



# **SIKKIM JUDICIAL ACADEMY**

**JANUARY-JUNE, 2020**



## **Half Yearly Newsletter**



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## ***The Role of Judges and Lawyers In The Administration of Justice***

***Hon'ble Mr Justice A P Subba  
Former Judge  
High Courts of Sikkim and Guwahati and  
presently Judge, Lok Ayukta, Sikkim***

1. It is said that Bench and Bar are the two wheels of the chariot of Justice. The temple of justice thus basically comprises of two wings and both the wings pursue the common goal of preserving the stream of justice pure and clean. Hence the judges and lawyers being complementary to each other no legal system can function effectively in absence of one of the two components.
2. In their cooperative effort to preserve the stream of justice pure and clean, the learned members of the Bar give feedback and supply materials to the Bench on the basis of which the Bench decides who is right and who is wrong. In the process if the feedback materials are adulterated the result in all eventuality would be incorrect. Similarly if the judges examine the materials with tainted glasses and polluted mind, the result would invariably be faulty. Such being the consequences if both the wings pay no regard to their respective professional duties (both legal and ethical) it will have the effect of eroding the confidence of the general public in the prevalent judicial system.

### **Lawyers and their status**

3. The profession of law is a noble calling and a member of the legal profession occupies a very high status in society. By virtue of such a high position he occupies a lawyer is required and expected to maintain high professional ethics. It is said that he is more than the fuel in the engine of law.
4. To help member of the legal profession keep to the path of ethics, necessary guidelines have been laid down in statutes framed for the purpose. In India, to regulate the conduct of lawyers adequate, safeguards have been provided in the Advocates Act, 1961. To oversee the day-to-day performance of lawyers, the Bar Council of India (the supreme statutory body under the Advocates Act) has also framed rules.

5. Chapter-II of part IV of the Rules deals with Standards of Professional Conduct and Etiquette. The broad guidelines cover, inter alia, the duty of the lawyers to the Court; to the client; to the opponent; to colleagues and so on. The Preamble of Chapter-II which is extracted below, eloquently narrates the standard of Professional Conduct of lawyers.

**“An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and spirit. The Rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned”**

#### **Judges and their status**

6. It is said that the depth of respect for Judges in Indian society is second only to the respect for saints and sages. It is hardly necessary to say that Judges play an important role in the maintenance of rule of law which is essential for the existence of orderly society. It thus follows that Judges hold power which is immensely greater than that of any other functionary. It is aptly said that there is no office in the state of such power as that of the Judge.
7. In our country the judges of High Courts and that of Supreme Court are Constitutional functionaries. Hence, no statutory conduct rules are applicable to them. Judges are governed by the Oath that they will act faithfully and without fear, favour, affection or ill will. However, to maintain probity in judicial life, the High Court and Supreme Court Judges have themselves formulated Code of Ethics, wherein morality and virtue of Judges have been restated.
8. For Judges and Magistrates of District Courts, all the States of India have formulated separate rules governing the conduct of Judicial Officers. Both the declaration of 'Restatement of Values' by the superior Judges and Conduct rules for subordinate Judges eloquently speak of a very high degree of virtuous life of Judicial Officers.

## **Relation between Judges and Lawyers**

9. There is a Sanskrit quadruplet which on proper adaptation can describe the role of lawyers and judges in the administration of justice. This quadruplet was quoted by Mr. Justice S. B. Majmudar, Judge, Supreme Court of India, as he then was, in the valedictory address delivered by his Lordship at Jaipur, Rajasthan on the concluding ceremony of the Golden Jubilee Celebration of the High Court of Rajasthan.

**The quadruplet translated means:**

**“Bracelet gets decorated by diamond studded therein while the diamond get sanctified by being embedded in the bracelet and the diamond and bracelet together decorate the hand on which the bracelet is put on. The lotus get decorated by the water in which it is found and because of the lotus, water gets dignified and because of the lotus and water together, the entire lake gets beautified. Because of the moon in the sky, the night gets decorated and because of the night, the moon gets dignified and because of the moon and the night, the entire sky get dignified. Because of the poet, the court of the king gets illuminated and because of the king's court, the poet gets dignified and because of the poet and the court the kings gets decorated.”**

To these four lines of the verse, Hon'ble Mr. Justice Majmudar added a line which is very significant in the present context and I quote-

“Because of the good lawyers, the presiding judges gets decorated and because of the quality of the presiding judge, the advocates get sanctified and because of the combined operation of good lawyers and presiding judge the entire court and judiciary get dignified.”

10. It is, however, disheartening to note that despite rules, regulation, sermons by high dignitaries and judicial dictums, the standard of judicial decorum is declining unabated. A not so old instance of the demeaning behaviour in hand is the one shown by a senior member of the bar in the case. In re: Vijay Chandra Mishra, reported in AIR 1995 SC 2348. The contemnor in this case was not only a senior member of the bar but was also adoring the high offices of Chairman of Bar Council of India and the President of the High Court Bar Association of a State. What had happened in the case was that the contemnor resented questions asked by the Judge and tried to brow beat, threaten and insult, showing disrespect personally to the Judge thereby

creating a scene in the court room. In this context mention can also be made of the case which is widely known as “cash for warrant scam” In this case a judicial magistrate in one of the states of India in 2003, who was caught in a sting operation, had issued warrant of arrest against constitutional functionaries like the President of India, Chief Justice of India and other VIPs. To add to this, mention can be made of the recent incidents of hurling of shoes upon the Judges in the court room and roughing up of a judge of Delhi subordinate Judiciary by the members of the Bar.

11. As can be noticed from the above the issue is not one of lack of legislation to regulate the profession but of non-compliance of the rules, regulations as well as of other ethical duties. It goes to show that the dictum "i.e 'law Procted Protects' finds no place in the present scenario. In the circumstances there is no doubt that time has come for introspection by the members of the profession and other concerned authorities so as to make the profession deserving of the high respect, dignity and glory attached to it.



**21<sup>st</sup> and 22<sup>nd</sup> February, 2020**  
**Workshop on “The Limitation Act, 1963”**  
**Civil Judges on 21<sup>st</sup> February, 2020 and**  
**District Judges and Senior Civil Judges on 22<sup>nd</sup> February, 2020.**



**RESOURCE PERSONS:**

**1. Ms Smritishree Chakravarty, Advocate, Guwahati High Court on 21.02.2020.**

**2. Mrs K C Barphungpa, District & Sessions Judge, West Sikkim on 22.02.2020.**

Both the Resource persons discussed the relevant provisions of the Act namely Section 3, 5 and 12 as well as the Schedule to the Act. The Resource Persons emphasized on the importance of correctly computing the Limitation period. They also discussed the importance and relevance of issuing certified copies of Orders and Judgments with relevant details namely date of order, date of application for certified copy, date of providing information of the order being ready, etc. The Resource Persons also discussed all the Landmark Judgments during the programme.





**28<sup>th</sup> and 29<sup>th</sup> February, 2020**  
**Workshop on “Code of Civil Procedure, 1908”**  
**Senior Civil Judges, Civil Judges on 28<sup>th</sup> February, 2020**  
**District and Sessions Judges on 29<sup>th</sup> February, 2020.**



**RESOURCE PERSON:**

**Mr H S Sharma, Former Ld District & Sessions Judge, Delhi Superior Judicial Service.**

In both the programmes the Resource Person discussed Order VII and Sections 79 to 82, Code of Civil Procedure, 1908 in great detail. Under Order VII, the Resource person deliberated upon Rule 10 on Return of Plaint, Rule 10A on Power of Court to fix a date for appearance when Plaint is to be filed after its return. The Resource Person also discussed the points to be borne in mind while rejecting a plaint under Rule 11 of Order VII along with all the landmark Judgments.





**6<sup>th</sup> and 7<sup>th</sup> March, 2020**

**Discussion with the Technical Team for Better Research on Web Based Legal Portals Chief Judicial Magistrates and Judicial Magistrates on 6<sup>th</sup> March ,2020 District & Sessions Judges on 7<sup>th</sup> March, 2020**



#### **RESOURCE PERSONS:**

1. Mr Sumit Dhawan, Regional Manager, East Region Eastern Book Company Pvt. Ltd, New Delhi.
  2. Mr Lochan Kumar Hazarika, Assistant Manager, Manupatra, Guwahati.
- Both the Resource Persons apprised on the various features of their Research site. They also explained the various methods to carry out effective research in an efficient manner on their sites. During the programme, the Resource Persons were able to clarify the doubts and problems raised by the participants.





**14<sup>th</sup> March, 2020**  
**Sensitization on “Sikkim High Court Practice Procedure Rules, 2011  
and conducting cases at the Appellate Stage” for Advocates.**



**RESOURCE PERSONS:**

- 1. Mr K W Bhutia, Ld Registrar General, High Court of Sikkim**
- 2. Mr U P Sharma, Advocate, Gangtok, Sikkim.**

Mr Karma Wangchuk Bhutia took the first session on Sikkim High Court Practice Procedure Rules, 2011. During the session the Resource person discussed all the procedural aspects relating to filing of petitions, appeals including necessary amendments incorporated in the Rules. The participants could clarify their doubts during the session

Mr U P Sharma took the second session on conducting cases at the Appellate Stage. The Resource person discussed all the relevant provisions contained in the Code of Criminal Procedure, 1973 and the Code of Civil Procedure, 1908. He also shared his experience while appearing before the Hon'ble High Court as well as the Subordinate Courts. The programme focused on sharing of best practices between the Resource Person and the participants.





**23<sup>rd</sup> May, 2020**

***Discussion on “The Recent Development in Criminal Law, Laws Relating to Bail and Surety and Recording of statements including Statements under the Protection of Children from Sexual Offences Act, 2012” for Sessions Judges of Sikkim Superior Judicial Service.***



**RESOURCE PERSON:**

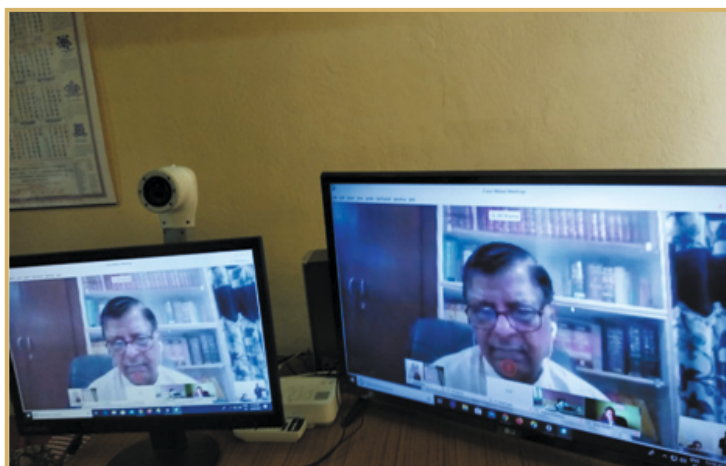
**Hon'ble Mr Justice Atul Sreedharan, Judge, High Court of Madhya Pradesh, Jabalpur Bench.**

Hon'ble Resource Person highlighted the developments in Criminal Law. He emphasized that there must be consistency in the Bail orders. Further he mentioned that in cases such as Criminal Breach of Trust or Cheating, the Court can perform the role of a Mediator, which will bring down the number of cases in the Courts. Hon'ble Resource Person enlightened on the importance of DNA Report in cases falling under the Protection of Children from Sexual Offences Act, 2012, discussing the first case of rape and murder which had been solved with the help of DNA report in United Kingdom.



**30<sup>th</sup> May, 2020**

**Workshop on “Code of Civil Procedure, 1908” for District Judges.**



**RESOURCE PERSON:**

**Mr H S Sharma, Former District & Sessions Judge, Delhi Superior Judicial Service.**

During the Workshop the Resource Person discussed all the relevant provisions. While discussing Jurisdiction under the Code of Civil Procedure, 1908, it was mentioned that the object of the Legislature behind pecuniary jurisdiction was to avoid forum hunting. It was also informed that Specific Performance Suits can be filed in a Court even if the Property lies in the territorial jurisdiction of another Court. Similarly a Partition Suit can be filed in a Court even if some of the property is lying outside the Jurisdiction of the said Court, provided the Court trying the Suit has pecuniary Jurisdiction over the matter. While discussing the provision on Judgment on Admission, the Resource Person highlighted that the Admission must be unequivocal, clear and unconditional. Further reliance must be placed upon the definition of Admission given in Section 17, Indian Evidence Act. It was also mentioned that the Admission must be specific and that the provision of Admission that is Rule 6 of Order XII, can be invoked even after recording of evidence in the suit.

During the Workshop the Learned Resource Person discussed all the landmark judgments on the various provisions sharing his experience as a District Judge while dealing with the provisions.



**6<sup>th</sup> June, 2020**

**Workshop on “Use of Video Conferencing Facility” for Judicial Officers.**

## **RESOURCE PERSON:**

**Mr Karma Wangchuk Bhutia, Registrar General, High Court of Sikkim.**

The Resource Person gave a brief overview of the E-Courts Project and discussed the technical aspect in Video Conferencing. It was informed that 2007 saw the commencement of the E-Courts Project in the country. Phase-I of the project was primarily concentrated on providing computer hardware to the Courts of the Country. In Phase-II apart from Courts, Judicial Academies and State Legal Services Authority were also included in the E-Courts Project. Further, Phase-II also concentrated on connecting Courts and Prison. It was informed that on 20.09.2017 Sikkim was the only State in the Country to have successfully connected the Courts with the Prisons. The Hon'ble High Court of Sikkim had also issued guidelines to carry remand over Video Conference of the inmates housed in the Prisons.

The Learned Resource Person also apprised on the Case Information System (CIS). It was informed that in CIS-3.0, the Interoperable Criminal Justice System (ICJS) has been launched which enables live exchange of data between the Courts, Prison, Forensic Laboratory and Police. It was informed that in Sikkim as of now the Courts have been connected with the Police. With the help of ICJS, it would be convenient to monitor cases. The Resource Person also discussed the Rules for Video Conference for Courts, 2020 notified by the Hon'ble High Court of Sikkim on 3<sup>rd</sup> June, 2020. The Rules spell out the procedure in detail of cases conducted using the Video Conference Facility. The Resource Person also shared some of the Landmark judgments of the Hon'ble Supreme Court of India which upheld the usage of Video Conferencing Facility in Court Proceedings.





19<sup>th</sup> and 20<sup>th</sup> June, 2020.

**Workshop on “Information Technology Act, 2000, Section 65B Indian Evidence Act, 1872, Cyber Law/Cyber Crimes, Appreciation of Electronic Evidence, Discussion on the landmark Judgments of Hon'ble Supreme Court of India and Hon'ble High Court of Sikkim including other High Courts” and for Chief Judicial Magistrates and Judicial Magistrates on 19<sup>th</sup> June, 2020**

**RESOURCE PERSON:**

**Dr. Harold D'costa, President of Cyber Security Corporation and CEO of Intelligent Quotient Security System.**



During the Workshop the Resource Person gave a brief background on the evolution of Cyber Crimes. He said that the security aspect on cyber transactions is very low in India. He said that India does not have its own router server. In the World at present, United States of America has 10 router servers while Sweden, Netherlands and Japan have one each. It was informed that in India there are 7 duplicate servers.

The Resource Person discussed the various types of Cyber crimes such as cyber stalking, cyber contraband, cyber trespassing, cyber laundering, cyber vandalism, cyber slandering, cyber theft, cyber porn, cyber terrorism and cyber fraud. While discussing cyber laundering and cyber fraud, the Resource Person emphasized the need to have a “block chain technology” to fight against such crimes. This block chain technology must be used by Banks to minimize the fraudulent transactions. The Resource Person also discussed the Procedure to be adopted during collection of Cyber Evidence. Section 65B, Indian Evidence Act, 1872, was discussed in great detail giving analogies. The Resource Person laid emphasis that the Investigating Officer tackling Cyber Crimes must have technically sound knowledge. He also discussed the landmark judgments of the Hon'ble Supreme Court as well as High Court of Sikkim and few other High Courts.







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