



# Monthly e-Newsletter

of Judicial Training & Research Institute, U.P.  
Vineet Khand, Gomti Nagar, Lucknow

**JTRINL - Volume 5 – Issue 4**  
*(April, 2023)*



<http://www.ijtr.nic.in/>



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JTRINL – Volume 5 – Issue - 4

(April, 2023)

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Published by:

Judicial Training & Research Institute, U.P.

Vineet Khand, Gomti Nagar, Lucknow-226010

Visit Website at [www.ijtr.nic.in](http://www.ijtr.nic.in)



## **PATRON-IN-CHIEF**



**HON'BLE MR. JUSTICE PRITINKER DIWAKER**  
Chief Justice, Allahabad High Court

## **SUPERVISORY COMMITTEE OF JTRI**



**Hon'ble**  
**Mr. Justice Devendra Kumar Upadhyaya**  
Sr. Judge, Allahabad High Court at Lucknow  
& Chairman Supervisory Committee JTRI



**Hon'ble**  
**Mr. Justice Ajay Bhanot**  
Judge, Allahabad High Court



**Hon'ble**  
**Mr. Justice Jaspreet Singh**  
Judge, Allahabad High Court at Lucknow



**Hon'ble**  
**Mr. Justice Om Prakash Shukla**  
Judge, Allahabad High Court at Lucknow

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## TRAINING ACTIVITIES IN THE INSTITUTE

### I. Special Training Programme for Judicial Officers from Bangladesh

National Judicial Academy of India's Training Programme for Bangladesh Judges and Judicial Officers, Phase-II was being organized from 09<sup>th</sup> April, 2023 to 13<sup>th</sup> April, 2023 at Judicial Training and Research Institute, U.P., Vineet Khand, Gomti Nagar, Lucknow in which 59 officers participated. The training programme was inaugurated by the **Chief Guest, Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow** and **Guests of Honour, Hon'ble Mr. Justice Attau Rahman Masoodi and Hon'ble Mr. Justice Rajesh Singh Chauhan, Judges, Allahabad High Court at Lucknow.**

While inaugurating the training programme, **Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow** started at the note that "the first phase at NJA, Bhopal of this two phase training programme must have been enriching, interesting and enjoyable and expressed hope that the good experiences will continue in the second phase as well. His Lordship said that any training programme for the judges of another country gives us an interesting opportunity to interact and share good ideas and practices with each other. It also gives us opportunity not only to understand each other in a better manner but also to understand and appreciate laws that are enforceable in our countries."

He further said that the relationship between India and Bangladesh is anchored in history, culture, language and shared values of secularism, democracy and countless other commonalities between two countries. In the present times, the work of a judge has acquired multi-dimensional shape as he is not merely involved in deciding cases but also managing court and cases as well as using modern technology to the optimum level so as to fetch good results. So, team work has come to occupy an important place in modern judging, court and case management.



Hon'ble Mr. Justice Devendra Kumar Upadhyaya,  
Senior Judge, Allahabad High Court at Lucknow,  
Hon'ble Mr. Justice Attau Rahman Masoodi and  
Hon'ble Mr. Justice Rajesh Singh Chauhan, Judges,  
Allahabad High Court at Lucknow Sharing Dias in the  
inaugural function



Hon'ble Mr. Justice Devendra Kumar Upadhyaya,  
Senior Judge, Allahabad High Court at Lucknow  
sensitizing the participants

On this occasion, the **Guest of Honour, Hon'ble Mr. Justice Atau Rahman Masoodi, Judge, Allahabad High Court at Lucknow** said that "he is both happy as well as pained. He said that he is happy to see that about 50 brother and sister Judges of Bangladesh District Judiciary are participating in this training programme. But he is pained to recall the partition of the country whereby two daughters of great land India got separated. He said that India and Bangladesh have good relations from the very beginning and these relations have further improved over last few years. He appealed to the participants that they should focus on

knowledge, legal principles, principles of natural justice and morality including Constitutional morality in their judicial work.” He concluded by giving best wishes to the participants.



Hon'ble Mr. Justice Atau Rahman Masoodi, Judge, Allahabad High Court at Lucknow addressing participating officers



Hon'ble Mr. Justice Rajesh Singh Chauhan, Judge, Allahabad High Court at Lucknow delivering his talk

**Hon'ble Mr. Justice Rajesh Singh Chauhan, Judge, Allahabad High Court at Lucknow and the Guest of Honour** of inaugural session, while addressing the participants, said that he is very happy to mention that India was the first country which recognized Bangladesh as an independent Nation. Ever since the beginning, both the countries have developed very healthy and strong relationship and this training programme is an indicator of that healthy relationship. He thanked the Institute for inviting him in the programme and gave best wishes to the Institute and participants.

Sri Kushalpal, Additional Director, JTRI welcomed the Guests and Sri Irfan Ahmad, Additional District & Sessions Judge/OSD, JTRI gave Vote of Thanks. The proceedings for inaugural session were compered by Dr. Humayun Rasheed Khan, Additional Director (Research), JTRI.

## **II. Four-weeks online Training Programme for Presiding Officer of Special Courts dealing with NI Act cases**

As per the directions of Hon'ble Committee constituted to suggest solutions for ensuring expeditious disposal of cases under section 138 of the Negotiable Instrument Act (Cheque Bouncing Cases), High Court Allahabad, the institute organized four weeks online training programme for the Presiding Officers of Special Courts dealing with highest pendency of N.I. Act Cases from 10.04.2023 to 09.05.2023 on virtual mode.

## **III. Two Days Workshop for the Principal Judges and Additional Principal Judges, Family Court**

Under the aegis of Hon'ble Committee for Sensitization of Family Court Matters, headed by **Hon'ble Mrs. Justice Sunita Agarwal, Judge**, Allahabad High Court, two days' workshop for the Principal and Additional Principal Judges, Family Court (Lucknow Cluster) was organized **at JTRI on 15<sup>th</sup> and 16<sup>th</sup> April, 2023**, in which about 28 Principal and Additional Principal Judges, Family Court participated from the districts Bahraich, Bareilly, Hardoi, Lakhimpure Kheri, Lucknow, Pilibhit, Shahjahanpur, Shravasti and Sitapur participated.

This Two-day workshop was organized to sensitize the participating Judges in the matters involving the concept of understanding gender, laying the ground rules, ice-breaking exercises, core concepts of gender in society, understanding stereotypes, gender in language, gender in the

judiciary, interrogating cultural stereotypes and existing workplace scenario and role of gender in it.

The inaugural session of the workshop was held on **15<sup>th</sup> April, 2023** from 10.30 a.m. to 11.30 a.m. in the Meemansa Lecture Hall of JTRI. The workshop was inaugurated by **Hon'ble Mr. Justice Devendra Kumar Upadhyaya**, Senior Judge, Allahabad High Court at Lucknow, **Chairman**, Supervisory Committee, JTRI & **Member**, Committee for Sensitization of Family Court Matters in the august presence of **Hon'ble Mrs. Justice Sangeeta Chandra**, Judge, Allahabad High Court at Lucknow & Member, Committee for Sensitization of Family Court Matters.

The workshop started with the introduction and objectives of the workshop explained by **Prof. Sumita Parmar**, who is a prominent name in the field of gender studies followed by a talk on understanding gender by **Prof. Roop Rekha Verma**, Former Vice Chancellor, Lucknow University and a prominent activist in the field of gender sensitization. **Prof. Sumita Parmar** said that the focus of the workshop would be to clarify the concept of gender and sensitize the participating Judges about different nuances of gender equality and gender justice in the context of judicial work.



Hon'ble Dignitaries sharing Dais in the Inaugural session



Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow addressing the participants in the inaugural session

In the inaugural speech, **Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court** at Lucknow said that “the idea of an egalitarian society can be materialized only when all sections of the society are given freedom to nurture and develop their human abilities in the best possible manner. Gender equality emphasizes that all human beings whether men or women are free to develop their personal abilities and make the choices without the limitations set by stereotypes, rigid gender rules, political and other prejudices. The issue relating to gender equality is very-very complex. It is complex in the sense that issues faced many times have been taken for granted by all of us. Howsoever, highly educated we may be, howsoever professionally experienced we may be in our respective life but we tend to take these issues for granted. Secondly, we are always in denial mode and everybody in the society is always in a denial mode when any such thing happens, but it exists. Why, because this is the manner in which it has been opposed by all of us. Family comprises of people from different genders and sects but to deal with family court problems your assessment is very-very necessary. We are trained to deal with stereotypes and other gender related issues.”

For gender sensitivity, we need to unlearn a lot of things which we have learned over last 40-45 years or even more than that. When we will unlearn the traditional pre conceived notions and knowledge, we will be open to learn new things and new ideas on gender issues. The implementation issues should now be at the forefront of public discourse. The curriculum design for this workshop is different. Besides the different design of the workshop, we have a number of distinguished academicians as panel experts, researchers; field experts for this workshop which

will not only enrich your knowledge but will also give you a different exposure. I extend my best wishes for the success of this workshop, he said.

**Prof. Roop Rekha Verma** started her talk on the premises of justice and its immense need for each member of society. She elaborately discussed the historical background in which gender biases and gender injustice germinated and grew up over the centuries. She referred to tribal communities in the context of certain pre-conceived notions and said that a number of stereotypes grew up unconsciously in society but they were later on imbibed and embraced by different communities leading to the solidification of such pre-conceived notions perpetuating gender inequality. She mentioned a traditional pre-conceived notion that procreation is the only duty of women and they are meant only for it. Then there have been misconceived notions about the distribution of work between men and women. She said that compassion, sacrifice, love and affection are common qualities of both men and women though these have been mostly referred to as the qualities of the women. Men and Women both have played vital role in the movement for gender equality and gender justice.

In technical sessions, the resource persons provided insightful thoughts making the participants to interact with each other and identify the core concept of gender sensitization. Some videos were played to show the real picture of gender discrimination in day to day life as prevalent in patriarchal society.

The resource persons sensitized the participants with practical inputs to highlight the age old conception about women in Indian Society.



Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow sensitizing participants



Prof. Sumita Parmar addressing participants

Last session was concluding session in which **Prof. Sumita Parmar** gave the closing remarks. **Hon'ble Mrs. Justice Sangeeta Chandra**, Judge, Allahabad High Court at Lucknow & Member, Committee for Sensitization of Family Court Matters gave blessings and tendered the vote of thanks saying that there is a need to change our mind set as the stereotypes are placed in the subconscious. We should keep on checking our approach and change it as and when required. In family court matters, we have often been focusing on 'fault element' in matrimonial matters. We have to change our perception at our own level. We should become more liberal while granting maintenance.

#### **IV. Induction Training Programme for Newly Recruited Additional District Judges by the way of Direct Recruitment**

In continuation of the induction training programme for Additional District Judges (direct recruitment) from **April 20, 2023, to May 19, 2023** phase III i.e. part II of the institutional training programme and 29 officers of higher judicial services participated in this training



programme. This Induction training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute on 20.04.2023.

The induction training programme covered diverse areas of discussion from principles of interpretation of contracts, relevancy and admissibility of electronic evidence, appeal in the context of rejection of plaint, Negotiable Instrument Act: practice & procedure with special reference to revisional jurisdiction, disposal of property under special acts, age determination under Juvenile Justice Act, 2015: some legal and practical aspects, U.P. Dacoity Affected Area Act, 1983: law and practice, how to make correspondence with higher authorities, investigation of a blind case: some fine nuances, an overview of Specific Relief Act, 1963 etc.

#### **V. Special Training Programme for Presiding Officers of Commercial Courts & Land Acquisition, Rehabilitation and Resettlement Authorities (LARRA) of U.P.**

The Institute organized 03 days Special Training Programme for Presiding Officers of Commercial Courts and Land Acquisition, Rehabilitation & Resettlement Authority of U.P, which was held from **28.04.2023 to 30.04.2023** (Friday to Sunday). About 13 Presiding Officers of Commercial Courts, 04 Presiding Officers of Land Acquisition, Rehabilitation & Resettlement Authority of Uttar Pradesh and 29 newly Appointed Addl. District & Sessions Judge participated in this training programme.

#### **VI. First Phase of Two (02) Days Mediation Training Workshop for Family Court Judges of Districts of Lucknow Cluster**

Under the aegis of Hon'ble Committee for Sensitization of Family Court Matters, headed by **Hon'ble Mrs. Justice Sunita Agarwal**, Judge, Allahabad High Court, two days' workshop for the Principal Judges and Additional Principal Judges, Family Court (Lucknow Cluster) was organized at JTRI on **29th and 30th April, 2023**, in which about 28 Principal Judges and Additional Principal Judges. Family Court from the districts Bahraich, Bareilly, Hardoi, Lakhimpur Kheri, Lucknow, Pilibhit, Shahjahanpur, Shravasti and Sitapur participated.

This Two-day workshop was organized to sensitize the participating Family Court Judges on the concept and techniques of Mediation. The inaugural session of the two days' workshop was held on **29 April, 2023** in the Aalok Lecture Hall of JTRI. The workshop was inaugurated by **Hon'ble Mrs. Justice Sangeeta Chandra**, Judge, Allahabad High Court at Lucknow & Member, Committee for Sensitization of Family Court Matters. Hon'ble Judge in her inaugural speech said that mediation play a vital role in the quick and effective disposal of matrimonial matters. Differences turn into disagreements and disagreements into conflicts which lead to violence sometimes. The techniques of mediation help to reduce the conflict and the pains of litigation.



Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow sensitizing participants



Participating officers in the workshop

The workshop started with the history and objective of Family Court's Law and its perception. The issue of conflict management and resolution was explained by the resource persons (Mediation Trainers, MCPC, Supreme Court) Sri Anoop Kumar Srivastava, Sri Niraj Upadhyay, Ms. Rajlakshmi Sinha and Sri Sandeep Saxena. On the first day in pre-lunch session the historical perspective of ADR and its relevance with special reference to Section 89 CPC was discussed. The Type of ADR and its difference with other judicial process was also discussed. The speakers elaborated the benefit of mediation. In the post lunch session, role play was enacted in order to sensitize the participating judges and to bring about the intricacies involved in the process of mediation. The concept of mediation process along with its various stages and purposes was deliberated upon in detail. Every human interaction involves the skill of communication. The concept and process of communication was explained by using interacting methodology.

In the second day of workshop, the aspects of Effective & Ineffective Communication along with Barriers to communication were discussed. Negotiation, its style and skills was also impressed upon. Bargaining and Impasse: Definition and Causes along with stages was also discussed in the sessions. The resource persons sensitized the participants with practical inputs.



Hon'ble Dignitaries sharing Dias in the valedictory Session



Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow addressing participants



Hon'ble Mrs. Justice Sadhna Rani (Thakur), Judge, Allahabad High Court sensitizing participants

Last session was the concluding session which was presided over by **Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow** & Member, Committee for Sensitization of Family Court Matters and **Hon'ble Mrs. Justice Sadhna Rani (Thakur), Judge, Allahabad High Court** & Member, Committee for Sensitization of Family Court Matters. **Hon'ble Mrs. Justice Sangeeta Chandra** impressed upon the negotiating tactics and the importance of role play for the training of judges. **Hon'ble Mrs. Justice Sadhna Rani (Thakur)** emphasized on the need of mediation considering the huge pendency of cases, evolving and understanding the techniques of mediation, role of mediators. In the end of the session, Her Ladyship offered Vote of Thanks.

## SHORT ARTICLES

### **The Beginning of ‘Individualized Sentencing Enquiry’ in India**

**By Dr. Humayun Rasheed Khan \***

The Supreme Court of India has recently emphasized the element of flexibility in considering the case-specific factors relating to crime and criminal. It has been said that sentencing is not a mathematical equation and ought not to be seen as one and the trial court must focus on equally considering the aggravating and mitigating circumstances and arrive at individualized sentencing outcome on a case to case basis. The court has, therefore, introduced a mandatory Pre-Sentence Report (PSR) in capital offences (*Manoj and others v. State of Madhya Pradesh, (2023) 2 SCC 353*).

The counsel for the appellant vehemently argued before the Supreme Court of India that neither of the courts below has even considered the possibility of reform of the accused who were all of young age and who did not have any criminal antecedents except Manoj who had been involved in a petty offence in the past. The emphasis was laid on Sections 253 (2) and 354 (3) CrPC which provide for bifurcated pre-sentence hearing and sentencing procedure on conviction of capital offences.

The Supreme Court said that there is an urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in the majority of cases reaching the appellate stage. It is, therefore, necessary that the trial court must elicit information from the accused and the State both. The State must produce at the appropriate stage, material which is preferably collected beforehand disclosing psychiatric and psychological evaluation of the accused in offences carrying capital sentence. This will help establish proximity to the accused person’s frame of mind at the time of committing the crime vis-à-vis mental state at the time of sentencing to evaluate the progress of accused towards reformation achieved during the incarceration period.

#### **Practical Guidelines to Collect Mitigating Circumstances**

The State, must for an offence carrying capital punishment at the appropriate stage, produce material before the trial court on psychiatric and psychological evaluation of the accused on the following points and this list is illustrative but not exhaustive;

- (a) Age
- (b) Early family background (siblings, protection of parents, any history of violence or neglect)
- (c) Present family background (surviving family members, whether married, has children, etc.)
- (d) Type and level of education
- (e) Socio-economic background (including conditions of poverty or deprivation, if any)
- (f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

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\* Additional Director (Research), JTRI

- (g) Income and the kind of employment (whether none, or temporary or permanent, etc.);
- (h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

The Supreme Court further said that the above information should mandatorily be available to the trial court, at the sentencing stage. The accused should also be given the same opportunity to produce evidence in rebuttal towards establishing all mitigating circumstances. The information regarding conduct and behaviour of accused in jail, work done or the activities performed by him and other related details should be called from the jail authorities (Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard by the High Court after a long time from the date of conviction or confirmation by the High Court, a fresh report is recommended from the jail authority. The jail authorities must include a fresh psychiatric and psychological report which will further evidence the reformatory progress, and reveal post-conviction mental illness if any.

### **Sentencing of Accused in Manoj Case**

The Supreme Court said that there can be no doubt that the crime committed by the three accused was brutal, and grotesque. The three defenceless victims were women of different age groups (22, 46, 76 years) who were caught off-guard and severely physically assaulted, resulting in their death, in the safety and comfort of their own home. To have killed three generations of women from the family is without a doubt, grotesque. The manner of the offence was also vicious and pitiless as two victims were stabbed repeatedly to their death, while third was shot point blank in the face. The post-mortem reflects that the stab wounds were extensive-ranging across the bodies of the victim. The extensive bleeding at the crime scene further reflects cruel and inhumane manner of attack, against the three women. The crime in itself, could no doubt be characterised as “extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community” as defined in Machhi Singh. These are the aggravating circumstances.

The mitigating circumstances need to be considered (and that too, liberally and expansively) a Psychological Evaluation Report, a Probation Officer’s Report, and Prison Report including material on their conduct and work done. An individualised approach is necessary. The reports placed before the Supreme Court in relation to the three convict-appellants was as under:-

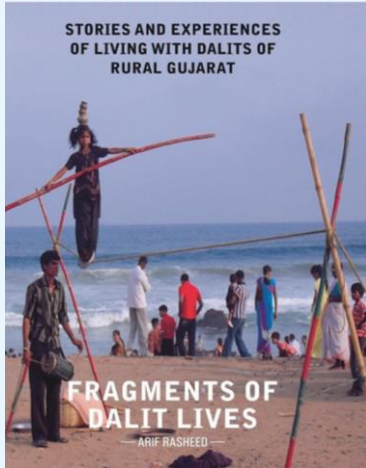
It was found evident that they have already, taken steps towards bettering their lives and of those around them, which coupled with their young age unequivocally demonstrates that there is in fact, a probability of reform. On consideration of all these circumstances the court found that the option of life imprisonment was certainly not foreclosed. It was held to be appropriate and in the overall interests of justice to commute the death sentence of all three accused to life imprisonment for a minimum term of 25 years.

To conclude the discussion, it may be said that the goal of reformation is ideal and society strives to achieve this goal through the penological assessment. The goal of reformatory punishment requires that the trial court must inquire and explore the reasons for reformation and rehabilitation in analysing the mitigating factor. The goal of reformation is well acknowledged in the jurisprudence of penology as indicated through the judgement of Supreme Court across the decade. However, the evaluation of aggravating and mitigating factors has primarily been mechanical and it has been found that in the absence of well documented mitigating circumstances at the trial level, the aggravating circumstances seem far more compelling

rendering the sentencing court prone to imposing death penalty. To address these challenges, the Supreme Court in *Manoj Judgement* deemed it necessary to frame practical guidelines for the trial courts till the legislature or executive formulates a coherent framework through legislation. The court expressed that the legislature will soon come up with a law which could provide a mechanism to systematically collect and evaluate information on mitigating circumstances to make the goal of reformation substantial and practicable on ground.

## **BOOK REVIEW**

**By Dr. Humayun Rasheed Khan\***



### **Title of the Book**

'Fragments of Dalit Lives : Stories and Experiences of Living with Dalits of Rural Gujarat'

### **Author**

Arif Rasheed

### **Publisher**

Foundation for Evidence based Development in India (FEDI)

### **Year of Publication**

2023

There is a concept in sociological studies that tells us about learning by living. It provides us an opportunity of personal observations about the community one lives with for a certain period of time. It tells us the strength, weaknesses and problems of such a community. Consequently, such a study is entirely different from any other analysis done from a distance as a study from a distance is often devoid of 'human touch of the community' that it talks about.

The work under review is one such work where the element of 'human touch' with the people it talks about is vehemently visible all around. Whether it is the story of Laxman bhai or Yaqub bhai or Hari bhai or Venu bhai as mentioned in different chapters of the book make the work lively, interesting and thought provoking and the readers are left to ponder over the 'constitutional promise of equality' and the glaring reality of 'social inequality' in many remote parts of the country even after seventy five years of independence.

The book is nicely divided into ten chapters covering about 170 pages. Chapter one deals with journey of a beginner where the author focuses on the initial personal experiences as an Action Aid Development trainee. In chapter two of the work, he explains the perspective and pragmatic path which he wishes to adopt in the book and makes a quick review of the relevant literature on the subject. Chapter three initiates discourse on Gujarat, dalits and the role of social organizations.

Chapter four of the book covers experience sharing on Bheemshala, Dhanduka, Rayna and Ranpur. It also talks about the developing 'social distrust' amongst certain communities in the post- riots scenario.

In chapter five, the author talks about the Queen's stepwell and dwells deep in untouchability check and socio- psychological dilemma of the dalits.

The author's observations of dalit status in Saurashtra Region with focus on small units such as Patdi, Limbdi, Sayla, Muli, Bhajud, Umrala, Sisak, Rampara, Ishwarya etc., are covered under chapter six.

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\* Additional Director (Research), JTRI

In chapter seven of the book, the author shares his experiences of Bombay Central to Anand covering Tarapur, Valli carnival and many stories in between with heart touching inputs on social inequality and social exclusion.

Chapter eight is entitled as the land of Patel discussing the business activities of patidar community. In chapter nine of the book, the author turns to the person who became the inspiration for writing this book and that is Jignesh bhai.

The last chapter of the book (Chapter ten) is entitled 'the world of paradox' where the author reflects on his feelings sandwiched between his observations and the experiences of poverty and deprivations of disadvantaged sections on the one hand as discussed in the preceding chapters and the glimpses of the glittering glory of mega polis which starts at the IGI airport at New Delhi on the other hand.

The book brilliantly ends with "Thomas Gray's famous lines from the "Elegy" when he wanders in a dilapidated graveyard of a small village and wonders about the lives of those who died in anonymity. There might be gems of people lying underneath the earth, but they never got an opportunity to explore their hidden talents because they always lived on the edge of poverty."

In short, this book is a touching reflection on the existing social inequalities in remote parts of the country offering us the future challenges on the path of 'egalitarian social order'.

## LEGAL JOTTINGS

“

“The Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility.”

**Hon’ble Mr. Justice Abhay S. Oka**  
**Judge, Supreme Court of India**  
**Pawan Kumar Chourasia v. State of Bihar**  
**AIR 2023 SC 1464: AIR Online 2023 SC 182**

”

## SUPREME COURT

### **1. Desh Raj and others v. Rohtash Singh, (2023) 3 SCC 714**

The Hon’ble Supreme Court held that the contract automatically stood terminated as per the stipulated contractual terms. The sale agreements should have been held to be terminated instead of being declared impossible to perform. Further, the forfeiture was justified and within the confines of reasonable compensation as per Section 74 of the Contract Act in light of the Act that during the entirety of proceedings – firstly nature of forfeiture was never contested by the respondent and secondly the respondent never prayed for the refund of earnest money. Consequently, the judgements rendered by the courts below were set aside and suit was dismissed.

### **2. Inox Renewables Limited v. Jayesh Electricals Limited, (2023) 3 SCC 733**

It has been held by the Hon’ble Supreme Court that the two clauses in the arbitration agreement must be read together as the courts in Rajasthan were vested with jurisdiction only because the seat of arbitration was to be at Jaipur. However, once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the courts at Ahmedabad, given the change in the seat of arbitration.

### **3. State of Himachal Pradesh and others v. Raj Kumar and others, (2023) 3 SCC 773**

It has been held that the right to be considered for promotion occurs on the date of consideration of eligible candidate and applicable rules would be the rules existing at that time. The government is entitled to take conscious policy decision not to fill vacancy arising prior to amendment of rules.



In the context of Article 309, 310 and 311, it was held that the relationship between employee and the State originates in contract but by virtue of constitutional constraints coupled with legislative and executive rules governing service, such relationship attains 'status' as against contract. It was further held that the State has a right to stop recruitment process any time before the appointment takes place as there is no vested right in candidate to get process completed. However, the state must justify its action on the touchstone of Article 14 of the constitution.

**4. Kaushal Kishor v. State of Uttar Pradesh and others, (2023) 4 SCC 1**

It has been held that the interpretation of constitutional provisions relating to fundamental rights should be based on well - established principles and not by reading additional restrictions into Article 19(2) as the restrictions are already exhaustive. Hon'ble Supreme Court also explained the meaning and objects of right to freedom and speech and traced its genesis. The rationale of correlative duties and objectives behind restrictions under Article 19(2) were elucidated. The issued relating right to circulate, right to dissent, right to advertise (commercial speech), compelled speech, hate speech were also elucidated by the Hon'ble Court.

**5. State through Central Bureau of Investigation v. T. Gangi Reddy alias Yerra Gangi Reddy, (2023) 4 SCC 253**

The issue under consideration in this case was in the context of Sections 167(2), 437(5) and 439(2) r/w Chapter XXXIII in relation to default bail.

It has been held that there is no absolute bar that once a person is released on default bail, his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses, not cooperating with the investigating agency and/or not cooperating with trial court concerned, etc.

S. 167(2) proviso - Default bail - The object of proviso and nature of order granting default bail under S. 167(2) fixes the outer limit within which the investigation must be completed and if the same is not completed within the period prescribed therein, the accused is entitled to be released on bail if he is prepared to and does furnish bail. Thus, object of S. 167(2) proviso was held is to impress upon the need for expeditious investigation within the prescribed time-limit and to prevent laxity in that behalf and, therefore, order granting default bail, held, cannot be said to be an order on merits.

## ALLAHABAD HIGH COURT

**1. Savrunisha and Ors. v. Bhola Nath, 2023 (41) LCD 1000**

It was held that leave to defend can be rejected only when it is moved at a proper time as stipulated under Order 37. Application moved at any prior stage may be rejected as pre-mature but can't be dismissed on merits. A salutary procedure that could curtail much avoidable criminal litigation and bring quick justice.

## **2. Mohd. Siddique and Ors. v. Mohd. Nafees, 2023(4) ADJ 305**

Interpreting the law on the point qua entertainability/maintainability of the application for release the court observed that it must be held that when the Legislature has provided that no application under Section 21(1) (a) of the Act shall be entertained by the prescribed authority on grounds mentioned in clause (a) of Section 21(1) of the Act before expiry of three years from date of purchase of property by the landlord it must necessarily mean consideration by the prescribed authority of the grounds mentioned in clause (a) of Section 21(1) of the Act of merits.

On the facts of the present case, the appellant had waived that contention about the suit being premature having been filed before the expiry of six months from the date of the suit notice. The appellate court had proceeded to decide that since six months' notice did not precede to release application, therefore, there was non-compliance of statutory provision and hence the release application was barred.

Applying the legal principle on the point of maintainability of release application beyond the period of three years of purchase of the property by the landlord, is as much as the requirement of law to have six months' notice before presenting the release application.

It has been held that the moratorium of three years period having already expired because the property was purchased by the present landlord way back in the year 2001, and the fact that the tenant respondent was admittedly paying the rent to landlord-respondents, tenant by his own and statement made in the written statement, the release application was maintainable. So, judgment granting release application having been passed on 23rd December, 2014, it would not get rendered as null and void or bad for coram non iudice as the prescribed authority concerned had the jurisdiction to entertain the release application and pass order thereupon.

## **3. Chandana Mukherji v. Addl. District Judge Special Judge and Ors. ,2023(4) ADJ 196**

The Hon'ble Court observed that it transpires that suit had been filed for cancellation of sale deed and for permanent injunction. During course of suit proceedings, an application under Order 26 Rule 9 read with Section 151 CPC had been filed for issuance of commission which was rejected by means of order dated 25th September, 2017 primarily on the ground that question regarding possession of parties over the property in dispute cannot be ascertained by issuance of commission. It was further held that issuance of commission cannot be a substitute for adducing evidence. It is noticeable that the aforesaid order dated 25th September, 2017 attained finality and no revision there against was filed by the petitioner-plaintiff but subsequently another application for issuance of commission under Order 26 Rule 9 read with Section 151 CPC dated 14th November 2017 was again filed by the plaintiff. It is relevant to indicate that in both the applications the applicant is Smt. Sarla who has been brought on record as a substitute party in place of original plaintiff Km. Chandana Mukherji, who passed away during pendency of suit proceedings.

It has been held that a reading of both applications brings to the fore the fact that essential pleadings for issuance of commission in both the application remain the same which pertained to apprehension on behalf of plaintiff that actual ground situation may be changed by the defendant in case forcible possession of the same is taken from the plaintiff. The second application has been rejected by means of impugned order dated 10th January, 2018 primarily on the ground that earlier as well application at the behest of plaintiff has been rejected by the court by detailed order dated 25th September, 2017 on the same pleading raised by plaintiff and therefore there

was no merit found in the second application for issuance of commission. The revisional court has also taken essentially the same grounds for rejecting revision preferred by plaintiff.

A perusal of the provision makes it evident that commission to make local investigations can be permitted by the court where it deems local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or ascertaining market value of any property, or amount of any mesne profit or damages or annual net profits. The purpose of issuance of commission as such is evident from the conditions indicated thereunder itself which is only for the purposes of elucidating primarily any matter in dispute. The provisions of Order XXVI Rule 9 of the Code do not make it applicable for the purposes of collection of evidence on behalf of the plaintiff.

Hon'ble Court held that application for issuance of commission to conduct an investigation and examination regarding possession of parties to a dispute would not be maintainable in terms of Order XXVI Rule 9 of the Code particularly when there is no explanation furnished by the plaintiff that he could not have access to any documents required for proving his possession over suit property. Even otherwise, it is impossible for a commission to decide possession of a particular party to dispute over the suit property only on the basis of a cursory examination. Applications under Order XXVI Rule 9 cannot be allowed merely for purposes of facilitating the case of one or the other party and it is not the business of the courts to discharge burden of evidence of either party.

By –

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## Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the judges of the district courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Vinod Singh Rawat is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

Keeping in view that in a healthy mind rests a healthy body, the institute has established and developed a gymnasium with latest equipments and machines. The physical training is compulsory part of the training programmes organized by the institute. The facilities of gym have been made available to the trainee officers as well as faculty members.

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Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A, Canadian Law reports, American Law Reports Annotated and Law Commission of India Reports. The institute is working on to develop e-knowledge hub and e-library in near future.