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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 on “Law & Procedure” for Newly Appointed Deputy Collectors of U.P.

The institute organized a Special Training Programme on Law & Procedure for newly appointed **59 deputy collectors** of Uttar Pradesh from 01 May, 2023 to 03 May, 2023. Various topics such as relationship between executive, police & judiciary, effective pairavi of cases by or against government in various courts, state administrative tribunals etc, executive magistrate under Cr.P.C., & other Special Acts, role/duties and functioning of executive to magistrate under the Legal Services Authorities Act, 1987 etc. were included in the three days programme.

II. One Day Sensitization Programme on ‘Speedy Disposal of Bail & Anticipatory Bail’

The institute organized One Day Sensitization Programme on “Speedy Disposal of Bail and Anticipatory Bail” for all the District Judges of Uttar Pradesh and 104 Additional District Judges of Uttar Pradesh on 15th May, 2023 at Judicial Training and Research Institute, U.P., Lucknow.

The Valedictory Session of above mentioned training programme took place in the evening of 15th May, 2023 in the Institute. The Chief Guest of the Valedictory Session was **Hon’ble Mr. Justice Pritinker Diwaker, Chief Justice, Allahabad High Court** and **Hon’ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow and Chairman, Supervisory Committee, JTRI** was the **Guest of Honour** on this occasion. Hon’ble Judges of Allahabad High Court, Lucknow bench were also present on the occasion.



Hon’ble Mr. Justice Pritinker Diwaker, Chief Justice, Allahabad High Court and Hon’ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow sharing Dias in the valedictory Session



Hon’ble Mr. Justice Pritinker Diwaker, Chief Justice, Allahabad High Court sensitizing the participants

The Chief Guest of the Valedictory Session **Hon’ble Mr. Justice Pritinker Diwaker, Chief Justice, Allahabad High Court** addressed the participating officers and said that “social pattern of crime should be considered while disposing off bail applications or even the case itself. His Lordship appealed to the participants in general and District Judges in particular to keep their perspective positive as false implications cannot be ruled out. He emphasized overall implications of a crime and its analysis in judicial assessment. He emphasized on visiting jails in view of the rules required so as to understand the plight of the prisoners in the State. A Judge

must have empathy while considering any matter as it is an essential part of justice delivery system.”

Hon'ble Mrs. Justice Sunita Agarwal, Senior Judge, Allahabad High Court addressed the participants through virtual mode and said that the issues relating to grant or refusal of bail are serious issues as these effect personal liberties enshrined in the Constitution. Judicial Officers particularly District Judges need to be more alert and sensitive to bail matters as District Judges play a leadership role in the particular district. She expressed hope that this sensitization programme will create a new zeal in the participants to work more pro-actively and ensure strict compliance of the directions that have come in the recent past from the Apex Court. She also hoped that huge number of cases will be disposed off in the coming Lok Adalat and she extended her best wishes for the forthcoming Lok Adalat.



Hon'ble Mrs. Justice Sunita Agarwal, Senior Judge, Allahabad High Court addressing the participants through virtual mode



Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow delivering his talk

Guest of Honour, Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow and Chairman, Supervisory Committee, JTRI said that the purpose of this programme is to sensitize the judicial officers in the context of bail and anticipatory bail as you all are well read in law. He said that the directions of Hon'ble Supreme Court in *Satendra Kumar Antil v. CBI & Another, (2023) 1 SCC (Crl.) 1* should be complied in letter and spirit. The need for this sensitization programme arose so as to ensure strict compliance of the directions of Supreme Court that have come very recently. The emphasis of Hon'ble Supreme Court is to ensure protection of personal liberty and right to freedom of citizens. It is the duty of senior judicial officers, particularly District Judges to sensitize their junior officers in their respective districts to follow the law as declared by the Apex Court. He emphasized on strict compliance of the directions given in different judgments of the Supreme Court.

Hon'ble Mr. Justice P.K. Srivastava, Former Judge, Allahabad High Court and **Chairman, Uttar Pradesh State Law Commission** said on the occasion that the focus of *Satendra Kumar Antil* judgment is on protection of personal liberty of those who are apprehending arrest and the judgment emphasizes on interim bail in appropriate cases. The judgment also includes directions to the police authorities as well as their controlling and regulating authorities to ensure strict compliance of not only directions in this judgment but also those directions given in *Arnesh Kumar* judgment. He appealed to the participants to ensure compliance of the directions as that not only involves personal liberty of the person apprehending arrest but also relates to the broader principles of innocence of the accused and fair trial principles.



Hon'ble Mr. Justice A. R. Masoodi, Hon'ble Mr. Justice Jaspreet Singh and Hon'ble Mr. Justice Subhash Vidyarthi, Judges, Allahabad High Court at Lucknow attending the valedictory function



Hon'ble Mr. Justice P.K. Srivastava, Chairman, U.P. State Law Commission addressing participants

In the Valedictory Session, Sri Pramod Kumar Srivastava, Principal Secretary, Law and L.R., Government of Uttar Pradesh, Sri Rajeev Bharti, Registrar General, Allahabad High Court, Sri Vivek, Senior Registrar, Allahabad High Court at Lucknow and other Members of Registry were also present. Sri Vinod Singh Rawat, Director of the Institute welcomed the Chief Guest and Sri Kushalpal, Additional Director of the Institute extended the Vote of Thanks. Dr. H.R. Khan, Addl. Director (Research), JTRI compered the programme.

III. 05 days Refresher Training Programme for Additional District & Sessions Judges

A Five days refresher training programme for Additional District Judges was organized from 15.05.2023 to 19.05.2023 in which 69 officers of higher judicial services participated. This refresher training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute.

The refresher training programme covered diverse areas of discussion from appreciation & handling of digital evidence/electronic evidence, admission in civil and criminal matters, passing of interim orders, conditional stay, summoning of trial court records, Law of Arbitration: an overview with special reference to execution proceedings with special reference to section 34 & 36 of Arbitration Act, 1996, relevant provisions and practical aspects of POSCO cases, appreciation of medico-legal injuries, appreciation of the post-mortem report: how to ascertain the cause, mode and manner of death etc.

IV. 05 days Refresher Training Programme for Civil Judges (JD)

A Five days refresher training programme for Civil Judges (J.D.) was organized from 23.05.2023 to 27.05.2023 in which 50 officers participated. This refresher training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute.

The refresher training programme covered diverse areas of discussion from execution of decrees, execution of injunction orders including mandatory injunction, procedure for seeking police help, application under Order 21 Rule 97 & 99 CPC, various facets of Section 311 CrPC and 313 CrPC, legality of imposition of costs for recall of witness, remand and its practical issues: challenges and precautions, change from Section 167 to Section 209 and Section 309 CrPC, dealing with various applications filed during remand, administrative works of civil judge (J.D.), work and duties of nodal officers, communication with Hon'ble High Court and

administration, inspection of office, practical issues with respect to: cancellation of instrument-standard of proof in case of will & sale deed, valuation and payment of court fees etc.

V. Two Days Sensitization Programme of District Judges/Chairpersons and Secretaries, DLSAs

Two Days Sensitization Programme for District Judges/Chairpersons and Secretaries, DLSAs was held on 27 & 28 May, 2023 at JTRI, Lucknow in which District Judges/Chairpersons and Secretaries, DLSAs of Uttar Pradesh participated. The Programme was inaugurated by the **Hon'ble Mrs. Justice Sunita Agarwal, Senior Judge, Allahabad High Court & Executive Chairperson, U.P. State Legal Services Authority** and **Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Senior Judge, Allahabad High Court at Lucknow** and Chairman, Supervisory Committee, JTRI.



Hon'ble Dignitaries lighting the lamp in the inaugural function



Hon'ble Mrs. Justice Sunita Agarwal, Senior Judge, Allahabad High Court & Hon'ble Mr. Justice D K Upadhyaya, Senior Judge, Allahabad High Court at Lucknow sharing Dias.

On the said occasion, **Hon'ble Mrs. Justice Sunita Agarwal, Senior Judge, Allahabad High Court** and Executive Chairperson, Uttar Pradesh State Legal Services Authority, said that steps should be undertaken to make the prisoners self-reliant through vocational education and training and skill development as per their interest. It was said that emphasis should be laid on providing training and at the same time also providing training programs to the prisoners detained in jails. Apart from this, it was also emphasized that all the judicial officers should go among the people living in mental hospitals, observation homes, old age homes and orphanages and with dedication towards them to make full efforts to solve their problems.



Hon'ble Mrs. Justice Sunita Agarwal, Senior Judge, Allahabad High Court addressing the participants



Hon'ble Mr. Justice D K Upadhyaya, Senior Judge, Allahabad High Court at Lucknow sensitizing participants

Hon'ble Mr. Justice D.K. Upadhyaya, Senior Judge, Allahabad High Court Lucknow Bench and Chairman, High Court Legal Services Sub-Committee, Lucknow Bench encouraged all the participants and motivated them to complete this training program. The participants were informed in detail about the effective implementation, review and assessment of the Legal Aid Defense Counsel System established in 40 districts of the state by Rajasthan High Court as informed by Hon'ble Mr. Justice Ashok Kumar Jain, Judge, Rajasthan High Court. In this sequence, Ms. Santosh Snehi Mann, Member Secretary, National Legal Services Authority, New Delhi discussed in detail about court based legal services/activities through PLV, Panel Lawyers Legal Aid Clinic.



Mr. Vinod Singh Rawat, Director,
JTRI welcoming Hon'ble
Dignitaries



Mr. Sanjay Singh, Member
Secretary, UP SLSA tendering vote
of thanks



Dr. Humayun Rasheed Khan,
Additional Director (Research),
JTRI compering the inaugural
session

Mr. Vinod Singh Rawat, Director, JTRI heartily welcomed the Hon'ble Judges and all the participants in his welcome address, and Mr. Sanjay Singh, Member Secretary, UP State Legal Services Authority, in his vote of thanks expressed gratitude to all the Hon'ble Judges, distinguished invitees, cooperation provided by the Director, JTRI, participating judicial officers, staff, media and other guests. The proceedings of the two days sensitization programme were compered by Dr. Humayun Rasheed Khan, Additional Director (Research), JTRI.

SHORT ARTICLES

Mercy in Sentencing under Different Judicial Systems

By Dr. Humayun Rasheed Khan*

The role of mercy in the sentencing process is more problematic. Fox poses a question that if the law of sentencing allows for all mitigating factors to be taken into account, why should a sentencer, having considered all such matters, deliberately order less than what is called for by the criminal law? One possible answer is that in order to humanize the world and to make it possible for people to thrive, the law needs the company of virtues such as mercy. In a 1989 reference in England, the Lord Chief Justice (Lane) made the following observation:

It must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature (*Attorney-General's Reference (No 4 of 1989) (1989) 11 Cr App R (S) 517 at 521*).

This fundamental aspect has been referred to many times by the Court of Appeal in subsequent appeals against sentence, often in the context of Crown appeals against sentence on the grounds of undue leniency. Yet again in another important reference matter, the statement was said to be 'as valid today as when it was first enunciated 16 years ago.

Similar sentiments have been expressed by the Appeal Court in Scotland. For instance, in *HMA v McKay* where the respondent had pleaded guilty of being in possession of drugs in prison with intent to supply the same to another prisoner having threatened him with violence unless he moved the drugs from one part of the prison to another, the Court observed that it was in complete agreement with the sentencing judge's view that the case was one in which justice should be tempered with mercy and humanity. In delivering the opinion of the Court, the Lord Justice General Hope said as under:

We wish to make it clear to the Lord Advocate, and to impress upon anyone else who may seek to press us in that direction, that this court will continue, so long as the power to do so rests with us, to assert the right of the judges to exercise leniency in the matter of sentencing wherever this is appropriate. We shall also continue to assert their right to take account of exceptional circumstances in deciding not to impose immediate custodial

* Additional Director (Research), JTRI

sentences in cases where a custodial sentence would otherwise be inevitable.

The Australian courts have also explicitly recognized the role of mercy in the exercise of sentencing discretion. In delivering his judgment in *Cobiac v Liddy*, [1969] HCA 26 Windeyer J noted the importance of mercy and explained how the concept operates:

The whole history of criminal justice has shown that severity of punishment begets the need of capacity for mercy. This is not because mercy, in Portia's sense, should season justice. It is that a capacity in special circumstances to avoid the rigidity of inexorable law is of the very essence of justice.

On this view, mercy is not so much the antithesis of justice as a component of it. Whether or not mercy arises for consideration in a particular case will depend on all the circumstances both of the offence and of the offender. The factors, or combination of factors, that will lead a court to consider the application of the sentencing principle of mercy are potentially innumerable, although generally such factors would have to be significant enough to counter the strong claims for punishment that ordinarily make a sentence of imprisonment appropriate.

For the Court of Appeal in England and Wales at least, any reduction in sentence will be justified as an exceptional act of mercy when it accepts that the punishment will be more onerous because of the offender's personal circumstances. There is, however, no clearly articulated penal justification for allowing such mitigation to have effect. Walker considers that the appellate courts tend to resort to what they describe as 'mercy' when they have a vague compassion for the offender but cannot articulate a precise justification for reducing the severity of the sentence.

For some theorists, such as Harrison and Murphy, mercy simply has no place in the criminal justice system. These scholars believe that mercy is either part of justice or is opposed to it. What the courts have articulated as 'mercy' is actually the same as doing justice and so there is no independent need for the concept of mercy. As Murphy (1988) puts it as under:

Judges in criminal cases are obligated to do justice. There is simply no room for mercy as an autonomous virtue with which their justice should be tempered. Let them keep their sentimentality to themselves for use in their private lives with their families and pets.

Muller points out that it is unrealistic to build an account of mercy on a model of sentencing that imagines judges simply to be selecting one of two possible sentences. It is not the sentencer's task to make a stark choice between a 'just' sentence and a milder one; the task involves the making of a subtle selection that seems most just from amongst a group of just possibilities. Given the increasing rates of imprisonment, Steiker argues that the ideal of mercy

can, in appropriate cases, serve as a necessary counterbalance. By exercising mercy, sentencing judge can give voice to humanitarian considerations which may still be lacking within the criminal justice system.

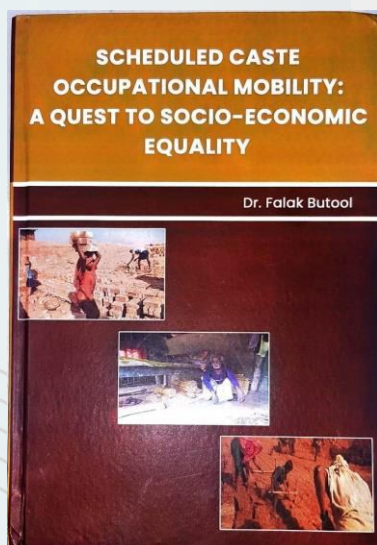
When we turn attention to our criminal justice system, we find that the Supreme Court of India has consistently observed that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration of the sentencing court. It is reiterated from time to time that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law. It is the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim to the crime but also the society at large while considering the imposition of appropriate punishment (*Hazara Singh v. Raj Kumar and others, AIR 2013 SC 3273*).

However, it does not mean that the role of mercy is not recognized in India at sentencing stage. Any analysis of judgements of the Hon'ble Supreme Court of India and Hon'ble High Courts would indicate that mercy is an important factor in sentence not only in commutation of 'death sentence' into 'life imprisonment' but also in modification of other sentence awarded to the convict. Moreover, the analysis of judgements delivered by trial courts would also show that in very limited cases the maximum sentence prescribed by law is awarded and generally either two third or one half of the maximum sentence is awarded. This sufficiently liberal approach is adopted by trial courts primarily on the 'merciful consideration' of the overall circumstances of the case, convict and his/her family.

The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. The Hon'ble Supreme Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.

BOOK REVIEW

By Dr. Humayun Rasheed Khan*



Title of the Book

Scheduled Caste Occupational Mobility: A Quest to Socio-Economic Equality

Author

Dr. Falak Butool

Publisher

Lulu Publications

Year of Publication

2023

Lucknow has been traditionally called as the ‘city of nawabs’ and north India’s cultural and artistic powerhouse. The city is renowned for its *Ganga-Jamuni tehzeeb* and is a magnificent blend of cuisine, art, craft, literature, architecture and culture. It is a dynamic blend of old world beauty in modern day growth and technology. This traditional city is the subject matter of book under review albeit from a social perspective in the context of one of the disadvantaged sections of the country i.e. scheduled caste population.

The author takes up the geographical personality of the study area in chapter III of the work where she says that this traditional city is located in the heart of the great-Gangetic plain with Barabanki district on eastern side while Unnao district is located on the western side. District Raebareli on the southern side and district Sitapur and as well as district Hardoi on its northern side. This big district is spread over a total of 3204 sq. k.m. River Gomti divides the city into Trans-Gomti and Cis-Gomti regions and has humid sub-tropical climate with cool, dry winters from November to February and dry, hot summers from April to June. The author in chapter III also talks about literacy, density, religious composition, occupational structure, agriculture and industry, urbanization, transport and communication, metro etc.

The book opens with constitutional promise of socio-economic equality, equal opportunity and egalitarian social order. While mentioning some previously done research analysis, she says that improvements on social indicators are more positive as compared to indicators on the touch stone of economic equality. The author says that the dream of egalitarian society is still a distant dream even after 75 years of independence as discrimination based on various grounds, particularly caste, continue to dominate our mindset.

* Additional Director (Research), JTRI

The book proposes to study social transformation more meticulously and pragmatically to understand the actual picture so as to address the bottlenecks in the quest for equality in different segments of life. The issue of market discrimination is discussed at length giving special emphasis to immobility of certain sections of society leaving them far behind from others on the path of socio-economic growth. The author says that a comprehensive regional analysis of occupational mobility is necessary for rational planning and legitimate minimization of regional disparities to foster sustainable and meaningful development. This study primarily enquires into occupational mobility of scheduled caste population in Lucknow.

The conceptual framework of this academic enquiry is laid down in chapter I of the work where fundamental issues such as occupation, mobility, occupational mobility, inter-generational occupational mobility, factors determining it, gender, migration, land ownership, level of education and social networking are discussed. Chapter II of the work covers research design and review of related literature. It also covers academic and literary work done in the other parts of the world on the subject besides the work done in India. This chapter also includes discussion on problems faced by researcher during field study due to the subject being sensitive and the consequent limitations in the process of data collection.

The major academic and empirical analysis of the subject is covered under two chapters namely chapter IV and V. The issue of occupational mobility of scheduled caste in primary, secondary and tertiary sectors is discussed at length in chapter III. This portion also covers educational mobility with special focus on urban scheduled caste population. The data collected is presented beautifully in tabular form. Chapter V of the book deals with exclusion and levels of development of scheduled caste population in Lucknow district covering both social and economic exclusion.

The main limitation of the book under review is that it lacks in exploring an in-depth academic - empirical analysis of the subject undertaken for the academic enquiry as the focus seems slightly more on tools and techniques, statistical analysis and data presentation rather than deeper exploration into the systematic exclusion on meritocratic fallacy and gullible philosophical foundations. Although some touching intellectual analysis is undertaken in the concluding part of the book in the context of critically acclaimed work of Dr. B R Ambedkar entitled '*Annihilation of Caste*' but the same perhaps needed to be explored more deeply with reference to social realities of exclusion. The book comes as an interesting read for anyone who wishes to get involved in the emerging area of occupational mobility and economic exclusion.

LEGAL JOTTING

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“The act of the court shall prejudice no one and in such a fact situation, the court is under an obligation to undo the wrong done to a party by the act of the court.”

Hon’ble Mr. Justice M. R. Shah
Judge, Supreme Court of India
Bhupinder Singh v. Unitech Limited
AIR 2023 SC 1626: AIR Online 2023 SC 207

”

SUPREME COURT

1. **Ram Gopal S/O Mansharam v. State of Madhya Pradesh, (2023) 5 SCC 534**

It was held in the context of S. 106 of Evidence Act that facts proved to be within special knowledge of accused must be explained by him or he must throw some light upon such facts.

The deceased was murdered by petitioner accused using axe and the case was based on circumstantial evidence. The fact that deceased was last seen together with petitioner as established by prosecution and then the burden under S. 106 of the Evidence Act was on petitioner to offer some explanation as to when and under what circumstances he parted company of deceased. But the burden was not discharged and the time-gap between period when deceased was last seen with petitioner and recovery of corpse of deceased was found quite proximate. Having regard to oral evidence of witnesses, enmity between deceased and petitioner also surfaced. Corroborative evidence with regard to recovery of weapon (axe) alleged to have been used in commission of crime from petitioner, further substantiated the case of prosecution. In such facts and circumstances of case, upholding by High Court of conviction of petitioner accused under S. 302 IPC was confirmed.

2. **HDFC Bank Limited and others v. Union of India and others, (2023) 5 SCC 627**

Articles 32, 14, 19 and 21 of the Constitution of India - Maintainability-Principle of ex debito justitiae vis-à-vis the principle of finality of issues in collateral proceedings - Prima facie error of Court in earlier collateral proceedings [that is in Jayantilal N. Mistry, (2016) 3 SCC 525] in not balancing and considering the fundamental right to privacy while delivering judgment on right to information, thereby enabling RBI to seek confidential and sensitive information pertaining to petitioner banks and their customers. Without expressing any final opinion on Jayantilal N. Mistry case, but based on prima facie findings and applying the principle of ex

debita justitiae against the plea of finality of issues, preliminary objection as to maintainability was rejected.

3. **Government of NCT of Delhi v. Sushil Kumar Gupta and others, (2023) 5 SCC 650**

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(2) -Deemed lapse of acquisition proceedings.

Practice and Procedure - Delay/Laches/Limitation - Condonation of delay. There was enormous delay in preferring appeal before the Supreme Court. However, coordinate Benches had condoned delay arising out of very High Court declaring lapse of acquisition proceedings under S. 24(2) of the 2013 Act. Further, precedent relied on by High Court while passing its judgment was later overruled by Supreme Court. Hence, delay in preferring appeal condoned.

4. **Prakash Nayi alias Sen v. State of Goa, (2023) 5 SCC 673**

This case relates to Section 84 of IPC dealing with unsoundness of mind. Impairment of cognitive faculties of mind rendering accused incapable of knowing nature of the act committed. It was held that legal insanity, not medical insanity, needs to be proved and the test of prudent man to be applied. Conduct of accused shortly before, at the time of and immediately after commission of crime was held relevant.

Penal Code, 1860 - S. 84 Unsoundness of mind Burden of - proof required under S. 105 of the Evidence Act when exception under S. 84 claimed Burden on accused to rebut presumption of sanity at the time of doing the offensive act. The burden is to be discharged by accused by proving unsoundness of mind on basis of preponderance of probabilities by producing reasonable material before court in form of oral, documentary and circumstantial evidence.

It is the collective responsibility of person concerned, court and prosecution to decipher proof qua insanity by treating proceeding non-adversarial keeping friendly relations with accused and regarding him as one having disability and as a victim in need of help. The whole idea should be to facilitate a person of unsound mind to stand trial. The provisions under Sections 328, 329, 330, 334 though procedural in nature, become substantive while dealing with accused person of unsound mind.

ALLAHABAD HIGH COURT

1. **Satya Pal v. State of U.P., 2023(4) ADJ 345(LB)**

The Hon'ble High Court of Judicature at Allahabad has held that the cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since, it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the material collected by the Investigating Officer results in

sufficient grounds to proceed further and would constitute violation of law so as to call a person to appear before the criminal court to face trial. This discretion puts a responsibility on the Magistrate concerned to act judiciously keeping in view the facts of the particular case as well as the law on the subject and the orders of Magistrate does not suffers from non-application of judicial mind while taking cognizance of the offence.

It was observed that for the purposes of investigation, offences are divided into two categories, "cognizable" and "non-cognizable". When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. Investigation includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a Magistrate (who is authorised by a Magistrate in his behalf). Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender, (iv) collection of evidence relating to the commission of the offence and (v) formation of opinion as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a chargesheet under Section 173, Cr.P.C.

The conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned summoning order was passed in mechanical manner without application of judicial mind.

It was held that the impugned cognizance/ summoning order passed is cryptic and does not stand the test of the law laid down by the Hon'ble Apex Court. Accordingly, the Criminal Misc. application u/S. 482 Cr.P.C. succeeds and was allowed.

2. Ahzam Ahmad and Ors. v. State of U.P. and Ors. 2023(4) ADJ 484 (DB)

The present petition is not maintainable as the petitioners have already invoked provisions of Section 97 Cr.P.C. and have approached the competent court i.e. the court of Chief Judicial Magistrate, Allahabad and the corpus are in Child Protection Home.

The petitioners have already invoked the alternative effective statutory remedy, and more so, when the stand taken by the police authorities that the petitioners are in Child Protection Home, therefore, on the ground of already invoked effective statutory remedy and also in view of Full Bench decision in the case of Rachna and another vs. State of UP and others, AIR 2021 ACR 109(FB), the present Habeas Corpus petition is not maintainable.

The petitioners have been lodged in Child Protection Home, therefore, prima facie, a genuine presumption can be raised that the machinery under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 has been put into motion. Therefore, present petition would not be maintainable.

3. Naveen Kumar Sharma and another v. State of U.P and another, 2023(4) ADJ 693

Whether the account of which the said cheque was drawn, was having sufficient balance to pay the amount gathered by said cheque worth Rs. 90,000,00/- drawn in favour of respondent, whether petitioner was having some other account apart from the account which was blocked as

said above on which cheque would be drawn in favour of the respondents in discharge of certain debt and liability as claimed by her, whether the petitioner indeed intended to get the cheque encashed, all these questions are to be decided during trial and the grounds taken in present petition can be raised by the petitioner at the stage of leading defence.

The petitioner has claimed that said cheque was issued in favour of the respondent No. 2 as security cheque, as huge amount was outstanding to the respondent No. 2 and for that reason after completing all formalities of disassociation from firm the cheque was to be encashed, is dispelled by the aforesaid proposition of law laid down by Hon'ble Apex Court in Om Laboratory Pvt. Ltd., wherein it was held that handing over of cheque by way of security per se, would not absolve the accused from discharge of liability arising from said cheque.

It was held that there is no good ground to interfere in impugned orders passed by court below which are under challenge in the petition. The impugned orders were in accordance with law and no illegality or irregularity was found therein.

By –

**Dr. Humayun Rasheed Khan,
Additional Director (Research), JTRI**

ABOUT US

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.

The Institute believes in continuous involvement of officers in sports activities to relieve the stress and keep them healthy. Besides Volley Ball and Carom, the hostel is also having Badminton Court as well as Table-tennis facilities. The hostel is fully furnished and equipped with the best house-keeping and hospitality facilities. The institute has a big air-conditioned Dining Hall with a dining capacity of about 150 persons at a time. The dining Hall is housed with the officers' hostel in one and the same building.

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.