



# **SIKKIM JUDICIAL ACADEMY**

**JULY TO DECEMBER, 2020**



## **Half Yearly Newsletter**



# CONTENTS

## ARTICLE

- Jurisprudential Philosophy of Pr-Conception and Pre-Natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 1994 by Hon'ble Dr. Justice Shalini Phansalkar Joshi, Former Judge, High Court, Bombay. 1-4

## TRAINING AND WORKSHOP

1. Deliberation on Local Laws of Sikkim for District Judges on 18<sup>th</sup> July, 2020. 5
2. Programme on "Role of Magistrate under the Code of Criminal Procedure, 1973, Remand, Bail, Committal, Section 164 Code of Criminal Procedure, 1973, Section 313, Code of Criminal Procedure, 1973" for Chief Judicial magistrates and Judicial Magistrates on 22<sup>nd</sup> August, 2020. 6
- 3 Programme on Local Laws related to House Rent & Eviction for District Judges on 25<sup>th</sup> August, 2020. 7
4. A Lecture on "Criminal Trials & Art of Cross-Examination" for Advocates, Bar Associations of Sikkim on 12<sup>th</sup> September, 2020. 8
5. Discussion on Law related to Divorce for District Judges on 19<sup>th</sup> September, 2020. 9
6. Programme on "Execution of Decree under the Code of Civil Procedure, 1908 and Execution of Decree under Local Law on Tribal Land with reference to Notification No. 3082/L/R dated 24.03.1954 and Sikkim Debt Law, 1910 for Senior Civil Judges and Civil Judges on 26<sup>th</sup> September, 2020. 10
7. Programme on "Law of Injunction- under the Code of Civil Procedure, 1908 specifically Order XXXIX, Sections 94, 95 and under Specific Relief Act, Specifically Section 36-42 for Senior Civil Judges and Civil Judges on 17<sup>th</sup> October, 2020. 11
8. Demonstration training on Unique features, bettering research skills through SCC Online for Readers, Law Clerks and Librarian of High Court of Sikkim and Subordinate Courts of Sikkim on 21<sup>st</sup> November, 2020. 12

- |   |    |
|---|----|
| 9. Discussion on Protection of Children from Sexual Offences Act, 2012 with special reference to the Victim for Special Public Prosecutors (POCSO Act, 2012), Public Prosecutors and Additional Public Prosecutors on 21 <sup>st</sup> November, 2020.  | 13 |
| 10. Demonstration training on Unique features, bettering research skills through Manupatra for Readers, Law Clerks and Librarian of High Court of Sikkim and Subordinate Courts of Sikkim on 28 <sup>th</sup> November, 2020.   | 14 |
| 11. Sensitization programme on minor victims of Sexual Offences, Role of Special Public Prosecutor under the Scheme of Protection of Children from Sexual Offences Act, 2012, and Other Related Issues for Special Public Prosecutors (POCSO Act, 2012), Public Prosecutors and Additional Public Prosecutors on 28 <sup>th</sup> November, 2020. | 15 |
| 12. A brain storming session on “Arbitration and Conciliation Act, 1996” for District & Sessions Judges on 5 <sup>th</sup> December, 2020.  | 16 |
| 13. Refresher Course on “Negotiable Instruments Act, 1881” for Chief Judicial Magistrates and Judicial Magistrates on 11 <sup>th</sup> December, 2020.  | 17 |



## ***Jurisprudential Philosophy***

### ***Of Pre-conception And Pre-natal Diagnostics Techniques (prohibition Of Sex Selection) Act, 1994***

***Hon'ble Dr. Justice Shalini Phansalkar-Joshi,  
Former Judge, High Court, Bombay.***

'Gender Equality' is the basic premise, on which Indian Constitution is founded. The clarion call of equality resonates in all its chapters, provisions and articles. It is found enshrined in 'Preamble' - the soul of the Constitution, the fundamental rights - the conscious of the Constitution, the fundamental duties - the crux of the Constitution and the Directive Principles of State Policy - embodying the spirit of the Constitution. 'Equality of Status' and 'Equality of Opportunity' is the Constitutional promise and the Constitutional vision of justice. Despite that, gender inequalities are found percolated in all walks of Indian Society. The reasons for the same may be several and myriad from historical, religious to social causes like the concepts of patriarchy, evil practice of dowry etc. Founding fathers of our Constitution made every effort to bring women at par with men by making provision in the Constitution itself for beneficial legislation for women and children. But the gender biased social practices, which are derogatory to women and which Constitution asks citizens to renounce, still continue unabated. The practice of gender biased sex selection and sex determination is the outcome of this deep rooted mindset of preference for male child. This practice has existed in India for decades together and is estimated to have resulted in a loss of nearly 5.7 lakh girls annually during 2001 – 2008. It has assumed alarming proportions and accentuated multi-fold with easy access and availability of technology and its misuse, the repercussions of which are bound to be felt over the next several generations together and across the nation, crossing geographical boundaries. The child sex ratio (number of girls : per 1,000 boys in the "0 to 6" age-group) has seen steady decline from "976" in 1961, "964" in 1971, "962" in 1981, "945" in 1991, "927" in 2001 to "919" in 2011 and it is now spreading to those areas and pockets of the country, in which earlier this phenomenon was not so noticeable. In States, such as Punjab, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra and Delhi, Child Sex Ratio is as low as around 850 girls to 1,000 boys. This decline in sex ratio in these urban, affluent and progressive States indicates the easy availability and misuse of the technology.

As far back as in 1994, the Legislature has taken note of the misuse of this technology, acknowledging that pre-natal diagnostic techniques, like amniocentesis and sonography, which are useful for detection of the genetic or chromosomal disorders or congenial mal-formations or sex linked disorders etc. are used (misused?), on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child, if found to be female. It was recognized that, with the advancement in technology, new techniques are also being developed to select the sex of the child even before conception. It was made clear that these practices and techniques were discriminatory to the female sex and not conducive to the dignity of the woman. In the words of the Legislature, "the proliferation of the technologies, mentioned above, may in future precipitate a catastrophe in the form of severe imbalance in male-female ratio". The State is duty bound to intervene in such matters to uphold the welfare of the Society, especially of the women and children.

It was, therefore, found necessary to enact and implement in letter of spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex selective termination of pregnancy and to provide for the regulation of such terminations. Such a law was found needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the Society.



The PCPNDT Act was, thus, enacted with a view to ban the use of both sex selection techniques prior to conception as well as misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensure their scientific use, for which they are intended.

It must, however, be remembered that, the PCPNDT Act does not totally ban the use of these techniques, but only its abuse is tried to be stopped by regulating the use of such techniques and by providing deterrent punishment to stop such inhuman acts. The PCPNDT Act, thus, provides for; (1) Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus leading to sex selection; (2) Prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex; (3) Permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders; (4) Permitting the use of such techniques only under certain conditions by the registered Institutions; and (5) Punishment for violation of the provisions of the Act.

The PCPNDT Act consists of only 8 Chapters, 34 Sections, 19 Rules and some Forms. Though it was enacted in 1994; however, it came into effect only from 1st January 1996.

The Act clearly defines pre-natal diagnostic techniques in Section 2(j); pre-natal diagnostic procedures in 2(i) and pre-natal diagnostic tests in 2(k). Even a cursory glance at these definitions makes it clear that they are quite wide in import and inclusive, leaving no scope for any doubt or interpretation. They do not exclude any technique, procedure or tests, which may aid in sex selection or sex determination.

Section 3A of the Act puts a specific ban on sex selection and Section 23 prescribes punishment to anyone, who conducts such pre-natal diagnostic techniques. The term 'sex selection' has been defined in Section 2(o). It includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.

The Act not only prohibits conduct of any pre-conception and pre-natal diagnostic techniques for the purpose of sex selection, but it also prohibits communication of the sex of foetus to the pregnant woman or her relatives or any other person in any way – by word or sign or any other manner. This provision is contained in Section 5 sub-section 2 of the Act. As the Act permits the use of this technique for other medical purposes, like detecting abnormalities and anomalies of the foetus, considering this eventuality, Section 5(1) provides that, even for the purpose of detecting abnormalities, if such diagnostic procedures are conducted on any pregnant woman, it must be after fulfilling certain conditions like explaining to her all known side and after effects, obtaining her written consent in the prescribed proforma in a language she understands and giving her a copy of the said consent. As per the mandate of the Act, if during conduct of such procedure, the person, that is the doctor or radiologist, comes to know the sex of the foetus, there is total prohibition on disclosure or communication of this information. Violation of this provision is also punishable under the Act.

The Act also takes care to see that no genetic counselling centre, genetic laboratory or genetic clinic shall conduct or cause to be conducted any pre-natal diagnostic technique, including ultrasonography, for the purpose of determining the sex of the foetus. Section 6© further provides that, no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception. The breach of this provision is also punishable under Section 23 of the Act with imprisonment and fine.

The Act has put a total ban on any advertisement by whatever means relating to pre-conception and pre-natal determination of sex. The definition of 'advertisement', as given in Section 22, is very comprehensive and includes circulars, labels, wrappers or any other document through internet or any other electronic or print media and even visible representation by means of any hoarding,

wall painting, signal, light etc. Any person contravening this provision is liable for punishment with imprisonment and fine.

A complaint can be filed not only by the Appropriate Authority concerned, but even by any Officer authorized in this behalf by the Central or the State Government or by an Appropriate Authority itself and also by any person, including a Social Organization, giving notice of 15 days to the Appropriate Authority. Any person, who uses pre-conception and pre-natal diagnostic techniques for the purpose of sex selection or sex determination, can be an offender. However, taking note of the prevailing social conditions and ground realities, the Act has incorporated special protection to the pregnant women by laying down that, she cannot be an offender, unless the contrary is proved. The Court shall presume that she was compelled by her husband and / or other relatives to undergo such techniques. Hence, her husband and / or other relatives shall be liable for the abatement of the offence. This is a salutary provision incorporated in the Act by the legislation for the protection and benefit of the pregnant women, which needs to be welcome and kept in mind.

The credit for actual implementation of the Act goes to the Hon'ble Supreme Court of India, as even till the year 2000, the machineries, which were contemplated under the Act to monitor its implementation, were not established. Under the Act, the duty is cast on the Central Supervisory Board with corresponding State Supervisory Board and the Advisory Committees and the Appropriate Authorities to implement the PCPNDT Act. However, these Boards or Committees were not established till the year 2003, either at the Central or even at the State level and hence, the Apex Court has to take note of the same, when it was approached by the Research Organization, namely, "The CEHAT"; a Non-Government Organization, namely, "MASUM" and a Civil Society Member Dr. Sabu M. George. In the landmark decision of CEHAT and Ors. Vs. Union of India, the Apex Court has expressed grave concern about the discrimination prevailing in the Indian Society against the girl-child, which was found to be universal. It was noticed that there was no change in the mindset that favours a male-child, as compared to a female-child. The use of modern science and technology prevent the birth of girl-child by sex determination before conception and by sex selection after conception, as was evident from the 'Census' figures of 2001, revealing a greater decline in the child sex ratio in the "0 to 6 years" age-group in the States like Haryana, Punjab, Maharashtra and Gujarat, which were economically better off. The Supreme Court took note of the fact that the law, which aims at preventing the practice of sex selection and sex determination, is not being implemented at all. Hence, after calling for data and compliance reports from the Central and State Governments regarding implementation of the PCPNDT Act, the Supreme Court has passed various orders from time to time, monitoring the implementation of the PCPNDT Act by way of continuous mandamus.

It is pertinent to note that, even thereafter, the implementation of the PCPNDT Act, which was enacted with a very loudable object of ensuring gender equality, remained a matter of apathy for the Governments concerned. Even in the year 2007, in a State like Orissa, hundreds of skeletons, skulls and body parts of infants were recovered in an area close to various Nursing Homes and Clinics, giving rise to strong allegations that the practice of sex selection and pre-natal sex determination was still rampant. After coming across a series of news items in the print and electronic media about this incident, in a Public Interest Litigation filed by one Mr. Hemanta Rath, a Social Activist, under Article 227 of the Constitution of India, the Orissa High Court was constrained to take note of the total inaction on the part of the Central and State Governments in implementing the provisions of the PCPNDT Act, reminding them once again that the PCPNDT Act has been enacted to serve the public purpose and the Constitutional aim, as is clear from the object of the PCPNDT Act. It was held that, the State is, therefore, under a statutory and Constitutional obligation to implement the provisions of the PCPNDT Act.

During the same time, the Punjab and Haryana High Court was also constrained to take note of the illegal elimination of 250 female foetus, leading to recovery of large quantity of foetal remains from a 20 feet deep septic tank at Buala Nursing Home in Pataudi of Gurgaon District in Haryana. In the inquiry conducted in the incident in compliance with the directions of the Court, four Medical Officers were found guilty. The State Government, however, dragged its feet in taking appropriate action against the Officers. Punjab and Haryana High Court was, therefore, constrained to give directions for expeditious inquiry and to take appropriate action against all those found to be guilty. It has to take note that the statutory notification appointing the Civil Surgeon of the District as an Appropriate Authority, though issued on 24th October 1997, it was not published in the Official Gazette, which led to many Doctors escaping action against them. The High Court found it regrettable that, for a period of over 12 years, the non-publication of the Notification had never come to the notice of the concerned Authorities.

This apathy and indifference towards implementation of the Act has continued despite the slogans and lip service to the cause of 'Save the Girl Child'. In the year 2012 also, in a Public Interest Litigation, the Rajasthan High Court had to take note of the same and give further directions for proper compliance with the provisions of the PCPNDT Act and for the expeditious decision of the cases filed under the said Act by making them time-bound and further making it clear that no laxity would be tolerated in this regard. A clear message was given that the violation of the Act had to be dealt with firm hand, since it had become very difficult to check the rampant practice of sex determination.

The monitoring and implementation of the PCPNDT Act, however, was required to be continued, as the declining Child Sex Ratio made it evident that the functioning of the Statutory Bodies, established under the PCPNDT Act, left much to be desired. Even as recent as in the year 2013, the Apex Court had to again express its concern about Indian Society's discrimination towards the girl-child because of various reasons, which have their roots in social behavior and the prejudices against the female-child and due to the evil practice of dowry that is still prevalent in India. Once again the Apex Court took note of the decline in the female Child Sex Ratio across the country, which was a result of the misuse of pre-natal diagnostic techniques and improper implementation of the PCPNDT Act meant to prevent such misuse. On the basis of the data furnished by the various States, it was observed by the Apex Court that, the functioning of the State Authorities established under the PCPNDT Act is far from satisfactory. The reasons for the same were found to be the lack of proper supervision and monitoring of the mushrooming growth of Sonography Centres. It was found that the Ultra-Sonography machines used for sex determination were seldom seized and even if seized, they were being released to the violators of the law, only to repeat the crimes. Moreover, very few cases had resulted in convictions and were pending disposal for several years in many Courts. Many of the clinics were totally unaware of the amendments in the PCPNDT Act and Rules. As a result, in the case of Voluntary Health Association of Punjab Vs. Union of India and Others, the Apex Court was required to issue various directions for the effective implementation of the PCPNDT Act through effective supervision of the Central and State Supervisory Boards, ensuring that the records and forms in accordance with Rule 9(8) are maintained properly, further ensuring that the manufacturers and sellers of Ultra-Sonography machines do not sell any machine to the unregistered centers and disclose on a quarterly basis the list of persons to whom the machines have been sold. Directions were given for taking steps for mapping of all registered and unregistered clinics in three months time and for constituting 'Special Cell' to monitor the progress of various cases pending in the Court and to take further steps for their early disposal, to seize and, if necessary, to confiscate and to sell the machines, which are used illegally and contrary to the provisions of the PCPNDT Act.

The most important direction given in the decision is to take steps to educate the people about the necessity of implementing the provisions of the PCPNDT Act, by conducting 'Workshops' as well as

'Awareness Camps' at the State and District levels. It was felt by the Apex Court that the reason for non-implementation of the provisions of the PCPNDT Act was the failure on the part of the authorities to change the mindset that discriminates against women and children. In addition to the awareness of the legal provisions, therefore, it was felt that the awareness is also necessary in other spheres, like focus on the prowess of women and need for women's empowerment; for that, a change in the mindset is required, so that the practices like dowry are abhorred. It was emphasized that, women play a seminal role in the society and it is a requisite need of the present day that the people are made aware that it is obligatory to treat women with respect and dignity. Hence, it was held that, a Cosmetic Awareness Campaign would not sub-serve the purpose. The people involved in the Training Camps must take it up as a service, a crusade. They have to equip themselves with Constitutional concepts, culture, philosophy, religion, scriptural commands and injunctions and the mandate of the law, as engrafted under the Act. They should have boldness and courage to change the mindset of the people. They should clearly spell out that the elimination of female foetus is the worse type of dehumanization of the human race.

As a matter of fact, the issue of sex selection and sex determination is a very complex one. It has several dimensions. The major cause for decline in female sex ratio, though may be attributable to the mushrooming technology, which is easily available and accessible, its deep rooted cause lies in the social mindset, which cannot be ignored. It takes years for the mindset to change, such change being gradual; whereas, the Legislation has the deterrent effect and it gives the necessary impetus for such change of mindset. Hence, the emphasis has to be laid on effective implementation of the Act.

The issue of decline in female sex ratio also cannot be looked into in isolation. It is required to be considered in the broader perspective of gender equality. All the laws, which have the effect of perpetuating the gender inequality, may be even in a subtle way, like the laws relating to succession and inheritance, when it pertains to women, the laws like Child Marriage Restraint Act, the Marriage Laws in their entirety, all evidence and exhibit such gender inequalities, which are required to be removed by the continuous efforts, both on the part of the 'Legislature' and the 'Judiciary' by its sensitive, realistic, progressive and dynamic interpretation of the laws. Then only, the law, which has been brought to check and arrest the decline in Child Sex Ratio, can achieve its object by its effective implementation. Otherwise, the India's poor show on 'Gender Equity' in 'Global Gender Gap Index, 2017' at the rank of "108", out of 144 countries, a fall of 21 places from the last year's 87 rank and the lowest since the 'Index' was developed in 2006, would be always an agonizing and painful reminder that the Constitutional promise of 'Gender Equality' is yet not fulfilled. If the girls are not allowed to be born or even not allowed to be conceived at all, the dream of 'Gender Equality' will remain far distant and will continue to elude. It will be for the State Legal Services Authorities to create such gender awareness, ensuring that the practices like sex selection and sex determination, which are against the spirit of the Constitution, which insult and humiliate the womanhood, are eradicated from the Society. I am sure, the Maharashtra State Legal Services Authority, through its dedicated efforts, will continue to strive on this noble path.



***All the programmes organised by the Academy in the second half of 2020 from July to December were held via Video Conferencing Facility owing to the Covid-19 Pandemic.  
18<sup>th</sup> July, 2020  
Deliberation on Local Laws for District Judges***

**RESOURCE PERSON:**

**Hon'ble Mr Justice Bhaskar Raj Pradhan, Judge, High Court of Sikkim and Judge-In-Charge / Chairperson, Sikkim Judicial Academy.**

The topics covered were “The Legal and Historic perspective on the The Sikkim Subject Regulation, 1961, The Sikkim (Citizenship) Order 1975, Statutory orders issued under the Citizenship Act, 1955 and The Adaptation of Sikkim Laws (No.1) Order 1975”. Deliberation was also made on “Laws regarding issuance of Certificate of Identification namely the Notification No.66/Home/95 dated 22<sup>nd</sup> November, 1995., Notification NO.57/Home/96 dated 27<sup>th</sup> September, 1996, Notification No. 04/Home/ 2006 dated 25.01.2006, Notification No.119/Home/2010 dated 26.10.2010, Notification No.16/Home/2014 dated 03.03.2014 and Corrigendum No. 49/ Home/2014 dated 30.05.2014”. Laws relating to marriages and Registration in Sikkim were also discussed especially the Rules to provide for Registration and Solemnization of a Forum of Marriage in Sikkim, 1963 and The Hindu Marriage Act, 1955.” The “Effects of non-enforcement of Special Marriage Act, 1954” was also discussed.

While discussing **The Sikkim Subject Regulation, 1961**, the Hon'ble Resource Person informed that the Regulation has been repealed after Sikkim merged with India. Further people who were left out from the Regulation were added in the Citizenship Act. Hon'ble Resource Person also discussed the difference between Sikkim Subject and Certificate of Identification. Lordship urged the participants to go through the recent judgment of the High Court of Sikkim in **Yogen Ghatani v. State of Sikkim (Writ Petition (C ) 66 of 2016)** dated 20<sup>th</sup> February 2020 which discusses in detail the laws relating to Certificate of Identification, Sikkim Subject, etc.

While discussing the Laws relating to marriages and Registration in Sikkim, Lordship informed that the Indian Christian Marriage Act, 1872 was extended and enforced to Sikkim from 28.01.1931. The Hindu Marriage Act was enforced only on 01.05.1989. Prior to this the Chogyal of Sikkim had promulgated the **Rules to provide for Registration and Solemnization of a Forum of Marriage in Sikkim, 1963**. As per these rules, anyone can get their marriage registered. The Rules are exhaustive and covers issues such as Divorce, restitution of conjugal rights, etc. Further the Government of Sikkim vide **Notification No.367/LR dated 09.08.2007** made it compulsory to register all marriages which take place between citizens of the country in the State under this Rules. Lordship also informed that the customary laws of each community is required to be codified. So far in the State only the customary laws of the Nepalese community has been codified.

With regard to the extension of the Special Marriage Act, 1954, to Sikkim, it was informed that vide a central Notification dated 09.10.2019 the Act has been extended to the State of Sikkim but the same shall be enforced “**on such date as the Central Government may, by notification in the Official Gazette, appoint.**” However, till date no such notification has been issued by the Central Government.





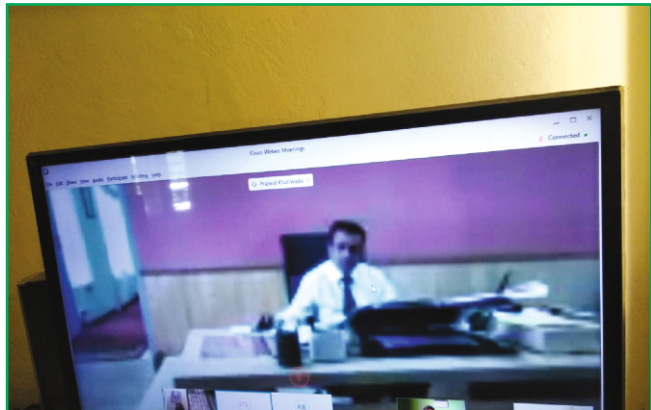
**22<sup>nd</sup> August, 2020**

***Programme on “Role of Magistrates under the Code of Criminal Procedure, 1973, Remand, Bail, Committal, Section 164 Code of Criminal Procedure, 1973, Section 313, Code of Criminal Procedure, 1973” for Chief Judicial Magistrates and Judicial Magistrates.***

**RESOURCE PERSON:**

**Mr Prajwal Khatiwada, District & Sessions Judge, East Sikkim.**

The Resource Person discussed in detail the role played by a Magistrate during the pre-trial stage, the trial stage as well as once the trial comes to an end. The Resource Person mentioned that every order passed by a Magistrate must be a reasoned order. It was mentioned that at



the time of arrest of person, the order of remand must be reasoned as held by the Hon'ble Supreme Court in a plethora of judgments. A reasoned order was also emphasized for orders framing charge, orders granting or refusing plea for DNA test, orders rejecting or granting of bail and order of sentence at the end of the Trial.

The Resource Person stated that while taking cognizance of a case, the same must be reflected in the order-sheet. While discussing statutory bail under Section 167 CrPC, the Resource Person mentioned that the period of 60 or 90 days is computed from the date the accused was ordered to be remanded either under Police custody or Judicial custody.

The Resource Person also discussed Sections 211, 216, 319, 91, 325, 197, 53A, 313, 164 and 389 CrPC. He mentioned that after charge-sheet is filed, the Magistrate has the power to order for “further investigation” but not for “re-investigation”. It was also mentioned that in Private Complaint Cases, the Magistrate can try a complaint case against a person even if the complaint is based on the same facts and circumstances of an earlier case filed complaint against the same person, provided the said person was discharged at the threshold of the previous case. The Resource Person apprised the participants on the necessity of maintaining a Case Chart/Calendar in every case. He also asked the participants to be sensitive while sharing contents of a pendrive or any electronic gadget in POCSO cases or cases involving sexual assault of a woman. It was informed that the Magistrates have the power to try cases against Defence personnels but it was incumbent upon the Magistrate to first inform the Defence Authority.





**25<sup>th</sup> August, 2020**

## ***Discussion on Local Laws for District & Sessions Judges***



### **RESOURCE PERSON:**

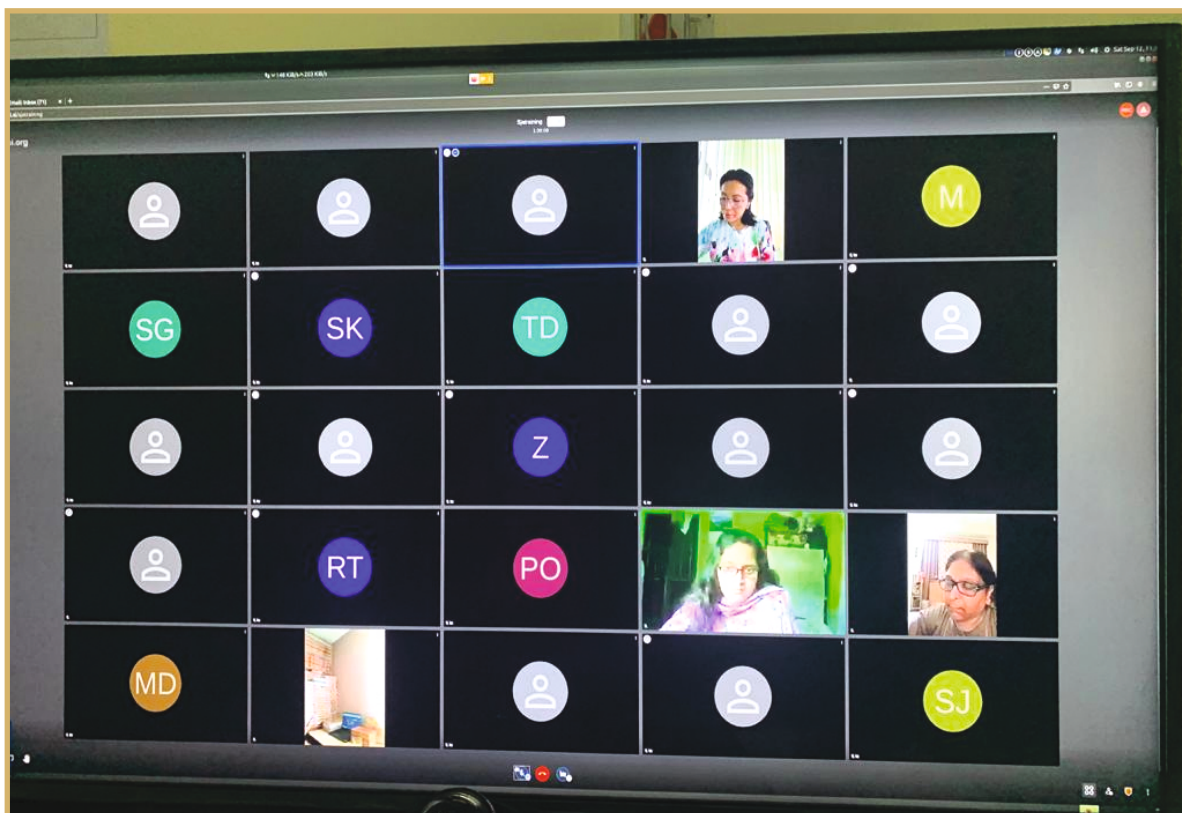
**Hon'ble Shri Justice Pius C. Kuriakose, Former Chief Justice, High Court of Sikkim.**

The Hon'ble Resource Person discussed the Local Law on House Rent & Eviction namely the Gangtok Rent Control & Eviction Act, 1956, Notification No.6326-600/H&WD dated 14.04.1949. Hon'ble Resource Person also went through the Law on Court Fees and Stamp namely the Sikkim State Rules regarding Court Fees and Stamp on Documents, 1928, The Sikkim Court Fees (Exemption and Miscellaneous Provisions) Act, 1983. Hon'ble Lordship referred to important judgments of the Hon'ble High Court of Sikkim during the session.



**12<sup>th</sup> September, 2020**

***A Lecture on “Criminal Trials & Art of Cross-Examination” for Advocates,  
Bar Associations of Sikkim***



**RESOURCE PERSON:**

**Mr HS Sharma, former District & Sessions Judge, Delhi Higher Judicial Service.**

The Resource Person discussed in detail the basic concept of cross-examination. He emphasized on the object of cross-examination which was to find the truth, falsity in the witnesses and to help defend the accused person during the trial. He informed that the charge framed in the case must be borne in mind during cross-examination. It was also informed that for effective cross-examination, one must be in grips with the facts of the case involved. Further he also said that the cross-examination must be based on law. The Resource Person discussed the various categories of witnesses and shared the manner of cross examining such witnesses. The Resource Person discussed all the topics with analogies drawn from his own experience as a Judge as well as an Advocate.



**19<sup>th</sup> September, 2020**

***Discussion on Law related to Divorce for District & Sessions Judges of Sikkim***

**RESOURCE PERSON:**

**Hon'ble Mrs Justice Meenakshi Madan Rai,  
Judge, High Court of Sikkim.**

The Hon'ble Resource Person discussed the Special Marriage Act, 1954 and divorce Law applicable to Tribals and Christians in Sikkim.

The Hon'ble Resource Person discussed the Historical background on position of women in the World and in India particularly. While

discussing Registration of Marriages solemnized in India, it was informed that the Hon'ble Apex Court has made registration of Marriages mandatory in the country which is seen reflected in the Hindu Marriage Act as well as the Special Marriage Act.

The provisions of the Special Marriage Act, 1954 was discussed in detail by her ladyship. It was informed that a Hindu marrying a non Hindu, the Special Marriage Act, 1954 applies. Landmark judgments on Maintenance was also discussed. Ladyship informed that it is the husband's duty to provide maintenance to his wife as per her social status and standard as held by the Hon'ble Supreme Court. Ladyship informed the same Court held that the income of the wife must also be considered at the time of granting of maintenance. The Hon'ble Supreme Court in 2011 acknowledged the concept of "Live-in relations" and held that a woman in live-in relation is entitled to maintenance provided it was with an unmarried man.

Ladyship emphasized that once a marriage is registered under one law, divorce cannot be granted under another law. It was informed that Christians in Sikkim have no respite at present since the Christian Marriage Act has not been extended to Sikkim.

Hon'ble Ladyship also discussed the Rules to provide for Registration and Solemnization of a Form of Marriage in Sikkim, 1963. With respect to divorce of tribals it was informed that Hindu Marriage Act does not apply to Tribals. Accordingly, in divorce matters involving parties belonging to tribal communities, the participants were asked to analyse the evidence properly. Ladyship also discussed pre-nuptial agreement and post nuptial agreement and its legal status in India. It was informed that such agreements are not enforceable in India. Ladyship informed the participants that the Hon'ble Supreme Court in a historical judgment struck down Section 497, Indian Penal Code, which penalises adultery since it was against Articles 14, 15 and 21 of the Constitution of India.





**26<sup>th</sup> September, 2020**

**Programme on “Execution of Decree under the Code of Civil Procedure, 1908 and Execution of Decree under Local Law on Tribal Land with reference to Notification No. 3082/L/R dated 24.03.1954 and Sikkim Debt Law, 1910.” for Senior Civil Judges and Civil Judges**

**RESOURCE PERSONS:**

**1.Hon'ble Mr Justice GS Sistani, former Judge, High Court of Delhi.**

**2.Mr NG Sherpa, Learned District & Sessions Judge, North District.**



The first session was taken by Hon'ble Mr Justice GS Sistani. The Hon'ble Resource Person discussed all the relevant

provisions on execution of decree under Order XXI Code of Civil Procedure, 1908. He informed the participants that an Execution Petition must be handled carefully by the Judges. Hon'ble Resource Person gave analogies while discussing the provisions. He also discussed the various problems faced while handling Execution Petitions and the ways to tackle them.

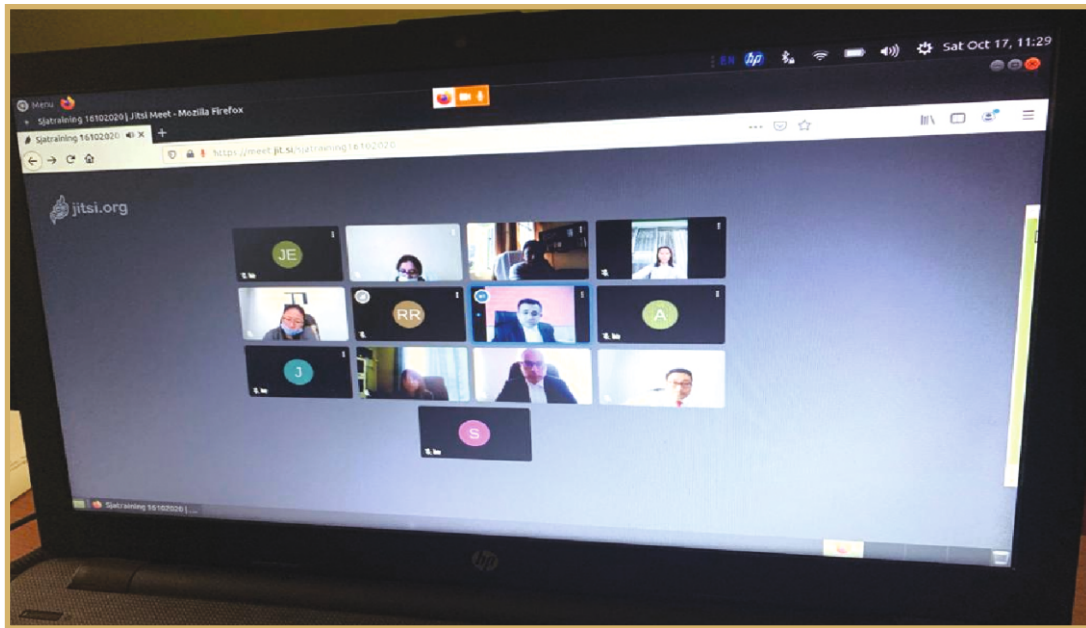
The second session was taken by Mr N G Sherpa and was on Execution of Decrees involving Tribal Lands. During this session the Resource Person discussed the various Local Laws on this subject particularly Notification No.3082/L.R. dated 24.03.1954 and Sikkim Debt Law, 1910. The Resource Person also discussed Revenue Order No. I, Notification No.660 and 669 dated 21.05.1931, Office Order No. 102 dated 21.03.1954, Office Order No.105 dated 24.02.1961 and Sikkim Regulation of Transfer of Land, 2005.





**17<sup>th</sup> October, 2020**

***Programme on “Law of Injunction- under the Code of Civil Procedure, 1908 specifically Order XXXIX and Sections 94, 95 and under Section 36-42 of the Specific Relief Act, 1963” for Senior Civil Judges and Civil Judges***



### **RESOURCE PERSON:**

**Mr Prajwal Khatiwada, District & Sessions Judge, East District.**

The Resource Person went through the relevant provisions specifically Order XXXIX Code of Civil Procedure, 1908 and Sections 34 to 42 of the Specific Relief Act, 1963. He discussed the different types of Injunction. While discussing the topic, the Resource Person emphasized on certain provisions which must be borne in mind while handling Injunction petitions. He gave analogies drawn from his own experience as a Presiding Judge. The Resource Person discussed important case law principles of the Hon'ble Supreme Court. He also provided with case law material on the subject matter.



**21<sup>st</sup> November, 2020**

***Demonstration training on Unique features, bettering research skills through SCC Online for Readers, Law Clerks and Librarian of High Court of Sikkim and Subordinate Courts of Sikkim***



**RESOURCE PERSONS:**

- 1. Mr Sanjay Kapoor, Vice President, SCC Online**
- 2. Mr Sumit Dhawan, Regional Manager, Eastern Book Company.**
- 3. Mr. Chetan Singh Gill, SCC online.**

The Resource Persons explained all the features of SCC Online in detail with demonstrations.





**21<sup>st</sup> November, 2020**

***Discussion on Protection of Children from Sexual Offences Act, 2012 with special reference to the Victim for Special Public Prosecutors (POCSO Act, 2012), Public Prosecutors and Additional Public Prosecutors***



**RESOURCE PERSON:**

**Hon'ble Dr Justice SS  
Phansalkar Joshi, Former  
Judge, High Court of Bombay.**

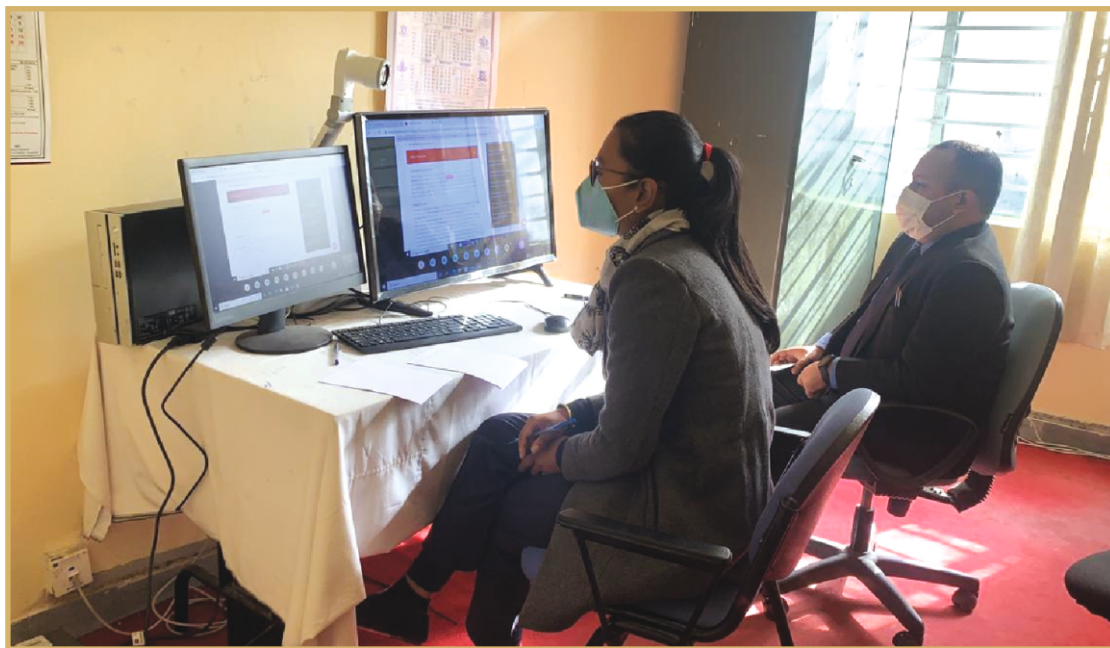
The Resource Person mentioned that the POCSO Act is the first Act to recognize Child as a Victim. She mentioned that a child has to face two equations in the criminal Justice System- first is the child versus adult and the second is child versus Accused. It was mentioned that prior to POCSO Act, there were statutes which recognized and protected rights of a child such as the Juvenile Justice (Care and Protection) of Children Act, 2015 but with the POCSO Act, 2012 the rights of a child as a victim has been recognized and fortified. The Act emphasizes on incorporation of child friendly procedure during the entire criminal proceeding starting from investigation stage.

Ladyship discussed all the provisions which provide safeguards for the child namely Section 33(2) which states that questions to be put to the child victim must be communicated to the Court and it is the Court which puts forth the questions to the child victim. This safeguard, prior to it being incorporated in the Act had been recognized by the Hon'ble Supreme Court in Sakshi v. Union of India. The Act also emphasizes that the identity of the child victim must be protected. This has been highlighted by all the Hon'ble High Courts of the country and by the Hon'ble Apex Court.



**28<sup>th</sup> November, 2020**

***Demonstration training on Unique features, bettering research skills through Manupatra for Readers, Law Clerks and Librarian of High Court of Sikkim and Subordinate Courts of Sikkim***



**RESOURCE PERSON:**

**Mr Satendra Kumar, Manager (Sales), Manupatra.**

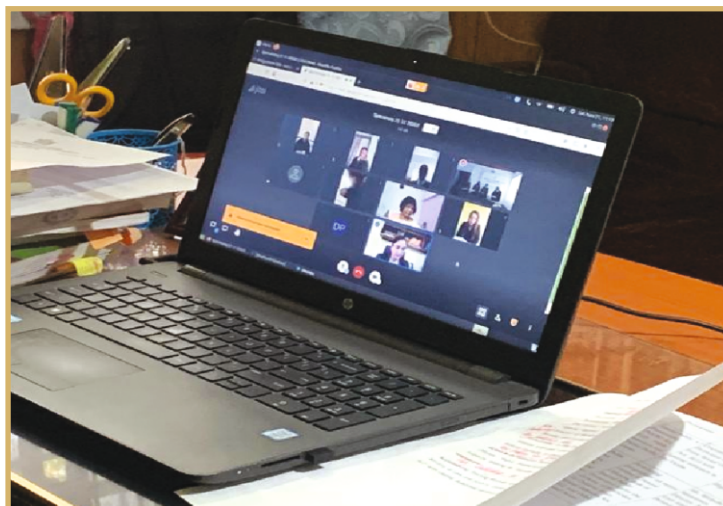
The Resource Person explained the features along with the contents of Manupatra in detail with demonstrations.



**28<sup>th</sup> November, 2020**

***Sensitization programme on minor victims of Sexual Offences, Role of Special Public Prosecutor under the Scheme of Protection of Children from Sexual Offences Act, 2012, and Other Related Issues for Special Public Prosecutors (POCSO Act, 2012), Public Prosecutors and Additional Public Prosecutors***

**RESOURCE PERSON:  
Ms Michelle Mendonca,  
Consultant , Freedom  
Fund, Mumbai.**



The Resource Person informed that Children have a special place in life and Law should also consider that. Accordingly, the POCSO Act imbibes this. It was informed

that prior to the POCSO Act, many offences against children went unpunished. The Resource Person discussed case laws of the Hon'ble Supreme Court wherein the offender was acquitted due to want of law. The Hon'ble Supreme Court had asked the Legislature in a leading judgment to address the lacuna.

The Resource Person discussed the challenges faced in implementation of the Act. She discussed the provision on Mandatory Reporting. She mentioned that in the country, there is delayed reporting of such offences. Some of the reasons mentioned were social stigma and grooming. She explained that there is also the case of secondary victimization that is where the child is made to narrate the entire incident, again and again, once the matter is reported in the Criminal Justice System.

The Resource Person stated that “Rape is a crime of Power” which is why children get sexually assaulted. She also emphasized that the Best Interest of the child must be borne in mind. That the criminal Justice system for the children must be based on compassion. It was informed that the Judge must appreciate the evidence of victim empathetically. The Resource Person discussed all the provisions which provide safeguards for the child. It was informed that anticipatory bail should not be granted in POCSO matters. The factors to be considered during sentencing was also discussed. It was informed that the Act provides for granting of compensation to the victim.



11<sup>th</sup> December, 2020

*Refresher Course on “Negotiable Instruments Act, 1881”  
for Chief Judicial Magistrates and Judicial Magistrates*



**RESOURCE PERSON:**

**Dr Ajoy Kumar Mukherjee, Learned Registrar Inspection-II, High Court of Kolkata.**

The Resource Person started the session with a brief background of the Act especially Chapter VII. He mentioned that the object of the Act is to inculcate faith in banking transactions. The ingredients of Section 138 of the Act were discussed in detail. The Resource Person discussed all the important provisions of Chapter VII namely Sections 139, 142, 145 and 146. The various issues involved while handling cases under Section 138 was also discussed. Reference to landmark judgments of the Hon'ble Supreme Court of India and Hon'ble High Courts were made during the session.





### SIKKIM JUDICIAL ACADEMY

Address: Sikkim Judicial Academy, Above  
DESME (Aadhar Office) Lingding  
Road, Gangtok, East Sikkim  
Website: [sikkimjudicialacademy@nic.in](mailto:sikkimjudicialacademy@nic.in)  
Email id: [dir.sja-sik@nic.in](mailto:dir.sja-sik@nic.in)  
Contact No: 03592-231541, 03592-231542