment made by the borrower after the issuance of the cheque. It was held that the sum reflected on the cheque will not be the "legally enforceable debt" as per Section 138 NI Act, when it has been presented for encashment without endorsing the part payment in terms of section 56 of the Act."29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56

of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment."

Special Leave Petition (Criminal) Diary No(S). 8905/2022

Mukesh Singh v. The State Of Uttar Pradesh & Anr

Decided on: September 30, 2022

Hon'ble Supreme Court bench comprising Justices Ajay Rastogi and CT Ravikumar while considering a special leave petition challenging an order granting bail to an accused in a murder case, has reiterated that the chief examination and cross-examination of a witness must be recorded on the same day or the following day. There should be no ground for adjournment in recording the examination-in-chief/cross-examination of the witnesses. It was observed, "*The mandate of law itself postulate that examination-in-chief followed with cross-examination is to be recorded either on the same day or on the day following. In other words, there should not be any ground for adjournment in recording the examination-in-chief/cross-examination of the prosecution witness, as the case may be.*"

HIGH COURT OF J&K AND LADAKH
JUDGMENTS

WP(Crl) No.6/2022

Rupesh Kumar v. UT of Jammu and Kashmir and others

Decided on: October 17, 2022

Hon'ble High Court of Jammu & Kashmir and Ladakh in a petition challenging order passed by the Divisional Commissioner, Jammu whereby he had been

taken into preventive custody in terms of Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, reiterated the procedure that if a person, in respect of whom a detention order has been made, has absconded or is concealing himself so that the order cannot be executed, the Government has to make a report in writing to the Magistrate concerned, where said person ordinarily resides, whereafter action, in terms of Sections 82 to 85 of Cr.PC has to follow and an order has to be notified in the official gazette directing said person to appear before a specified officer at a specified place.

CRAA No. 9900005/2013

State of J&K v. Bansi Lal

Decided on: October 07, 2022

Hon'ble High Court of J&K and Ladakh while considering an acquittal appeal against the judgment of Principal Sessions Judge, Kishtwar, revisited the legal position that the prosecution case cannot be disbelieved only on the ground of defective investigation, provided the prosecution evidence otherwise is credit-worthy and inspires confidence. Hon'ble Court also observed that law with respect to circumstantial evidence is by far crystallized now that the conviction can be sustained on the basis of circumstantial evidence provided there is a complete chain of circumstances leading to the only hypothesis that it was the accused only who has committed the crime and the circumstances are inconsistent with his innocence.



“There is, and can be, no disagreement with the principle that even the humblest citizen of the land, irrespective of his station in life, is entitled to present his case with dignity and is entitled to be heard with courtesy and sympathy. Courts are meant for, and are sustained by, the people and no litigant can be allowed to be looked upon as a supplicant or importuner.”

M.N. Venkatachaliah, J. in Sheela Barse v. Union of India, (1988) 4 SCC 226, para 27

CIVIL

SUPREME COURT JUDGEMENTS

Civil Appeal Nos. 7691 - 7694 of 2022
S. Ramachandra Rao v. S. Nagabhushana Rao & Ors.

Decided on: October 19, 2022

Hon’ble Supreme Court Bench of Justices Dinesh Maheshwari and Aniruddha Bose observed that the doctrine of res judicata is attracted not only in separate subsequent proceedings but also at a subsequent stage of the same proceedings. It was also observed that a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata. It was observed, “10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy 14 that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue if rendered by a Court of competent jurisdiction. Such a binding

decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

Civil Appeal No. 7605 of 2022
Divya v. The National Insurance Co. Ltd. & Anr.

Decided on: October 18, 2022

Hon’ble Supreme Court Bench of Justices BR Gavai and CT Ravikumar observed that while computing motor accident compensation, the multiplier of victims up to the age group of 15 years should be taken as '15'. Referring to **Reshma Kumari & Ors. V. Madan Mohan (2013) 9 SCC 65**, the bench observed: “10.1.4 We are of the considered view that the selection of multiplier '15' for the age group upto 15 years by the three-Judge Bench in Reshma Kumari’s case is having a sound basis. It is common knowledge that the age group of 21 to 25 years is regarded as the commencement of normal productive years as referred specifically by the two-Judge Bench in Sarla Verma’s case at paragraph 3.”

Civil Appeal No. 7203 of 2022
Mahesh Govindji Trivedi v. Bakul Maganlal Vyas & Ors

Decided on: October 12, 2022

Hon’ble Supreme Court Bench of Justices Dinesh Maheshwari and Aniruddha Bose observed that there is no bar in taking on record a counter claim filed long after

filing of written statement but before framing of issues. Referring to Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Ors.: (2020) 2 SCC 394 , it was observe, "14. *In a conspectus of the aforesaid and while proceeding on the fundamental principles that the rules of procedure are intended to sub serve the cause of justice rather than to punish the parties in conduct of their case, we are clearly of the view that the counter-claim in question could not have been removed out of consideration merely because it was presented after a long time since after filing of the written statement.*"

Civil Appeal No. 7145 of 2022

Siravarapu Appa Rao & Ors v. Dokala Appa Rao

Decided On: October 11, 2022

Hon'ble Supreme Court bench of Justices Surya Kant and MM Sundresh while allowing the appeal directed against judgment and order passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh whereby the High Court dismissed the Second Appeal filed by the appellants and held the judgment and decree of the trial court stands nullified by reason of death of one of the plaintiffs and that the suit stood abated, observed that, where there are more than one plaintiffs, the entire suit cannot be held to be abated on the death of one of the plaintiff. Referring to *Delhi Development Authority vs. Diwan Chand Anand and Others, (2022) SCC Online SC 855, it was observed , "9. In our considered view also, where there are more than one plaintiffs, the entire suit cannot be held to be abated on the death of one of the plaintiffs."*

HIGH COURT OF J&K AND LADAKH
JUDGMENTS

**Lpa No.98/2018 C/W Ccp(D)
No.13/2019**

Ghulam Mohammad Shah v. Ghulam Qadir Rather & Ors.

Decided on: October 17, 2022

Hon'ble High Court of J&K and Ladakh while deciding an appeal challenging the judgment/order dated 27.09.2018 passed by the learned Writ Court, relied on the ratio laid down by the Division Bench of the Court in *Wali Mohammad Magrey & anr. Vs. Ali Mohammad Gujree & Ors. (LPA(OW) No.29/2018 decided on 20.12.2021 and observed that even though no period of limitation is prescribed for filing a revision petition against an order of mutation, the same has to be filed within 90 days. It was observed, "16) From the above analysis of law on the subject, it is clear that even if it assumed that no period of limitation is prescribed for invoking revisional jurisdiction against an order of mutation, yet it would not give licence to a party to approach the revisional authority at a time of his choice and the revisional authority cannot exercise its revisional power arbitrarily with inordinate delay."*



ACTIVITIES OF THE ACADEMY

One Day Workshop on “Management of Court Business, Use of ICT, and Maintenance of Files and Record”

One Day Workshop on “*Management of Court Business, Use of ICT, and Maintenance of Files and Record*” was organized by J&K Judicial Academy through virtual mode on 01st October, 2022 for High Court Staff including Bench Secretaries and Dealing Clerks.

Mr. Sobha Ram Gandhi, Registrar Judicial, High Court of Jammu & Kashmir and Ladakh, Jammu Wing and Mr. Anoop Kumar Sharma, Central Project Coordinator e-Courts High Court of J&K and Ladakh were the resource persons in the programme. The Online workshop was moderated by Ms. Swati Gupta, OSD, J&K Judicial Academy.

In his deliberations, Mr. Sobha Ram Gandhi, resource person described the Judicial Staff as the backbone of the Judicial System and emphasised the specific role of Bench Secretaries, Readers, Dealing Clerks and other judicial staff of all ranks in the management of Court Business and maintenance of files and records. He guided the participants on the procedure to be adopted in maintenance of court files and referred to the relevant circulars and orders relating to the subject.

Mr. Anoop Kumar Sharma, resource person discoursed upon the use of ICT in management of court business and gave a PowerPoint presentation on the tools and techniques of Case Information System. He described the implementation of CIS as a pioneering step in efficient management of court working and stressed upon the adoption of ICT tools for maximizing output and productivity.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the

subject topic and raised queries which were satisfactorily settled by the resource person.

One Day Training Programme “Disposal of Criminal Cases through Plea Bargaining, Compounding of Offences and Probation of Offenders Act- in compliance to order of Hon’ble Supreme Court, as contained in Record of Proceedings dated 14th September, 2022 Moto (Criminal Suo) No. 4 of 2021 in Re: Policy Strategy for Grant of Bail with MA 764/2022 in CRL.A. No. 491/2022 and W.P.(CRL.)No. 170/2022”

One Day Training Programme was organized by J&K Judicial Academy on “*Disposal of Criminal Cases through Plea Bargaining, Compounding of Offences and Probation of Offenders Act- in compliance to order of Hon’ble Supreme Court, as contained in Record of Proceedings dated 14th September, 2022 Suo Moto (Criminal) No. 4 of 2021 in Re: Policy Strategy for Grant of Bail with MA 764/2022 in CRL.A. No. 491/2022 and W.P. (CRL.)No. 170/2022*” through physical as well as virtual mode, on 15th October, 2022 for Principal District & Session Judges, Addl. District & Session Judges and Chief Judicial Magistrates of UTs of Jammu & Kashmir and Ladakh. *Hon’ble Mr. Justice Bashir Ahmad Kirmani*, Former *Judge*, High Court of J&K was the resource person in the programme.

In his inaugural address, Hon’ble Mr Justice Javed Iqbal Wani, Judge , High Court of Jammu & Kashmir and Ladakh described the significance of the concept of justice in maintaining a delicate equation between qualitative and speedy justice within the justice delivery mechanism through statutory procedures. He also stated that the triple concepts of Plea Bargaining, Compounding of cases and Probation of

Offenders Act are the alternative modes of dispute resolution in criminal cases which not only play an important role in bringing down the pendency of cases but also afford an opportunity to the offenders to return back to normal life instead of incarceration which is in consonance with the principle of



reformation.

Hon'ble Mr. Justice Bashir Ahmad Kirmani, in his special remarks underscored the importance of the statutory provisions of Plea Bargaining, Compounding of cases and Probation of Offenders Act in clearing the backlog of pending cases in various courts. He also stressed that since the new institution of cases out-numbers the disposal of cases, it is imperative that alternative modes are adopted to lessen the pendency in courts. He also emphasised that the judicial officers must tone-up their abilities and craftsmanship in clearing the backlog yet they must not lose sight of the concept of justice which is the essence of the whole system of administration of justice.

Mr. Shahzad Azeem, Director, J&K Judicial Academy welcomed the participants and gave an overview of the programme. He stated that the present day criminal justice system is severely affected by the inordinate delays and enormous pendency of cases in courts which is a potent factor for the overcrowding of jails and have a cryptic tendency to negatively impact the entire domain of administration of justice. He described the provisions of Plea Bargaining,

Compounding of cases and Probation of Offenders Act, as sure alternative modes for disposal of cases which have the capacity of playing a very decisive role in bringing down the figures of pending cases in the courts.

In the technical sessions, *Justice Bashir Ahmad Kirmani*, resource person deliberated upon the concept & provisions relating to the provisions of Plea Bargaining, Compounding of cases and Probation of Offenders Act and the procedure for disposal of criminal cases by effectuating the provisions in compliance to the directions of the Supreme Court.

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

Two Days Special Programme on Financial Management, preparing Fiscal and Budget Document, Use of E-Commerce Platforms, Public Financial Management System (PFMS), Taxation, Maintaining Financial Records and Audit for AOs/Nazirs of High Court of J&K and Ladakh and Subordinate Courts of both the UTs of J&K and Ladakh

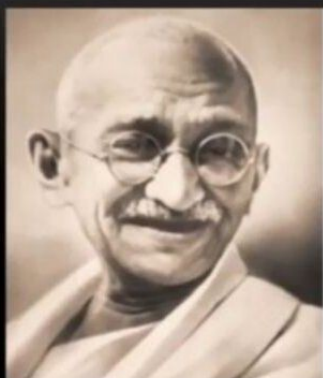
J&K Judicial Academy organised a Two Days Special Programme on "*Financial Management, preparing Fiscal and Budget Document, Use of E-Commerce Platforms, Public Financial Management System (PFMS), Taxation, Maintaining Financial Records and Audit*" on 18th & 19th November, 2022, through physical as well as virtual mode, for AOs/Nazirs of High Court/ Subordinate Courts of UTs of Jammu & Kashmir and Ladakh. Mr. Haroon Ahmed, FA/CAO, High Court of J&K and Ladakh and Mr. Adil Ahmad, Technical Support Engineer, PFMS, Directorate J&K, Srinagar were the

resource persons in the programme. Ms. Swati Gupta, OSD, J&K Judicial Academy moderated the programme.

In the first technical session of the first day of the special training programme, Mr. Haroon Ahmed, resource person deliberated upon the concept relating to General Financial Rules (GFR) and Financial Management in order to manage the finances of an organization in a financially prudent manner. He also discussed the methods of preparing the fiscal and budget document for an effective expenditure management in the organization. In the following technical sessions, Mr. Adil Ahmad, resource person, described the Public Financial Management System (PFMS) as a core banking solution interface that facilitates online validation of beneficiary's bank account details efficiently. He highlighted all the technical

concepts relating to the payments effected through PFMS.

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



2ND OCTOBER

Happy Gandhi Jayanti

FROM O.D.R SYSTEM TO B.D.R SYSTEM: DECENTRALIZATION OF JUSTICE

The Policy Plan for “Online Dispute Resolution” was published in Nov. 2021 titled “Designing the future of Dispute Resolution: The O.D.R policy plan for India.” The preliminary level definition of O.D.R system as envisaged in the Policy Plan of 2021 is the use of information and communication technology (ICT) in resolving disputes. Policy plan observes that O.D.R system doesn't mean just e-A.D.R, but at a more advanced stage, it can work as the fourth party through the use of algorithmic assistance tools, which shall help the parties to find resolution of their disputes and conflicts. Such technology can take the form of intelligent decision support system, smart negotiation tools and automated resolution and machine learning, which has the potential to become a comprehensive system for access to justice.

O.D.R system was born in 1990's with the advent of Internet. O.D.R system no doubt brought an innovation in streamlining the existing alternate dispute resolution procedures but by and large it failed to create any disruptive mechanism having significant and substantial advantage over the existing methods. O.D.R system couldn't become a massive adoption because of its own limitations such as the O.D.R system is contractual and can be only by consent. The O.D.R systems were developed by private companies and had the issue of enforceability of the decisions.

Another limitation of O.D.R system is the issue of trust and confidence. The O.D.R system required a central authority which would ensure the enforceability of decisions and at the same time ensure that the procedures adopted are operated in fair and transparent manner. At the heart of dispute resolution system lies the concept of

legitimacy, which is ultimately premised on trust i.e trust in the system, trust in the process and trust in its fairness. This is where the role of blockchain technology comes handy and gives birth to blockchain based dispute resolution system and may also be referred as B.D.R (Blockchain Dispute Resolution system).

Blockchain technology works on a distributed ledger technology that provides a decentralized network. The network approves the transaction on the basis of consensus and as such is truly democratic and once the transaction is approved, it is nearly impossible to temper with it, as the data is distributed across the network without trusting any single authority to maintain the record of transactions. In short blockchain technology provides a complete decentralized mechanism removing the role of intermediaries with decision making ability in a trustless environment.

The first workable and successful application of blockchain technology happened in the financial sector way back in year 2008, when paper was released by the pseudonym “Satoshi Nakamoto” with the intention of creating a purely peer to peer version of electronic cash which would allow online payments to be sent directly from one party to another without going through a financial institution. (Bitcoin white paper). Bitcoin model is an example of blockchain technology which effectively created an institution with distributed network of anonymous computers with economic incentive to reach consensus. Economic incentive for the participants of decentralized network is in the form of tokens, which are rewarded to them for their work and is commonly known as crypto currency.

Bitcoin model is revolutionary in the sense that it created a system, which operates in a truly democratic manner with consensus of members of the community and in a decentralized manner without the need of any central authority. No doubt this model has its dark side as well and had brought some dangers too, but the design mechanism of Bitcoin model made it possible for the first time to visualize a system with decision making ability in a trustless environment. Bitcoin is simply a public digital payments infrastructure without being controlled or owned by any single entity. The blockchain technology through its bitcoin model has taken the whole World by storm and governments all over the world are trying to understand this new technology.

The same model may also be replicated in dispute resolution systems for the same reasons as it had for its application in the financial sector. O.D.R system with the help of blockchain technology has the potential to create a comprehensive decentralized autonomous dispute resolution institution which can not only bring significant improvement in the existing O.D.R systems but can also mitigate the limitations of our traditional dispute resolution system. Smart contract is a self-executable agreement, when the pre-determined conditions are met, and doesn't need any central authority to enforce it. The design mechanism strikes at creation of disputes and at the same time doesn't require any authority for enforcement as it is automated and self-executable on the pre-determined conditions.

Smart contracts are smart enough to self-execute as programmed in accordance with the pre-determined conditions, but one important limitation of smart contract is

that it can't be deployed to resolve a dispute or ambiguity, where subjectivity and interpretation of rules is involved. This is where the role of DAO (Decentralized Autonomous Organization) comes into play.

Decentralized Autonomous Organisation (DAO) is a collection of smart contracts bound together to form a digital organization which operates according to the rules and procedures. The decision making process is encoded directly in computer code and deployed on a decentralized network of computers, where the members participate in the decision making process through incentivized coherent voting.

Critical and important feature of a robust dispute resolution system is its ability to reach at true and just decisions. Any court which frequently convicts an innocent and exonerates guilty by its decision making process would fail to earn faith and respect from its subjects. Ability to reach at just and true decision is a hallmark of the judicial process.

The other equally important features of a court system is its efficiency in reaching to the just and true decisions and adherence of ethical principles in decision making process. Efficiency is about cost and speed of decision making process and ethics is about the fair decision making process without any discrimination on the basis of caste, sex, color, region, religion etc.

The characteristic feature of the dispute resolution system built on blockchain as decentralized autonomous organization are: (a). Decision making process is encoded and as such is immune from external influences. Decision making process in a DAO shall be in accordance to the rules and regulations encoded leaving absolutely no chance to influence the final

outcome. (b). The rules and regulations can't be changed unilaterally by anyone as the design of the system is decentralized and change in the rules can only be by consensus. And (c) The entire process is automated, anonymous and immutable leaving no scope for creating any privilege, bias against or favor for anyone.

In traditional dispute resolution system, it is an expectation of the society that the decision making process and the decision maker shall act impartially and honestly. Despite codification of ethical principles, it is still in the hands of the decision maker as to whether he/she decides in accordance with the expectations of the society and in accordance with the ethical principles. Whereas B.D.R (blockchain dispute resolution) system is by its design honest and impartial leaving no room for creation of special rights for special persons.

"Kleros" protocol (Klerous Website) founded in 2017 is one decentralized application built on the top of Ethereum blockchain. Klerous is a decision protocol for a multipurpose court system able to solve every kind of dispute. It is an Ethereum autonomous organization that works as a decentralized third party to arbitrate disputes in every kind of contract, from very simple to highly complex ones. Every step of the arbitration process (securing evidence, selecting jurors etc) is fully automated. Klerous doesn't rely on the honesty of few individuals but on game-theoretical economic incentives. (White paper of Klerous).

Klerous is based on the fundamental insight from legal epistemology: a court is an epistemic engine, a tool for ferreting out the truth about events from a confusing array of clues. An agent (Jury) follows a

procedure wherein an input (evidence) is used to produce an output (decision). Klerous leverages the technologies of crowd sourcing, blockchain and game theory to develop a justice system that produces true decisions in a secure and inexpensive manner. (White paper of Klerous).

The combination of features of O.D.R system and blockchain technology has the potential to create a comprehensive decentralized dispute resolution system which may be compatible with the realities of the modern digital world. The phenomenon of internet is global. The traditional dispute resolution systems founded on the basis of geographic divisions of the world into political nations states is not fit and compatible enough for today's digital world. No doubt that the technology is not yet ready to answer all the questions, but it is our best hope for fixing the fallacies of our times. Dark and evil side of this technology may be taken care of by a calibrated and appropriate legal framework in consultation with the stake holders.

***-Contributed by:
Sh. Jahangir Ahmad Bakshi
Sub-Judge/ Special Mobile
Magistrate, Budgam.***

