SJA e-NEWSLETTER

Official Newsletter of Jammu & Kashmir Judicial Academy
(For internal circulation only)

Volume 3 | Monthly | August 2020

Contents

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From the Editor's Desk

A judge's job is inherently stressful. Decision making is only one of the many stressful pursuits of a judge. A judge performs judicial and administrative functions, and from that perspective he needs to have judicial and managerial capabilities. He has to manage the men and resources at his disposal and under his control, apart from dealing with persons and processes integral to justice delivery system but not entirely at his disposal and under his control. These multifarious functions of a judge add up to the stress generated by the core judicial function of judging. In the pure judicial function, a judge is required to do a lot of mental exertion, in that he has to continuously update his knowledge of law by reading a lot of legal literature. Though, digital world has made the process of information collection a lot easy but the kind of vast information a judge has to process in the course of justice delivery, requires him to toil hard. Then he is required to continuously follow the judicial precedents flowing from the constitutional courts. Many a online legal blogs come out with analysis of judicial precedents by law professionals of regular basis, however that also requires on daily basis to visit these blogs or follow their notifications pushed on the computer and mobile devices. Another important work for a judge, associated with reading legal blogs is to maintain a personal diary compiling the judicial precedents in a sequence. Doing this on regular basis makes the job of a judge easy but nonetheless it is more stressful to begin with. At the time of applying law to the facts presented before the court, a judge is required to search his personal diaries or to search online legal databases or to pick up law digests and commentaries from the book-shelves. Personal dairies regularly updated come very handy in such times. Dependable personal notes would make the job easy for a judge thereby reducing the stress in one part of judicial process. Dealing with manpower and available resources involves management skills. Different management skills are required to deal with men and resources at various levels. Learning management skills therefore, becomes essential to the non-core judicial functions. Dealing with many stakeholders in the justice delivery system, not entirely under the control of the presiding judge of a court, is also a considerable stressful factor. How these stakeholders would support the efforts of the court to dispense justice, is not entirely the domain of a judge. Better the quality of support from the other stakeholders, better would be the quality of justice dispensation. Wholehearted support in all time cannot be expected but coordinated efforts and developing a professional culture among these stakeholders make the things easy for the court and more for the judge. Advocates are important and inseparable component of any judicial system. They are considered to be the officers of the court and are expected to always behave ethically and with professional excellence. Counsel appearing in a case before the court are expected to render assistance to the court with a view to help the court in arriving at a just conclusion of any lis. This culture, however, is seen rare. Professional competence of a lawyer does not always translate into quality assistance rendered to the court. Developing a truly professional culture among lawyers would also make the job of a judge smooth. In all, working of judge is not dependent purely on his competence but is greatly affected by many outside factors. Skill and managerial capabilities, however, help in putting the things in a better order and thereby utilize the available resources to an optimum. Better skills and management capabilities help streamlining the court processes and reduce the stress of a judge substantially.

LEGAL JOTTINGS

"We expect members of the noble fraternity to respect themselves first. They are an intellectual class of the society. What may be proper for others may still be improper for them, the expectations from them is to be exemplary to the entire society, then only the dignity of noble profession and judicial system can be protected."

Arun Mishra J. ***in Reepak Kansal v. Secretary General, Supreme Court of India & Ors. Writ Petition (Civil) No.541 of 2020, decided on July, 2020***

CRIMINAL

Supreme Court Judgments

Special Leave to Appeal (Crl.) No. 2787/2020
Satyabrat Gupta v. The State of Jharkhand
Decided on: July 29, 2020

The Supreme Court in this case reiterated the legal position and confirmed the view taken by the High Court that in a case involving charges under the Prevention of Corruption Act and Indian Penal Code, if sanction is not forthcoming in the former charge, prosecution can continue in the later in case sanction relates to that charge. Sanction not granted in the P.C. Act is no bar to proceed with offence under IPC if sanction in that respect is granted by the sanctioning authority.

Criminal Appeal No. 283 of 2011
Parminder Kaur @ P.P Kaur@ Soni v. State of Punjab.
Decided on: July 28, 2020

A complaint was filed under sections 366A and 506 of IPC by the prosecutrix alleging that the appellant who lives with her child, mother and a boy who was a tenant in her house enticed her to indulge into the illicit intercourse with the boy. During the trial the appellant denied the allegations and gave an alternate version in her statement u/s 313 of CrPC.

The Supreme Court noted that under Criminal Procedure Code, after the closure of prosecution evidence and examination of all witnesses the accused is given an opportunity of explanation through section 313(1) (b) of the Code. Any alternate version of the events and interpretations offered by the accused must be carefully analysed and considered by the trial court in compliance of section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider the defence, could endanger the conviction itself. Unlike the prosecution which needs to prove the case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probability. Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defence plea.

The Hon'ble Supreme Court set aside the order of the High Court and the trial court holding that the prosecution had failed to prove the guilt of the appellant under section 366A and 506 of IPC beyond reasonable doubt.

Criminal Appeal No. 2463 of 2014
Shailendra Swarup v. The Deputy Director, Enforcement Directorate
Decided on: July 27, 2020

The Supreme Court in this case held that the liability to proceed with for offence under Section 68 of Foreign Exchange Regulation Act (FERA) depends on the role one plays in the affairs of the company and not on mere designation or status. For a Director's lability to arise, it must be made out that at the time of commission of offence, the Director was in charge of and was responsible to the company for conduct of the business of the company.

In this case, the Enforcement Directorate had issued a show cause notice to the appellant who happened to be a practicing

advocate. He responded to the notice stating that he was only a part time non-executive director of the company and had no role in day to day affairs of the company.

The Supreme Court considered the issue by referring to case law S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, handed down in terms of Section 141 of N.I. Act. The Court drew parity between the two provisions and held that the Enforcement Directorate was not right in fixing the liability of the appellant in the wake of material to suggest that the appellant was only a part time, non-executive director of the company. The Adjudicating Officer imposed the penalty without returning a finding that the appellant was liable for contravention of Section 8(3), 8(4) and Section 68 of the FERA. The Court allowed the appeal and quashed the order of the Adjudicating Officer.

CA No. 20825-20826 of 2017
Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal
Date of Decision: July 14, 2020

In this Reference regarding interpretation of Section 65B of the Evidence Act i.e. admissibility of electronic records, the Hon'ble Supreme Court held that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record. The verdict has reiterated the position held by the 3-judges bench in Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473, and held the division bench ruling in Shafhi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801, as not the good law. However, it was clarified that when original document itself is produced; certificate is not required.

This reference pertained to the July 26, 2019 order, in which, after quoting Anvar P.V. v. P.K. Basheer, it was observed that a Division Bench judgment in Shafhi Mohammad v. State of Himachal Pradesh may need reconsideration by a larger Bench. In 'Shafhi Mohammad', it was "clarified" that the requirement of certificate under Section 64B(4), being procedural, may be dispensed with by the Court wherever the interest of justice so requires, and one such circumstance in which the interest of justice so justifies would be where the electronic device is produced by a party who is not in possession of such device, due to which such party is unable to secure the certificate.

The 3-judge bench, observed:

"the major premise of Shafhi Mohammad (supra) that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B(4) in cases in which such person refuses to give it."

Moreover, the Bench clarified that the last sentence in Anvar P.V. case which reads as "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…" is to be read without the words "under Section 62 of the Evidence Act, …"

On the question pertaining to the stage at which the certificate is to be furnished to the Court, the bench noted that Section 65B does not specify the stage for this purpose. In cases where such certificate could be procured by the person seeking to rely upon an electronic record, such certificate must accompany the electronic record when the same is produced in evidence. However, in cases where certificate is defective, or where such certificate has been demanded but not furnished by the concerned person, the Judge conducting the trial must summon the person(s) referred to in Section 65B(4) of the Evidence Act, and require that such certificate be given by such person(s). This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the aforementioned circumstances. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case.

As regards criminal cases, the Court observed as under:

"When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents

that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC."

The bench also issued general directions to cellular companies and ISPs to maintain CDRs and other relevant records of such period in accordance with Section 39 of the Evidence Act, in a segregated and secure manner in case a particular CDR or other record is seized during investigation in the said period. Concerned parties can then summon such records at the stage of defence evidence, or in the event such data is required to cross-examine a particular witness. This direction shall apply in criminal trials till appropriate directions are issued under relevant terms of the applicable licenses, or under Section 67C of the IT Act.

J&K High Court Judgments

Case No: CRR NO.29/2013
Drug Inspector Zone-I Jammu v. S.K. Khanna and Anr.
Decided in July 03, 2020.

In this revision petition, an order of dismissal of complaint passed by the trial magistrate on account of non-appearance of Drog Inspector, was sought to be quashed. The respondents were alleged to have committed offences under sections 18(a)(i), 18(c) read with section 27 of the Drugs and Cosmetics Act, 1940.

The High Court considered the case in the backdrop of applicability or otherwise of the amended provision viz. Section 32(2) of the Drugs and Cosmetics Act, 1940, which provides:

"Save as otherwise provided in this Act, no court inferior to that of a Court of Sessions shall try an offence punishable under this Chapter."

The High Court observed that the above-mentioned amendment relates only to the change of forum and cannot be said to be invasion of any of the rights of the respondents. Law being settled on this point that where there is a change in law of forum or procedure, it operates retrospectively unless otherwise specifically provided for. The High Court relied on Hitendra Vishnu Thakur v. State of Maharastra in which the Supreme Court has laid down certain principles for determining as to when an Amendment Act operates retrospectively. Applying the principles laid down in the said judgment of the Supreme Court to the instant case, the High Court held that the trial magistrate has acted without jurisdiction, illegally and irregularly abusing the process of court. It was observed by the Court that amended provision became applicable in the year 2009, however the complaint before the magistrate continued till 2012 when it came to be dismissed for non-appearance of the complainant. The magistrate had lost jurisdiction to proceed in the complaint after the amended provision came into force in the year 2009. All the acts were without jurisdiction, thus the Court quashed the impugned order.

CRM (M) No. 509/2019
Ajaz Yousaf v. Faiz-Ul-Rehman
Date of Decision: July 07, 2020

Cognizance taken by the Chief Judicial Magistrate, under Section 138 of the Negotiable Instruments Act,1881, in a complaint filed by the respondent/complainant against the petitioner, alleging that the petitioner had issued three cheques as one of the Directors of the Company in favor of the petitioner. However, the cheques had returned unpaid.

The Hon'ble High Court held that it is well settled position of law under section 141 of the N.I.Act,1881 that if the person committing an offence under section 138 is a company, every person, who at the time when the offence was committed was incharge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. The complaint against the petitioner was, therefore, not maintainable without the company being arrayed as an accused in the complaint. The petitioner had signed the cheques as a Director of the company and not personally. It is necessary to arraign the company as an accused in the complaint. Hence, the pending complaint proceedings quashed.

"A decision which curtails fundamental rights without appropriate justification will be classified as disproportionate. The concept of proportionality requires a restriction to be tailored in accordance with the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed."

N.V. Ramana, J. ***in Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, para 80***

CIVIL

Supreme Court Judgments

Civil Appeals NO: 6932 of 2015
The Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch & Ors.
Decided on: July 14, 2020

The case at hand involves a road accident that took place on the 6th of June, 2013, when one Vishakha Wadekar, was driving her car with her young daughter, on the National Highway. She had no inkling that danger lurked round the corner of the highway an over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter.

The National Highways Authority of India (hereafter "NHAI") had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd (which is arrayed as the ninth respondent; PS Toll Road (Pvt.) Ltd. hereafter referred to as "the concessionaire") on 10.03.2010 for the maintenance and operation of the Pune-Satara section of National Highway No. 4, to an extent of 140 kms and included construction of the project (i.e. the highway stretch) as well as its operation and maintenance for a period of 24 years. As per the relevant clauses of the agreement,

The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways the expenditure for which was to be borne by the concessionaire, besides an elaborate highway monitoring mechanism had to be in place through an independent engineer who was to furnish a report after due inspection, containing defects or deficiencies.

Additionally, the independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards.

Other stipulations included, inter alia, requirements that the concessionaire had to carry out remedial measures within a period of 15 days after receipt of the report of the independent engineer.

The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages.

Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including "unusual occurrences on the Project Highway" such as death or injury to any person (any obstruction, or "flooding of Project Highway".

Soon after the incident, the Lokmanch, through its president, filed an application under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by the contractor for mining. Besides, general relief by way of directions to

other respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

The NGT, in its impugned order held the respondents liable including the contractor as well as the NHAI for having done the mining of the hill illegally, beyond the permissible limits and that NHAI had been negligent in taking the safety measures and monitoring the work of the mining, which led to the loosening of the road and consequently to the accident.

Pursuant to NGTs directions Maharashtra Govt. issued a circular under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

Both, the general directions of NGT, against the respondents as well as the above mentioned circulars were challenged by respondents before the High Court which upheld the order of the NGT, hence they approached the Supreme Court.

The Supreme Court culled out the following four Issues and held:

i) Jurisdiction of NGT: The Hon'ble Supreme Court made an in depth examination of the relevant provisions of NGT Act as well as all those Acts given in its Schedule I, and the compensation Provisions given under Schedule II, as also of the precedents laid down by the Apex Court in a slew of judgments viz; Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496; Jitendre Singh vs Ministry of Environment, 2019, SCC OnLine SC 1510; State of Tamil Nadu v. M/s. Hind Stone & Ors(1981) 2, SCC 205; Lafarge Umiam Mining (Pvt.) Ltd. v. Union of India & Ors, (2011) 7, SCC 338; State of Meghalaya and Ors. v. All Dimasa Students Union, Dima-Hasao District Committee & Ors. (2019) 8, SCC 177; M.C. Mehta v. Union of India. (2004) 12, SCC 118.

The Supreme Court held that the NGT has the power to make directions and provide for "restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit.

ii) Compensation: After analyzing the factual position, and the provisions of National highways Act of 1956, and the various case laws both in India and Common Law, viz. Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum. (1997) 9, SCC 552; Griffiths v. Liverpool Corporation, (1967) 1, Q.B. 374; Haydon v. Kent County Council, (1978) Q.B. 343; Yetkin v. Mahmood, (2011) Q.B. 827; Vadodara Municipal Corporation v Purshottam V. Muranji,(2014) 16 SCC 14, the Supreme Court held that Courts have always followed the approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency.

iii) Issues regarding Correctness of NGT's directions to Mahrashtra Govt. under Para 17(e) of the impugned order: as regards these issues as well, after through consideration of the MRTP Act and the case laws, viz; All Dimasa Student Union case (2019) 8, SCC 177; Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011; PTC India v. Central Electricity Regulatory Commission, (2010)4 SCC 603; The court came to the conclusion that the power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutary, in the sense of restoring the environment to the position it was before the practice impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the

nature of the abusive practice, its powers can also be preventive.

iv) Issue regarding circular and the legality of the order/notification of the state of Maharashtra, issued under Section 154, MRTP Act: Consequently the notification issued by Mahrashtra Govt. pursuant to the directions of NGT in para 17 (e) were also set aside, quashing the order of the Bombay High Court as well to that extent.

Hence the appeals were partly allowed.

Civil Appeal Nos.1021-1026 of 2013
V. Kalyanaswamy (D) By Lrs. & Anr. v. L. Bakthavatsalam(D) By Lrs. & Ors.
Decided on: July 17, 2020

In these petitions, the Hon'ble Supreme Court dealt with a bunch of civil appeals. The point of law involved in these appeals pertained to Section 14(1) of the Hindu Succession Act.

The Hon'ble Supreme Court referred to the case of Mangal Singh and Others v. Smt. Rattno (Dead) by her legal representatives and another reported in AIR 1967 SC 1786, and quoted as follows: -

"It was urged on behalf of the appellants that, in order to attract the provisions of S.14(1) of the Act, it must be shown that the female Hindu was either in actual physical possession, or constructive possession of the disputed property. On the other side, it was urged that even if a female Hindu be, in fact, out of actual possession, the property must be held to be possessed by her, if her ownership rights in that property still exist and, in exercise of those ownership rights, she is capable of obtaining actual possession of it. It appears to us that, on the language used in S.14(1) of the Act, the latter interpretation must be accepted."

Noticing Section 14 (1) of the Act and that it covered property possessed by a female Hindu whether acquired before or after the commencement of the Act the Court proceeded to explain the circumstances in which the decision in Kotturuswami case was rendered. And thereafter the Court laid down as follows:

The Hon'ble Supreme Court also referred to a recent judgement Shyam Narayan Sigh and Ors. v. Rama Kant Singh and Ors. reported in 2018(1) RCR (Civil)981 wherein the Hon'ble Supreme Court held inter alia as follows:

"In other words, all that has to be shown by her is that she had acquired the property and that she was 'possessed' of the property at the point of time when her title was called into question".

Finally, the appeal was dismissed as the appellants entire case was based on A. Alagiriswami having rights in the property. The Court held that A. Alagiriswami has no rights in the property. The arguments based on the compromise Decree in O.S. No. 71 of 1958, barring the Lakshmiah branch from questioning the partition or the Will, cannot be upheld. Insofar as we have held that R. Krishnammal had become the absolute owner under Section 14(1) of the Hindu Succession Act, and having regard to the compromise Decree in O.S. No. 71 of 1958 by which she had given-up all her rights in favour of the respondents, no right vested with A. Alagiriswami which he could have passed to the appellants. The contention that there was no challenge to the sale deeds, may not advance the case of the appellants.

Civil Appeal No. 9519 of 2019
Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)(D) Thr Lrs & Ors.
Decided on: July 09, 2020

The present Civil Appeal has been filed to challenge the impugned Judgment and Order passed by a Division Bench of the Gujarat High Court, which affirmed the Order of the Trial Court, allowing the application

filed under Order VII Rule 11(d), CPC holding that the suit filed by the Appellant and Respondent Nos. 9 to 13 was barred by limitation.

The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

The Supreme Court held that the delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963.

The Plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is, therefore, liable to be rejected under Order VII Rule 11 (d) of CPC. Reliance is placed on the recent judgment of this Court rendered in Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs., wherein the Court has held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

Therefore, the Court dismissed the appeal with costs of Rs. 1,00,000/- payable by the Appellant to Respondent Nos. 2 and 3, within a period of twelve weeks.

Civil Appeal Nos. 2811-2812 of 2020
Erudhaya Priya v. State Express Transport Corporation Ltd.
Decided on: July 27, 2020

In this petition, the Hon'ble Supreme Court widened the concept of multiplier method in motor accident claims and added certain considerations to it.

The Hon'ble Supreme Court relied on National Insurance Company Limited v. Pranay Sethi and Ors., (2017) 16 SCC 680. In para 42 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt) and Others. v. Delhi Transport Corporation and Anr., (2009) 6 SCC 121. In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability. Accordingly, the multiplier applied in the case of the appellant was '18' and not 17.

The Hon'ble Supreme Court also referred to the case of Jagdish v. Mohan & Others (2018) 4 SCC 571, and placed reliance on the following para 8 of the judgement;

8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

(i) Pain, suffering and trauma resulting from the accident;

(ii) Loss of income including future income;

(iii) The inability of the victim to lead a normal life together with its amenities;

(iv) Medical expenses including those that the victim may be required to undertake in future; and

(v) Loss of expectation of life."

Another important decision considered by the Hon'ble Supreme Court was Sandeep Khanuja v. Atul Dande & Anr., (2017) 3 SCC 351, wherein it has been expressly laid down that "while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration."

Thus, the appeals were allowed and the compensation was enhanced to the tune of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.

Civil Appeal No. 2705 of 2020

United India Insurance Co. Ltd. v. Satinder Kaur and Ors.
Decided on: June 30, 2020

The Court held that compensation towards 'loss of love and affection' is not to be awarded as a separate head. It comes within the ambit of compensation for 'loss of consortium'

Further, the Court reiterated the relevant principles evolved by judicial dicta, for assessment of compensation in cases of death. The criteria which are to be taken into consideration for assessing compensation in the case of death are: (i) the age of the deceased at the time of his death; (ii) the number of dependants left behind by the deceased; and (iii) the income of the deceased at the time of his death. To arrive at the loss of dependency, three factors are to be taken into consideration:- i) Additions/deductions to be made for arriving at the income; ii) The deduction to be made towards the personal living expenses of the deceased; and iii) The multiplier to be applied with reference to the age of the deceased. Furthermore, the Court reiterated that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses.

J&K High Court Judgments

MA No. 291/2012 with connected matters
New India Assurance Co. Ltd. v. Usha Baloria & Ors.
Decided on: July 24, 2020

In this set of appeals, the common questions raised before the Hon'ble High Court were:

1. Whether the amount of family pension payable to the family of the deceased Government employee for any period, which is equivalent to the last pay drawn, is deductible from the amount of compensation payable to the dependents on account of death of the employee in a motor accident case? If the answer to the question is in positive; how to deal with that amount?

2. Whether income tax has to be deducted out of the salary payable to an employee for the purpose of assessment of compensation?

3. Whether the claimants can seek enhancement of compensation without filing appeal or cross objections independently, merely in an appeal filed by the Insurance Company or owner/driver of the vehicle? If answer to the above question is in negative, whether the claimants can argue to sustain the award on grounds other than dealt with by the Tribunal or decided against them?

4. Whether the Insurance Company can be permitted to raise arguments in an appeal against the award of the Motor Accidents Claims Tribunal, which were not specifically raised before the Tribunal?

As to the question No. 1, the Court observed that:

"The actual amount of family pension equivalent to the salary of the deceased employee for a period of seven years or till the date of superannuation as the case may be, if received by the family of the deceased will be deductible from the amount of compensation assessed. As in the case in hand as well, there is nothing on record to suggest whether the amount has been received or not and the amount thereof, it is directed that the amount of compensation payable to the claimant will depend upon their filing affidavit to the effect that they have or have not received the amount of family pension equivalent to the salary, the amount thereof, if received and if not received a statement that they will not claim the same from the State. The exact amount received/receivable shall be deductible from the compensation assessed. The actual amount of family pension equivalent to the salary of the deceased employee for a period of seven years or till the date of

superannuation as the case may be, if received by the family of the deceased will be deductible from the amount of compensation assessed. As in the case in hand as well, there is nothing on record to suggest whether the amount has been received or not and the amount thereof, it is directed that the amount of compensation payable to the claimant will depend upon their filing affidavit to the effect that they have or have not received the amount of family pension equivalent to the salary, the amount thereof, if received and if not received a statement that they will not claim the same from the State. The exact amount received/receivable shall be deductible from the compensation assessed."

While dealing with question No. 2, the Court observed that:

"Answer to the question being already available in view of judgment of Hon'ble the Supreme Court in the case of Vimal Kanwar and others case, that while calculating the amount of compensation under the Motor Vehicle Act, income tax has to be reduced out of the income of the deceased, no further opinion can be expressed on the issue by this Court. However, in a glaring case, where the claimants claim huge income of the deceased and the compensation is assessed on the basis thereof without taking care of income tax, the issue can be permitted to be raised even in appeal".

It was further directed that in future wherever income certificate of an employee either in government or public or private sector is produced before the court in the matters where compensation is to be assessed on the basis thereof, the employer shall be duty bound to mention the amount of TDS in the certificate so issued and even the Courts/Tribunals shall also be duty bound to ensure the same before taking the same in evidence.

As to the question No. 3, the Court observed that:

"In an appeal filed by the insurance company seeking setting aside of award or reduction of compensation, the amount of compensation granted to the claimants cannot be increased further, however, the award can be maintained on other grounds."

While deciding question No. 4, the Court ruled that, any of the parties have a right to raise all issues on facts and law for re-appraisal by the first appellate court on the basis of the evidence already on record.

Viewed thus, the Court directed modification of the awards of the Tribunal in terms of the findings recorded on the issues framed. Court further held that "Where no appeal or cross objections have been filed by the claimants, they will not be entitled to enhancement of compensation, even if as per law the amount calculated is more than the amount awarded by the Tribunal. However, if after recalculation or re-adjustment the final amount comes out to be same or more, as compared to the amount awarded by the Tribunal, the same shall not be reduced in the appeals filed by the insurance company." Regarding grant of interest, the Court directed that claimants in all appeals shall be entitled to interest, as awarded by Tribunal, from the date of filing of the application and not from the date of passing of award.

Hon'ble court further directed that "the counsel for the insurance company or the owner and driver and wherever possible the counsels for the claimants shall inform the Court about all the cases which arises out of same accident or involve same legal issue. This shall not be limited to cases filed in this Court but also before the Motor Accident Claims Tribunal. This should not be limited to motor accident claim cases but all category of cases. Court should even be apprised of the factum of pendency of similar matter before other bench of this Court as well".

CSA No.01/2013

Omkar Singh Wazir v. Vijay Kumar Gupta & Anr.

Decided on: July 07, 2020

Writ jurisdiction of the Court under Article 227 of Constitution of India was invoked by the petitioner for setting aside order dated 31.01.2020 passed by the trial court, on the grounds that the impugned order is unjust, erroneous, illegal and has resulted in manifest injustice. An application was filed on 17.01.2020 by the petitioner seeking permission to set aside the ex-parte proceedings initiated against him and the same was dismissed vide order dated 31.01.2020

The court held that the power under Article-227 of the Constitution of India vested in the Court is to be exercised most sparingly in appropriate cases and is not to be used to correct error or otherwise. Since the trial Court has neither acted in excess of its jurisdiction nor exercised jurisdiction which is not vested in it nor does the order suffers from any bias or error of law which has resulted in miscarriage of justice. While considering the application of the petitioner for setting aside the order, the trial court has rightly dismissed the application of the petitioner. Accordingly, the petition was dismissed by the Court.

MA No. 224/2015

Hardev Singh and others v. Rajinder Singh and Others

Decided on: July 21, 2020

The present appeal is filed by the claimants against the award passed by the Motor Accident Claims Tribunal, to be paid by the insurance company. However, the claimants being dissatisfied with the amount of compensation awarded, sought the enhancement by way of present appeal on major ground that the Tribunal has committed a serious error in adopting the applicable multiplier with reference to the age of the claimants, whereas the same was required to be adopted keeping in view the age of the deceased.

The Hon'ble Court observed that the tribunal has erred in applying the multiplier with reference to the age of the claimant. Court held that the applicable multiplier, to be adopted for assessment of compensation, must be with reference to the age of the deceased and not the claimants. The Hon'ble Court relied upon the Judgments of Hon'ble the Supreme Court rendered in the cases of Sarla Verma and others v. Delhi Transport Corporation and Anr., (2009) 6 SCC 121 and National Insurance Company Ltd. v. Pranay Sethi and Ors., AIR 2017 SC 5157, which are clear on the said point that the multiplied has to be taken according to the age of the deceased and the applicability of the multiplier by the Tribunal according to the age of the claimants was erroneous.

CR 42/2020

Daljit Singh v. Gurnaam Singh and Others

Decided on: July 13, 2020

The petitioner-plaintiff has filed a suit for declaration that the agreement to sell executed in favor of respondent – defendant is null and void and inoperative qua him. The petitioner also sought a consequential relief of injunction restraining the respondents from interfering in any manner in the peaceful possession of the plaintiff over the suit land.

The trial Court at the time of entertaining the suit and issuing of summons to respondents, by way of interim relief, directed the parties to maintain status quo respect to the subject matter of the suit and the said order was valid till next date of hearing and was made subject to the objections from the respondents. The respondent filed written statement and an application for vacation of interim order of status quo. While the suit was pending before

the trial court, the petitioner filed an application seeking a direction to SHO to implement the interim order passed by the trial court in its letter and spirit.

The trial court took note of the allegations and dismissed the said application on the ground that the suit was based on the agreement to sell and as per endorsements made at the back of the agreement to sell, the petitioner has taken full and final payment and delivered the possession to the respondent. This order of the trial court was challenged invoking the supervisory jurisdiction of the Hon'ble High Court vested under Article 227 of the Constitution.

The High Court ruled that the trial court committed an error by adjudicating upon the merits of controversy raised in the suit while deciding the application seeking compliance of its interim order of status quo. The order was indeed an interim order subject to modification, vacation, and variation on motion by the respondents. As respondents have filed their written statement as also an application for vacation of the interim order of status quo. Thus, the Hon'ble High Court held that in disputes with regard to the factum of possession, the order of status quo has the potential of engaging the parties to commit a breach of peace on spot and in the eventuality, the order to police to ensure compliance of the interim directions may be called for.

M.A. No:231/2016
National Insurance Company Ltd v. Purna Devi And Ors
Decided on: July 18, 2020

Insurer has filed an appeal against the judgment and award of the MACT, Kishtwar in which the tribunal had awarded the respondent Nos. 1 to 3 the compensation of Rs. 19,66,928/- along with interest @ 7.5% per annum.

The Hon'ble High Court Observed that, only the minor is entitled to parental consortium (citing Magma General and Satinder Kour Cases), and wife was entitled to spousal consortium that too at fixed rate of Rs. 40,000/-. Loss of estate and funeral expenses were payable at Rs 15000/- each in accordance with Pranay Sethi's case.

The Hon'ble Court, in respect of payment of interest, further held that it is the established principle of law that party who is at fault cannot be permitted to take advantage of that fault. The claimant should not be entitled to interest for the period from June 2013 to February 2016 for which the claimant was responsible for causing delay by filing transfer petition and later withdrew that petition.

The Hon'ble High Court partly allowed the appeal and modified the amount of compensation from Rs. 19,66,928/- to Rs.19,11,928/-.

CFA No. 03/2008
Gurdas Ram & others v. Surjeet Singh Khurana & others
Decided on: July 16, 2020

This is an appeal under Section 39 of the Jammu and Kashmir Arbitration Act Svt. 2002 (1945 A. D). Appellants are aggrieved by the judgment and decree passed by the Additional District Judge, Jammu who has rejected the objections filed by the appellants under Sections 30 and 33 of the Arbitration Act and made the award dated 31.05.2001 by Mr. Justice K. K. Gupta, former Judge of the High Court as rule of the court vide judgment dated 30.10.2007.

Hon'ble High Court held that since the award in this case is a non-speaking award, therefore, the argument that there is no decision on the issues framed has been rightly rejected by the trial Court. The trial Court has, thus, dealt with every argument put forward on behalf of the appellants before making the award rule of the Court as

there is not even a whisper as to how the trial court acted unreasonably or capriciously or has ignored the relevant facts in the absence of which this Court is unable to interfere in the exercises of its discretion in view of the law laid down in Uttar Pradesh Co-operative Federation Ltd. v.. Sunder Bros. of Delhi, AIR 1967 SC 249, holding that:

"It is well-established that where the discretion vested in the Court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the, appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion."

The trial court after having considered each and every argument advanced before it and while considering the grounds available to the appellants under section 33 of the Arbitration has recorded finding rightly and also reached the conclusion correctly, hence, this appeal is dismissed being without any merit without any order as to costs.

MA No. 270/2009

National Insurance Company Ltd. v. Paramjeet Kour and Others.
Decided on: July 16, 2020

Aggrieved by the award passed by the Motor Accidental Claim Tribunal, Jammu for an amount of Rs 20,21,760/- along with interest at the rate of 7.5% per annum from the date of institution of claim petition, the insurance company filed the appeal against the said award on the ground that as per "Smt . Sarla Verma & Ors v. Delhi Transport Corporation and Anr , 2009 (3) Supreme 487 and "National Insurance Company Ltd v. Pranay Sethi & ors" (2017) 16 SCC 680, in view of five dependants, the Tribunal has not made proper deduction as one fourth from the salary of the deceased instead one third deduction has been made. In the aforesaid appeal the deceased was serving in Indian Army as L/Naik having monthly salary of Rs 7898/- and was 27 years of age at the time of accident. The deceased was survived by five dependants. As per the law laid down by the aforesaid judgements, instead of one third deduction made from the salary, one fourth deduction was made for the purposes of assessment of compensation and award is modified to Rs 18,12,540/-. In addition to aforesaid amount, Rs 40,000/- is further granted as loss of spousal consortium to wife and Rs 40,000/- each is further awarded as loss to parental consortium to minor sons with an additional amount of Rs 15,000/- each as funeral expenses and loss of estate respectively. The total award of Rs 19,62,540/- along with interest at the rate of 7.5% per annum from the date of institution of the claim petition till its realization is awarded in favour of the claimants and award of Tribunal is modified.

The cross appeal was filed by the claimants on the ground that the deceased could have attained a high rank position as Captain and increase of future prospect by 100% claimed instead of 50% as per the

salary of the deceased. The claimants relied upon "Sureshchandra Bagmal Doshi v. New India Insurance Company" (AIR 2018 SC 2088). Since the appellants did not adduce any substantial evidence to prove that the deceased could have attained high rank in Army, the plea of enhancement not accepted by the Court. The judgment relied upon "supra" was distinguished as in the said judgement evidence to prove high rank was adduced.

CSA No. 01/2012
Swaran Singh v. Sub-Registrar Jammu and others
Decided on: July 16, 2020

In this appeal the Hon'ble High Court reiterated the law that the property in the land can only be conveyed by registering sale deed and not by agreement to sell, in terms of section 54 of Transfer of Property Act. The agreement must conform to the requirements of the provision, and the agreement is no substitute for formal sale deed

The Court also reiterated the law that even after the execution of agreement to sell, the actual owner does not loose his right over the property. A person taking possession under such agreement to sell can only be regarded as being in permissive possession. In view of section 138 of the TPA (as was applicable to J&K), without formal registration in terms of the provisions of the Registration Act, sale is not completed and handing over of possession by the actual owner after taking sale consideration, can not be construed as lawful parting of possession. Person taking possession in such a situation would continue to be in permissive possession, unless he is able to show the intervening events amounting to adverse possession.

MA No. 381/2009
Oriental Insurance Company Ltd. v. Kuldeep Kour and Ors.
Decided on: July 15, 2020

High Court of J&K in the present case dismissed appeal filed by the Oriental Insurance Company against the award was passed by the Motor Accidents Claims Tribunal, Jammu.

Claimants had lost their sole breadwinner in a motor vehicle accident and had filed a claim petition before the Tribunal seeking compensation to the tune of Rs. 40.00 lac along with the interest at the rate of 18% per annum. The Tribunal had found the claimants entitled to a sum of Rs. 16,41,456. Appellant assailed the award contending that besides other errors, Tribunal erroneously applied the principle of "pay and recover" in the instant case.

After considering contentions from both the sides, the High Court found no reasons to differ with the views considered by the Tribunal while awarding compensation in the matter.

Court said that the grounds of challenge urged by the insurer and the arguments put forth by them have no legs to stand. Relying on the decision of the Supreme Court in the case of National Insurance Company Ltd v. Swaran Singh and others, (2004) 3 SCC 297, Court said that the Tribunal was justified in application of the principle of the "pay and recover" in the present case.

Court observed: "It is true and as is discernible on a glance of the impugned award that the insurer had succeeded in proving before the Tribunal that the driving licence possessed by the driver of the offending vehicle was fake, but it is nowhere come in the evidence or testimony of any of the witnesses of the insurer that owner of the offending vehicle had engaged the services of the driver even after being aware that the licence possessed by him was fake and invalid. Whether or not the licence, on the

face of it, was fake or the same could have been detected only after an enquiry made from the licencing authority, which had issued it, is also not in the evidence on record."

The court also observed that the Tribunal has committed no illegality in increasing the income of the deceased by adding 50% by way of future prospects.

However, Court found the cross objections filed by the claimants seeking enhancement of the compensation as justified and modified award of the Tribunal to that extent saying that the Tribunal had erred in applying right multiplier while awarding compensation. The modified award of compensation released in favour of the claimants by the Court eventually stood at Rs. 18,22,172.

MA 629/2010

National Insurance Co. Ltd. v. Yousaf Din & Others

Decided on: July, 2020

In this appeal the Hon'ble High Court discussed about the validity or otherwise of the driving license of the driver at the time of the accident.

In this case, the insurer has assailed the impugned award on the sole ground that the driver of the offending vehicle was not holding a valid and effective driving license at the time alleged accident. The driver was holding a driving license to drive Light Motor Vehicle only. The vehicle involved in the accident i.e. Qualis is a light motor vehicle with its unladen weight of 2225 kg, which is less than 7500 kg and, therefore, in terms of Section 2(21) of Motor Vehicles Act, 1988, a driver who holds light motor vehicle driving license would be entitled to drive a light commercial / transport vehicle.

Held, a person with a light motor vehicle driving license is entitled to drive transport vehicles below 7500 kg in weight.

MA No. 281/2012

Reliance General Insurance Co. Ltd. v. Sudesh Devi and others

Decided on: July 07, 2020

In terms of Section 30 of Employees Compensation Act, 1923, an appeal filed is not to be considered as a regular appeal but in-fact the only question which is to be considered is, whether any substantial of law is involved appeal would lie only in such cases where substantial question of law has been raised.

The Court referred to law laid down by the Hon'ble Supreme Court in Sir Chunni V. Mehta & Sons Ltd v. Century Spg. & Mfg. Co. Ltd. that, "a question of law would be a substantial question of law if it directly or indirectly affects the rights of parties and there is some doubt or difference of opinion on the issue. In Krishna Kumar Aggarwal v. Assessing Officer it was held that if the question is settled by apex court or the general principles to be applied in determining the question are well settled, mere application of it to a particular set of facts would not constitute a substantial question of Law"

The deceased-Kulbir Singh was driving Indica Car from Srinagar to Jammu on 02.07.2009, met with an accident at Shetani Nallah near Banihal, as a result of which, he alongwith two other occupants of the Car died on the spot. The deceased was 26 years old at the time of his death and was drawing a salary of Rs.5000/ - per month plus Rs.2000/ - as trip charges. The said vehicle at the time of accident was insured with appellant-Insurance Company. The appellant-Insurance Company filed its objections before the Commissioner, however, respondent No. 3-Owner of the offending vehicle appeared in person once before the Commissioner, but thereafter as he absented himself, therefore, was proceeded ex-parte.

The appeal was admitted by the

Hon'ble High Court and issues were framed in the case and were discussed as well. The appellant has framed the substantial question of laws from A to G of the appeal but none of them was treated as the substantial questions of law. The court relied upon the judgement of the Supreme Court viz, 'North East Karnataka Road Transport Corporation v. Sujatha" which held that:

"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/ his LRs sue/s his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact."

Held, that all the issues are issues of fact and not of law and as appeal lies only, if substantial question of law arises, therefore this appeal is not maintainable and there is no merit in this appeal and the same is, accordingly dismissed.

CR No.46/2020

Nirmal Kumari v. Raj Bahadur Singh Jamwal & Anr.

Decided on: June 29, 2020

A civil revision was filed in terms of Section 115 of CPC against the order passed by the trial Court in a civil suit titled "Raj Bahadur Singh Jamwal v. Nirmal Kumari" whereby the application filed for rejection of plaint by the petitioner/defendant was dismissed on the ground that though, the oral agreement to sell was not valid, the other relief i.e. the relief of permanent prohibitory injunction restraining the petitioner/ defendant from interfering in the peaceful possession of the respondent/plaintiff can proceed independently.

The petitioner/defendant agreed that the oral agreement to sell was not maintainable. However, the relief of permanent prohibitory injunction claimed by the respondent/plaintiff restraining the petitioner/defendant from interfering in the peaceful possession of the respondent/ plaintiff was dependent upon the relief of specific performance of oral agreement to sell claimed by the respondent/plaintiff and hence, was not maintainable.

Disagreeing with the petitioner's plea, the High Court observed that the respondent/ plaintiff in his plaint has categorically averred that he is in possession of the land for the last more than fifteen years and even the Khasra Girdwari with regard to possession exists in his favour and that the relief of permanent prohibitory injunction claimed by the respondent/plaintiff against the petitioner/ defendant is sustainable independently of the relief of specific performance of contract.

Relying on D. Ramachandran v.. R.V. Janakiraman & others, (1993) 3 SCC 267, the Hon'ble High Court dismissed the petition and observed that under Order 7 Rule 11 of CPC, there is no provision or concept of partial rejection of the plaint. The plaint can

either be rejected as a whole or not at all.

Writ Petition (C) No. 922/2020
Anil Kohli v. Union Territory of J&K through Secretary Finance Deptt. & Ors.
Decided on: June 30, 2020

While taking up the matter relating to the J&K Excise Act, Svt. 1958 read with J&K Liquor License and Sale Rules, Svt. 1984, Hon'ble High Court of J&K ruled that though the J&K Excise Act, Svt. 1958 and J&K Liquor License and Sale Rules, Svt. 1984, do not provide for issuance of notice or for giving an opportunity of being heard to a license holder in case any action is contemplated to be taken under these rules. Yet the Act and Rules do not expressly exclude the principles of natural justice. Taking this into consideration Hon'ble High Court of J&K held that the impugned order and communications made to the petitioner do not stand the test of fairness and reasonableness besides being violative of principles of natural justice and are liable to be quashed. As it is well settled by the Hon'ble Supreme Court in a long line of decisions, that statutory silence is taken to imply compliance with the principles of natural justice particularly where the statutory rights of parties are considerably affected.

Civil Second Appeal No: 01/2013
Omkar Singh and Anr. v. Rajinder Singh
Decided on: July 23, 2020

The respondent had filed a civil suit in the trial court for possession of land measuring 08 Marlas on the basis of right of prior purchase being co-sharers to the land in dispute thereto, sale whereof had been already made by appellant no. 2. Consequently, the trial court held that the respondent was the co-sharer of the land in dispute and that the notice of the sale deed so made by the appellants was not served upon by the respondent. The first appellate authority also gave a concurrent finding of the abovesaid judgement.

The Hon'ble Court while appreciating the findings of the trial court and the court of first appeal, relied on the Supreme Court's judgement Union of India v. Ibrahim Uddin (2012) and Order XLI, rule 27. The Hon'ble Court also considered the findings of the trial court based on Uttaradi Mutt v. Raghavendra Swamy Mutt, Hukum Chandra(D) thr. L.R's v. Nemi Chand Jain, Om prakash Gupta v. Ranbir B Goya and Jabbar Bhat v. Ashmi; that improvement of status over land can defeat right of pre-emption and to what stage can such claim be made. This was directly explained in Shyam Sunder v. Ram Kumar (2001). The law settled by the apex court is; that right of a pre-emption is required to be settled at the earliest either on pre-emptor's proving his qualification to pre-empt on the date of the sale, on the date of filing of suit, and on the date of the decree of the Court of the first instance or vendee improving his status till the adjudication of suit for pre-emption and after adjudication of suit any loss of qualification by the pre-emptor or vendee improving his status equal or above to right of pre-emptor is of no consequence.

The Court therefore held that the trial court and first appellate court have rightly appreciated the law on the subject, and thereby dismissed the second appeal.

Commemoration Ceremony in observance of National Doctors' Day

J&K Judicial Academy's activities for the month of July 2020, commenced with collaborative effort of the Judicial Academy with the Jammu and Kashmir State Legal Service Authority, on 1st July, in organizing "Online Talk and Commemoration Ceremony in observance of National Doctors' Day". This programme recognized the commitment of Medical Heroes in healing communities and providing selfless service and healthcare. Three panelists, namely, Dr. Sanjay Kumar Basin (Prof & HOD, Surgery, Govt. Medical College Jammu), Dr. S. Mohammad Salim Khan (Prof & HOD, Community Medicine, Govt. Medical College Srinagar) and Dr. Tsering Morup, Senior Anesthetist Consultant, S.N. Hospital Leh, guided the session, in which they highlighted the health issues faced by people in the wake of Covid-19 pandemic, and the role of Health Professionals as frontline warriors. The panelists highlighted the importance of the National Doctors' Day and discussed the enriching contribution of Dr. B.C. Roy, a physician, philanthropist, educationist, social worker and politician, in whose name this day is celebrated. They urged the medical community to draw inspiration from the selfless work and vision of Dr. B.C. Roy in the field of community service and health.

The Panelists explained various facets of Covid-19 pandemic and talked about the significant role being played by the Doctors and other Health workers by working tirelessly in preventing the spread of pandemic, treating the affected patients and saving the lives of thousands of sick patients, after their own lives to considerable threat. They also recognized the tremendous efforts of the people in general in rendering helping hand to the medical community. The panelists cautioned that in this time of pandemic, the people need to take all the precautions and follow all the health safety protocols in order to minimize the spread of virus. The pandemic has the potential of exploding and affecting a sizeable population and putting already stressed health institutions under tremendous pressure. In the Indian scenario, it will be very difficult situation.

Mr. M.K. Sharma, Member Secretary, J&K SLSA recognized and appreciated the efforts of medical community in general and the Doctors in particular. He enlisted the achievements of the health workers as frontline warriors. He also thanked the panelists for their enlightening views.

Webinar on "ICT Advances and Scope of Artificial Intelligence in Justice Delivery"

On 1st July, 2020 J&K Judicial Academy took lead in initiating dialogue on use of Artificial Intelligence (AI) in Judiciary. A Webinar titled Webinar on ICT Advances and Scope of Artificial Intelligence in Justice Delivery" was organized. This programme was guided by Dr. Pavan Duggal, Advocate Supreme Court of India and Vice Chancellor, Cyber Law Online University. Dr. Pavan Duggal began his discussion by highlighting latest advancements in the field of Information and Computer Technology and discussed the technological transformation in the governance in big organizations and Government setups. He discussed that the Information Technology has revolutionized the working culture and has brought efficiency and transparency in the governance. The technology has empowered the common man and the mobile phone has transformed the way the common man interacts with the world and gains access to the information requisite for his day to day use.

Talking about the use of ICT in the Judicial Institutions, Dr. Duggal recognized the contribution of e-Courts project and the consistent efforts made by it in transforming the working culture in justice dispensation. He said that for bringing improved efficiency and smooth workflow, it is needed to upgrade the technology commemorating the latest advances in the ICT. Then he discussed the scope of AI in Justice Delivery System. He told the participants that in some jurisdictions across the world, Judiciary has started experimenting with the AI, and so far with very positive outcomes. In non-core areas like disposal of Traffic challans and

bail applications, apart from doing the research and administrative work, the use of AI has been very encouraging. In the context of advances made in India, Dr. Duggal said that quite an exponential progress has been made in bringing the AI in governance, and in the Judicial Delivery system AI is almost ready to be used in disposal of Motor Accident Claim cases to begin. In the field of legal research, AI is going to revolutionise the way Judges make research pertaining to the cases coming up before them. In the overall scenario, the AI shall be of great help to the judges in administration of Justice and in automation of court processes. Though, the AI is no substitute for the dimensions of the human brain, it can definitely supplement the efforts of judges in arriving at just and expeditious rendering of justice.

Dr. Duggal complimented the J&K Judicial Academy for leading the way in starting discussions on the latest developments of ICT in general and AI in particular.

Online Workshop on "Law Governing Forests, Wildlife and Environment"

Three days Online Workshop on "Law Governing Forests, Wildlife and Environment" organised by J&K Judicial Academy in collaboration with the J&K Forest Department, on 2nd to 4th July, 2020. Online workshop was e -inaugurated by Ms Justice Gita Mittal, Hon'ble the Chief Justice of High Court of Jammu and Kashmir, in presence of Justice Sanjay Dhar, Hon'ble Judge High Court of J&K, Dr. Mohit Gera, Principal Chief Conservator of Forests and HoFF, J&K, Sh. T. Rabi Kumar, Chief Conservator of Forests, Central, along with other senior officials from the Forest Department.

The 3-day online module on laws governing forests, wildlife and environment was developed on the initiative of the Chief Justice, by the Forest Department involving experts in forest and environmental laws from across the country including officers from J&K Forest Department. All the important spheres concerning the environment were covered in the module. In the online workshop, Judicial officers from UTs of J&K and Ladakh, trainee judicial Officers from Telengana, and public prosecutors from J&K as well as law officers of the Government participated. Officers working in the Forest Department at various levels also participated in the deliberations.

Hon'ble the Chief Justice, while inaugurating the online workshop spoke on sensitization and empowerment of judicial officers and other stake holders in justice delivery system, on various laws and legislations on forest conservation and environment protection. She also stressed on creating awareness among the judicial officers on various important issues such as Sustainable Development Goals, global warming, carbon footprint, CAMPA and its related terms such as CA and NPV, and various other Acts such as Prevention of Cruelty to Animals, 1960, Wild life Protection Act, 1972 etc. She said that J&K is endowed with rich Biodiversity which needs to be preserved. She complemented the efforts of the Forest Department in protection of this natural wealth. She also emphasised on the need for more such programmes addressing basic issues on environment and biodiversity. She also called for concerted efforts of all the stakeholders and society in preservation and protection of environment for the future generations.

Dr Mohit Gera, PCCF & HoFF, J&K gave an overview of forests, wildlife and environment sector and said that the role judiciary has been tremendous in conservation of forest and protection of the environment. Dr. Gera also gave examples from several landmark judgements handed down by the Hon'ble the Supreme Court and the National Green Tribunal. Sh. T. Rabi Kumar, CCF Central, gave an overview of 3-day module.

On the first day in two technical sessions, Mr Kunal Satyarthi, IFS, Principal CASFoS, Dehradun and Mr. Ramesh Kumar, Chief Conservator of Forests, Jammu spoke on the Forest Legislation in India and J&K. They highlighted various provisions of law and judicial pronouncements of the Supreme Court, various High Courts and National Green Tribunal which have contributed to the development of Jurisprudence on environment. The experts on the subject also talked about the provisions of law which are requisite for

protection and conservation of forests and are required to be implemented in letter and spirit to secure protection of environment. They talked about necessity to engage with every stakeholder to understand the importance of protection of environment.

On the 2nd day of the workshop, the resource persons namely Mr. M.K. Kumar, IFS, Regional Wildlife Warden, Jammu, Mr. Ritwick Dutta, Senior Lawyer practicing in the Supreme Court and National Green Tribunal, made presentation on Wildlife Protection Act, 1972 and Forest Conservation Act, National Green Tribunal Act and various landmark judicial pronouncements from the Supreme Court respectively. Mr. Kumar in his address talked about various facets of the wildlife protection regime in place in India and highlighted the provisions of law in which the judiciary has to intervene. He also discussed the provisions pertaining to penalty and exercise of jurisdiction by the magistrates. Mr. Ritwick Dutta in his elaborate presentation discussed the historical perspective and the provisions of Forest Conservation Act. He highlighted the journey of legislations from exploitation of forests for the human needs to protection of forests as essential requisite for survival of ecology and environment. He also discussed the interventions of the Supreme Court of India in developing the environmental jurisprudence through various landmark judgements, which led to a greater understanding of the need to protect the environment and ecology. Various exploitative practices of the polluting industries could be curbed on these interventions. Mr. Dutta said that the Supreme Court of India has become a role model for all the jurisdictions across the world, in the matter of protection of environment. He also highlighted the background of the need to establish the National Green Tribunal and discussed the useful interventions made by it since the time of its inception.

On the last day of the workshop, Mr. Vasu Yadav, IFS, Additional Principal Chief Conservator of Forests, Dr Nadeem Hussain, IFS, Regional Director, J&K Pollution Control Board and Smt. Uma Devi, IFS, Additional Secretary, Ministry of Environment, Forests and Climate Change, Government of India, addressed the participants on varied subjects including, the Environment Protection Act, Air (Prevention and Control of Pollution) Act, Water (Prevention and control of Pollution) Act and the Biological Diversity. Mr. Vasu gave an overview of various legislations on the protection of environment which have played a vital role in protecting, preserving and improving the environment and ecology. He also discussed the role of specialised agencies created by the governments in terms of the environmental laws. He flagged the need for strengthening the prosecution wing of the government in relation to the environmental laws for creating a sense of deterrence.

Smt. Uma Devi in her presentation on the Biological Diversity Act, highlighted the need for preservation of the biological diversity for the health of the ecology, animal and human existence on the Earth. She explained that the biodiversity is the variety and variability of life on Earth and is typically measure of variation at the genetic, species and ecosystem level. She said that the nature has created biological diversity in flora and fauna, and in animals, that ensures the continuous process of evolution for survival in the struggle for existence. Biodiversity boosts ecosystem productivity where each species, no matter how small, all have an important role to play. Biodiversity has resulted in greater variety of crops. Greater species diversity than ensures natural sustainability for all life forms.

The programme concluded with valedictory address by Smt. Uma Devi and concluding remarks by Mr. Mohit Gera. Vote of thanks was proposed by Mr. T. Rabi Kumar.

Webinar on "The Role and Responsibilities of the Public Prosecutors"

On 6th July, 2020, J & K Judicial Academy organised webinar on "The Role and Responsibilities of the Public Prosecutors" for the benefit of the Public Prosecutors, Additional Public Prosecutors and Law Officers of the Government handling criminal cases in the High Court. Mr. Bharat Chugh, Advocate Supreme Court of India was the resource person in the online training programme. Quoting from

practices in the world over, Mr. Chugh highlighted the importance of the institution of Public Prosecutor. He said that the Public Prosecutor enjoys the statutory powers and performs the functions enjoined upon him by law. Though, he acts as an officer of the Government but in the matter of performing his functions the statute requires him to have a fair degree of independence. Mr. Chugh enlisted the provisions of law which give power and functional independence to the public prosecutor. He also quoted from various judicial pronouncements, in which the role of the public prosecutor and the nature of his responsibilities have been highlighted. He said that the public prosecutor is required to perform the public function, as such he is required to show high degree of ethical and moral conviction. He is required to perform his functions with transparency and accountability, for he is answerable to the public in general for all his acts. He draws his powers from the public trust and confidence. The public prosecutor is not expected always to make efforts for the conviction of accused prosecuted by him, but he must always side with law. If the law requires an accused to be discharged or acquitted, he should not hesitate in stating so with fairness to the court. After all, the public prosecutor ought to act with utmost fairness in accordance with the spirit of law.

Webinar on "Gender Justice"

On 8th July, 2020, the Judicial Academy organized a webinar on "Gender Justice". Ms Justice Roshan Dalvi, former Judge of the Bombay High Court addressed the participating Judicial Officers, trainee judges from Jammu & Kashmir and Telangana, and the law officers of the Government. In her presentation, Justice Dalvi gave an overview of the international covenants and the provisions of the Constitution of India, calling for creation of just society in which gender issues are addressed with utmost sensitivity. She started her presentation with the gender perspective and enlisted numerous instances where gender perspective comes into play but is often ignored. She said that the gender inequalities stem from the primitive mindset and indifferent attitude of the society since generations together. There has been a reluctance on the part of society to accept the change and thereby to create an environment where gender on its face would not play any role. This required setting up of legal framework for achieving gender justice. The Constitution of India is the bedrock of equality and justice, which provides for special provisions for the woman and children recognizing the importance of protective and positive discrimination. She said that the historical instances of discrimination are refusing to die down, however the incremental changes have happened. In the present scenario, it is needed to create a gender just regime for development of all sections of the society. The social setup is not going to change unless the gender-based issues continue to occupy our thinking. Of late, the legislature in India has recognised the need for taking progressive steps for the 3rd gender as well. Special legislation has been enacted, giving recognition to the 3rd gender, taking it out from the binary of male and female. Justice Dalvi highlighted that now the time has come when the gender issues should not occupy our thinking process but the social relevance of every citizen of the country is recognised. It is needed to give full effect to the potential inherent in every individual. Only then we can expect the society to prosper in true sense.

Online Session on "Focus and Concentration: Setting the Right Balance"

On 11th July, 2020, the Judicial Academy organised an Online Session with Prof. (Dr) Ved Kumari, Law Campus, Delhi University. Prof. Ved Kumari started her deliberations with the opening remarks that judging is a greatly stressful job and talked about the importance of focus and concentration in the justice delivery process. She said that it is scientifically proven that hearing and listening are different aspects. Listening is different from mere hearing in the sense that listening involves the cognitive faculties rather that mere use of ears. Findings in this field have recognized the importance of 'Active Listening'. Listening is not sitting in silence waiting for other person to speak. An 'Active Listener' is required to pick up verbal and non-verbal cues by using

cognitive faculties. Judges are expected to hear patiently and to focus on every aspect of the judicial processes going on in the court. This would require a judge to be sufficiently skillful in the art of concentration. She further said that it is difficult to engage in the process of hearing with requisite concentration for a longer period. It would require a judge to be well equipped and to attain sufficient level of concentration by constant practice. She exhorted that the meditation, with requisite scientific temper, can give desired levels of transformation in a judge from a passive listener to an active participant in the process of hearing. Requisite level of the mind training is needed to achieve the desired levels of focus and concentration. Unless a right balance is the achieved, a judge is sure to miss out many finer points when his concentration and focus are lost. The resource person demonstrated a few exercises and activities with a view to give an insight to the judicial officers to practice and achieve the desired levels of focus and concentration. The judicial officers learned various techniques of meditation for achieving good results for the mental and physical well-being, thereby to increase the efficiency and quality of justice delivery.

Online Awareness Programme on "Covid-19: Addressing the Health Concerns"

With the continued focus on the health concerns in the wake of ongoing Covid -19 pandemic, the Judicial Academy organised an Online Awareness Programme. Earlier, a few programmes on the similar issue were organised by the High Court on the initiative of Hon'ble the Chief Justice. With emergence of new information and the continued medical research, it necessitated the continued dialogue. Dr Satish Bhardwaj from 'Godmans Rescue' NGO, Delhi, guided the session. Dr Bhardwaj has been, since the inception of the pandemic, dealing with the patients in emergency and ICU. He addressed various issues concerning the health in the wake of ever-growing number of patients and development of vaccine not nearsighted. He advised the participants to take all requisite precautions for personal safety in order to prevent contracting Covid – 19 infection, by maintaining social distancing norms and observing hand and respiratory hygiene. He cited the instances from Delhi and other metropolitan cities in which the spread of virus has been phenomenal, and told the participants that more and more information is now available for the researchers and doctors which has resulted in better understanding of the behaviour of the virus. This has in turn resulted in better handling of the patients with symptoms of Covid – 19 or asymptomatic persons. He said that a lot of misinformation is available on the social media that has created a fear psychosis in everybody's mind. This fear psychosis must be removed, and it needs to be understood by all that there are better ways to deal with the problem and tackle it by practicing requisite protocols and SOPs. Dr Bhardwaj took several questions posed by the curious participants and satisfied their concerns.

Webinar on "Contours of Law on Sanction to Prosecute Public Servants"

On 15th July, 2020 the Judicial Academy organized a Webinar "Contours of Law on Sanction to Prosecute Public Servants", for Public Prosecutors, Additional Public Prosecutors and Law Officers of the Government in UTs of J&K and Ladakh. Mr. Pradeep Mehta, Joint Director (Retd.), Faculty Member Chandigarh Judicial Academy was the resource person. Mr. Mehta gave insight into various dimensions of Law relating to sanction for Prosecution under the general Penal Laws as well as under special legislations like Prevention of Corruption Act. He highlighted that the purpose of the provisions relating to the sanction is for the Government and the sanctioning authority to see that anything done by a public servant in the course of his public duties with mala-fide intention and not authorized by law does not go unpunished and also that no unnecessary harassment is caused to the public servants in the lawful discharge of their public functions. Mr. Mehta also enlisted differences in the scheme of various legislations pertaining to sanction for prosecution. He highlighted the legal position on various aspects of law on sanction for prosecution, referring to the judicial pronouncements from the Supreme Court of India and various High Courts.

Webinar on "Management of Judicial Stress"

On 18th July, 2020 the J&K Judicial Academy organized a webinar on "Management of Judicial Stress". Prof. Balram Gupta, Former Director National Judicial Academy and presently Director (Academics) Chandigarh Judicial Academy, conducted the programme. Judicial Officers and Trainee Judges from the UTs of Jammu and Kashmir and Ladakh and Trainee Judges from Telangana Judicial Academy attended the programme. Prof. Balram Gupta had earlier conducted the similar programme that was hosted by SCC Online Learning Centre in Collaboration with Chandigarh Judicial Academy. The deliberations in the programme were quite mesmerizing and engaging.

While speaking in the deliberations Prof Gupta talked about the culture of a Judge and of Judicial system. Saying that the job of a Judge is stressful, Prof. Gupta delved into various aspects of judging which create stressful impact on the mind of a Judge. He shared a few anecdotes from the judicial history and demonstrated how the great judges were able to overcome the stress coming their way in the course of justice delivery. He exhorted the participant judges to follow the stress busting techniques and to take care of health as an utmost priority. Quoting from the writings of great authors, he advised the judges to adopt calm, cool and composed posture with smile on the face for the lawyers and the litigants to confine trust and confidence in the judges. Humility and sobriety are the basic attributes of a Judge. He said that integrity is the fundamental quality of a judge. If these attributes are inculcated by the judges, it earns them a lot of respect, which in turn makes their job easy.

Prof Gupta advised the participants to read the biographies and good writings of celebrated judges and legal professionals and to learn from their experiences. Updation of legal knowledge on regular basis is essential for keeping pace with development of law and to render quality justice. He also said that a judge should always make endeavor to keep on improving and this process of learning should never stop. Learning the administrative qualities is also very essential as the judges act as leaders in their respective jurisdictions, within the scope of judicial dispensation. They have to manage the manpower and resources, as such learning management skills is of utmost importance. This skill development effort and the experiential learning helps the judges to command respect and good will, which is helpful in managing the judicial stress.

Online Workshop on "Law on Dishonor of cheques"

Two days Online Workshop was conducted by the Judicial Academy on "Law on Dishonor of Cheques" for the Judicial Magistrates and Trainee Judges, on 22nd and 23rd July, 2020. Mr. Ramakanth Devulapally, Senior District & Sessions Judge, Senior Faculty Member at Telangana Judicial Academy was the resource person. In his presentations on two days Mr. Ramakanth discussed every aspect of the trial of complaints of dishonor of cheques, in finer details. He referred to a good member of judicial precedents handed down by the Supreme Court and various High Courts on different aspects of the law on dishonor of cheques. He traced the history of Law on dishonor of cheques and gave the perspective of development of Law in this regard. The changes incorporated by the Legislature from time to time were discussed and the impact of such amendments was also thoroughly discussed. He laid special emphasis on the latest amendments carried out in the year 2018, aimed at clarifying the position as to jurisdiction of the courts and providing for grant of interim compensation by the trial courts and the appellate courts ni cheque dishonour complaints. The deliberations at the workshop by Mr. Ramakanth were greatly helpful for the judicial officers to understand the nitty-gritties of law and the understanding of law gained by them shall be helpful in effectively and expeditiously dealing with the cheque dishonor cases.

Webinar on "Law of Maintenance under different Legislations"

J&K Judicial Academy organized a Webinar on Law of Maintenance under different Legislations, on 24th July, 2020 for the judges of

all ranks in the UTs of J&K and Ladakh. Trainee Judges from Telangana Judicial Academy also joined the deliberations along with their faculty members.

Ms. Swati Chauhan, Principle Judge, Family Court Nanded, Maharashtra was the expert to guide the participating judicial officers. She had earlier guided two programmes on family court matters organized by the J&K Judicial Academy in Jammu and Srinagar. In her scholarly address Ms. Swati discussed the provisions of various legislations concerning grant of maintenance to wife, children, spouse, live-in partners and parents. She discussed the development of law on maintenance, mainly highlighting the provisions of maintenance under Section 125 CrPC and Section 23 of Protection of Women from Domestic Violence Act. She also discussed various provisions of law having civil contours and dealt by the civil courts. She discussed the fundamental principles of law for grant of maintenance. She quoted from various pronouncements handed down by the Supreme Courts and various High Courts on different aspects of maintenance law. She also ably addressed the queries of the participants.

Webinar on "Constitutional Vision of Justice"

J&K Judicial Academy organized a webinar on Constitutional Vision of Justice on 27th July, 2020, in which Judicial Officers from UTs of J&K and Ladakh and Trainee judges from J&K and Telangana participated. Some Judicial Officers from North-eastern States and Maharashtra also joined the programme.

Former Director of National Judicial Academy Prof G. Mohan Gopal addressed the participating judges on the pertinent topic of the Constitutional vision of justice, as is required to be followed by the subordinate judiciary in day to day work of judicial dispensation. Dr. Mohan Gopal talked about the freedom struggle of India and evolution of the values which form the bedrock of the justice in all its manifestations. He said that the preamble of the Constitution of India contains the foundational principles of justice, which are further unfolded in Part-III and Part-IV of the Constitution. The vision of justice is primarily founded in the constitutional values, evolved from freedom struggle and Gandhian philosophy i.e. truth (Sathya), non-violence (Ahimsa), upliftment of the last person in the queue (antyodya) and development of all (Sarvodya). These principles are the grundnorm and basic tenets of the preamble i.e. justice, equality, fraternity and dignity.

Dr. Mohan Gopal further elaborated that the judiciary being an important pillar of democracy and an organ of State, is mandated to follow and practice the fundamental principles contained in the preamble and Part-III and Part-IV of the constitution. It is needed by every judge to inculcate in himself the values enshrined in the Constitution and rise above the personal views of morality. The judges are required only to follow the principles of the constitutional morality. The resource person discussed the lives of great judges like Justice Krishna Iyer, Justice P.N. Bhagwati and Justice Ghajendragadkar and said that these legal luminaries had imbibed in themselves the fundamental principles of justice, which is reflected in their judicial pronouncements. Every judge must learn from them and ensure sticking to the principle philosophy of the Constitution in their every judicial action, and start seeing every issue coming up before them from the prism of right and wrong according to the constitutional values.

Dr. Mohan Gopal discussed the recent judicial pronouncements of the Supreme Court and highlighted that there has been a clear and emphatic recognition in these judgments of the principle of Constitutional morality and many social and community based practices are being considered on the basis of the test so laid down.

The participant judges were greatly benefitted by the scholarly discourse of Dr. Mohan Gopal, the original proponent of the Constitutional Vision of Justice.

SUPREME COURT DIRECTIVE IN THE CONTEXT OF ELECTRONIC EVIDENCE

Recently, a 3-Judge Bench of the Supreme Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.,Civil Appeal Nos. 20825-20826 of 2017, decided on July 14, 2020, answered a reference in the context of admissibility of electronic evidence and requirement of certificate envisaged under Section 65B of the Evidence Act. This has settled the position of law that had become blurred in view of few judgments of the Supreme Court taking somewhat contrary views. A note on the position of law is included in another section of this newsletter. The Supreme Court, however, has recognised the difficulty involved in the process of collection, admission and appreciation of electronic evidence and has felt the intervention of law making body to streamline the procedures involved. The concern of the Supreme Court is reflected in the following observation:

"63. It is also useful, in this context, to recollect that on 23 April 2016, the conference of the Chief Justices of the High Courts, chaired by the Chief Justice of India, resolved to create a uniform platform and guidelines governing the reception of electronic evidence. The Chief Justices of Punjab and Haryana and Delhi were required to constitute a committee to "frame Draft Rules to serve as model for adoption by High Courts". A five-Judge Committee was accordingly constituted on 28 July, 2018. After extensive deliberations, and meetings with several police, investigative and other agencies, the Committee finalised its report in November 2018. The report suggested comprehensive guidelines, and recommended their adoption for use in courts, across several categories of proceedings. The report also contained Draft Rules for the Reception, Retrieval, Authentication and Preservation of Electronic Records. In the opinion of the Court, these Draft Rules should be examined by the concerned authorities, with the object of giving them statutory force, to guide courts in regard to preservation and retrieval of electronic evidence."

The Supreme Court was conscious of the fact that unlike procedure regarding reception of the traditional documentary evidence and material objects, procedure for reception of electronic evidence is not free from many technicalities and difficulties. Electronic records involve many complex processes and is of fragile nature, prone to tampering/changes without ostensible notice. It needs technical skills to understand the complexities involved, for which judges usually are not trained enough. For the judges to overcome these difficulties, it needs to have uniform guidelines and SOPs to handle with the electronic evidence. From the above-noted observations of the Supreme Court, clear recognition has been made to the contribution of the Committee comprising Hon'ble Judges Justice Rajesh Bindal, Justice S. Muralidhar, Justice Rajiv Sahai Endlaw, Justice Rajiv Narain Raina and Justice R.K. Gauba. Guidelines and draft rules suggested in the meticulous report prepared by the Hon'ble Committee, after thorough consultation with different stakeholders in the justice delivery system, has been directed by the Supreme Court to be considered by the concerned authorities for giving statutory force. Therefore, till such statutory recognition is received by the draft rules, the courts confronted with the issue of electronic evidence can take cue from the draft rules to overcome the difficulties.

In the same judgment, Justice V. Ramasubramanian after scanning the position in various jurisdictions, suggested to have a relook on desirability of the special provisions in the Evidence Act as regards electronic evidence.

- Editor

(Guest Column)

CONSTITUTIONAL MORALITY

Indian Constitution is seventy years old. It is the longest Constitution. The meaning and scope of different Articles has undergone change with change of times. There are still Silences of the Constitution. Gradually, these Silences are being given Voice. So that they can speak. They can play their role in developing the Constitutional Jurisprudence. In the first

quarter (1950-75), the Constitution stood amended 39 times. The first amendment itself (1951) added the ninth schedule. By the year 1975, 124 different Enactments had been added to 9th schedule. This provided the constitutional cover so that these enactments could be saved from being declared unconstitutional. The U.S. Constitution (1787) is 233 years old. Till date there are only 27 amendments. Indian Constitution has already crossed the century mark (in fact – 104)

The Supreme Court is the 'Light-house' and the 'Lamp' of the Constitution. It is the 'Balancing-Wheel'. It provides 'Illumination' during dark and difficult times. It was laid down in 1973 that the 'Basic-Structure' of the Constitution cannot be diluted, damaged or destroyed. The journey from 1973 has proved that the 'Basic Structure' is the saviour of the Constitution. The Constitution no-where speaks of 'Basic Structure'. This silence which was given Constitutional Voice has made its presence felt loud and clear.

There are other Constitutional Silences also like 'Constitutional Morality' and 'Constitutional Values'. The word 'Morality' has been used in Articles 19, 25 and 26. The expression 'Constitutional Morality' has nowhere in the Constitution been used. The summit court used it in Keshavananda Bharati (1973). It is important that 'Basic Structure' and 'Constitutional Morality' were used in the same case. Both expressions are pregnant with elements of growth of Constitutional Jurisprudence. Both are guiding Constitutional Principles for the three organs of the state. They are brothers. Elder and younger. Crafting a constitution is one aspect. Working out a constitution for generations is equally, probably, a much bigger constitutional discipline and skill. It is a continuous process.

Constitutional Morality is culled-out from different provisions of the Constitution dealing with specific situations. It is the substance of those provisions which would speak of Constitutional Morality. It is adherence to the core principles of constitutional democracy. Governance of the system in accordance with Rule of Law is a complex exercise. No system is good or bad. It is human beings who run the system make the difference. Rule of Law though not defined in the Constitution regulates and controls the system. The Three Organs of the State play different roles. The roles are demarcated. Not with mathematical precision. Therefore, there is need for co-ordination. Co-operation. Connectivity. Understanding. It is in this process that Constitutional Morality links them together. Each organ must understand its role in the context of Constitutional Morality. Constitutional Morality is a running thread. Constitutional Morality will help each organ to take up its role in the constitutional perspective. Morality may have different perspectives. In the governance of the country, the focus will have to be on Constitutional Morality.

It is suggested that Constitutional Morality is unruly-horse. It would be difficult to regulate and control it. It would differ from Judge to Judge. From Bench-to-Bench. Opinions differ in this regard. The same used to be said about the Basic Structure. To-day, Basic Structure has merged and emerged as the focal point of the Indian Constitution. Other countries being governed by modern Constitutions are considering Basic Structure as an importable constitutional device. Therefore, why should it not be adopted and adapted in different respective systems? It is felt that it is only a matter of time. In due course of time, even Constitutional Morality will become a tool of good governance.

Indian apex court has already used Constitutional Morality in some situations. As a concept, it has been used meaningfully. This virus of Constitutional Morality will create anti-bodies. In due course of time, it is hoped that Constitutional Morality will be a potent constitutional weaponry to introduce constitutional discipline in the governance of the country.

Dr. B.R. Ambedkar while introducing the Draft Constitution on November 4, 1948 made it clear that Constitutional Morality was to be cultivated. The expression was not used in the body of the Constitution. It required commitment to certain core aspects of the Constitution. This commitment was to be cultivated. Cultivation takes time. In A.K. Gopalan (1951), the summit court gave literal

and restricted meaning to "Procedure establish by law'. It was over-ruled in Maneka Gandhi (1978). It took almost 3 decades to understand the Constitutional Morality of Article 21. Its cultivation has given a new vision to Article 21. Article 21 is the face of Constitutional Morality.

In Sabarimala Temple case (2019), there was prohibition on the entry of women of age-group of 10 to 50 years into the temple for worshiping of Lord Ayyappa. This was based upon custom and usage. The constitution bench held (4:1) that this ban was violative of the right to dignity and equality. Such exclusionary practice was declared as violative of Constitutional Morality. The dissenting view was that Equality and non-discrimination are the facets of Constitutional Morality. These facets are to be balanced and harmonised with freedom of faith, belief and worship under Articles 25 and 26. This is understandable. This needs to be viewed in the backdrop that the ban is lifted. This only means that those who wish to worship Lord Ayyappa are free to visit the temple. However, those who have their faith and belief, they are free not to visit the temple. No compulsion. In fact, this is real freedom. Constitutional Morality in-action. The real Constitutional Morality means freedom according to one's faith and belief. This freedom, in fact, is itself integral to Constitutional Morality.

In Joseph Shine case (2019), the Constitution Bench declared S.497-IPC-Adultery as violative of Articles 14, 15 (1) and 21 of the Constitution. It was found arbitrary and gender discriminatory. It was considered encroachment into women dignity, identity and privacy. This was in consonance with commitment to Constitutional Morality, which requires to enforce constitutional guarantees.

In the matter of Lt. Governor- Delhi (2018), the constitution bench relied upon Constitutional Morality. It was made clear that Constitutional Morality negates the idea of concentration of power in the hands of few. All high constitutional functionaries must follow constitutional norms. Constitutional Morality acts as a check on lapses by authorities. A constitution establishes the structure of the Govt. The working of the structure is dependent upon the fulcrum of Constitutional Morality. Constitutional values work as the barometer of Good Governance. How much one wished that the Constitutional Morality needle had guided the Rajasthan situation!

Justice is the first promise of the Indian Constitution. Article 142 ordains the Supreme Court to make such orders which are necessary for doing complete justice. This concept of complete justice has been invoked by the summit court from time to time and in different situations. One of the issue is, if there is any legislation or rule which obstructs the doing of complete justice, can an order be passed by bye -passing the specific provision of law. In some cases, the view is in the affirmative. In some not. The basic reason to take the affirmative view is, Article 142 requires the doing of complete justice. If there is any provision which comes in the way of the apex court, such obstruction is violative of Article 142. It seems reasonable to suggest that Constitutional Morality can certainly play a definite role in furtherance of doing complete justice. In fact, the doing of complete justice in itself is Constitutional Morality. Therefore, it is pertinent, wherever the issue arises of doing complete justice, Constitutional Morality notion needs to be read from different provisions of the Constitution. This notion of Constitutional Morality needs to be mixed with doing of complete justice. This would emerge as new jurisprudence of doing complete justice in accordance with Constitutional Morality.

The Indian Supreme Court, during the last 3-4 years (in-particular) has given meaning to Constitutional Morality. Applied it in different situations. Constitutional Morality is evident in the goals set in the Preamble. Indeed, the whole Constitution is an Essay on Constitutional Morality. Each organ of the state. The citizenry. They all must be wedded to the Constitution and its Morality. This is the holy book. Hold it. Keep it on your table. Follow it. Act according to it. Nurture it. Make it a way of life. This would be the real Constitutional beauty.

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