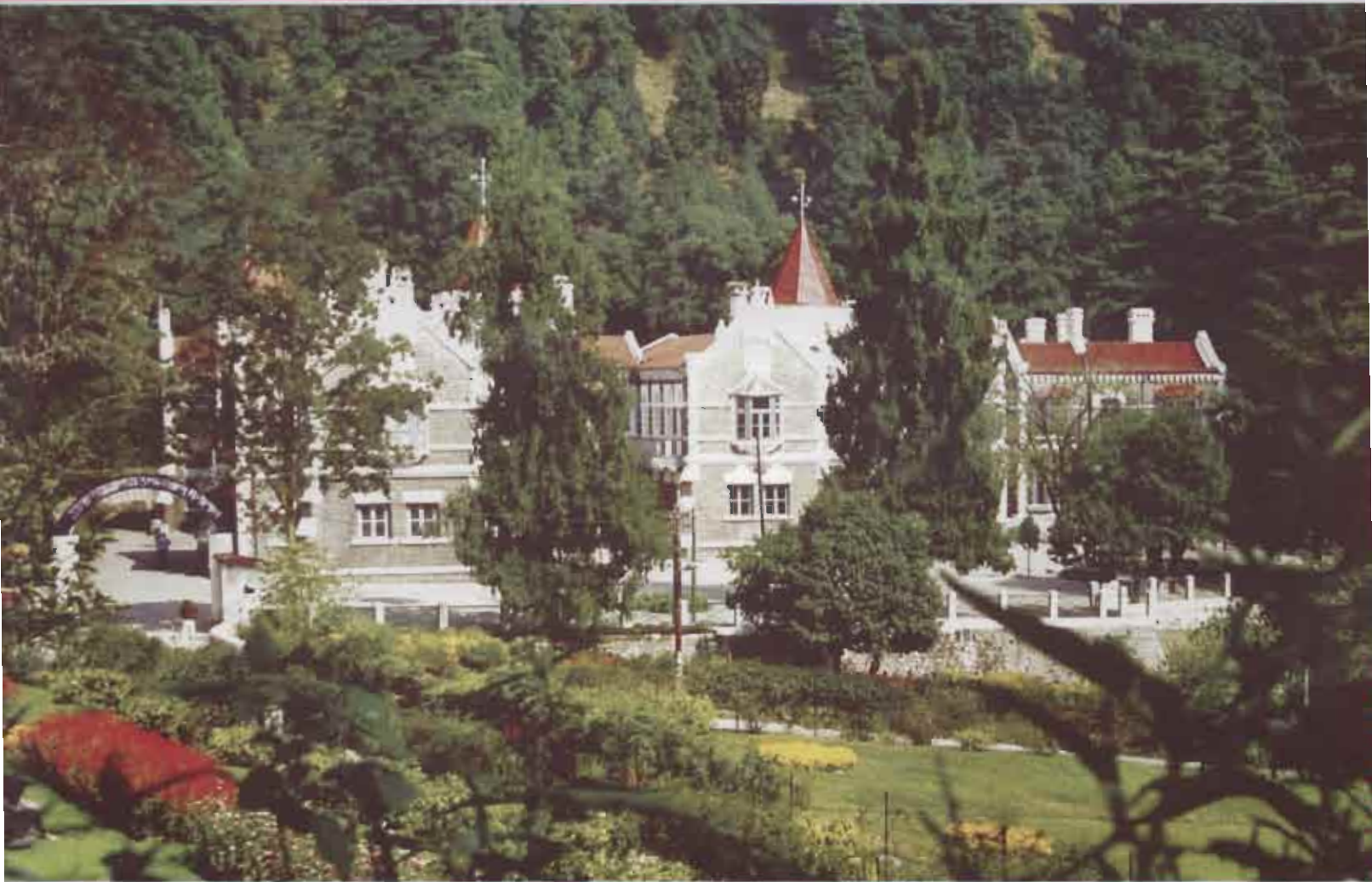




UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-1 Issue No-2 (Oct.-Dec., 2010)



HIGH COURT OF UTTARAKHAND, NAINITAL

EDITORIAL BOARD

Hon'ble Mr. Justice Prafulla C. Pant
Hon'ble Mr. Justice Sudhanshu Dhulia

COMPILED BY

U.C. Dhyani, Registrar General, High Court of Uttarakhand

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Group Photograph taken on 13-11-2010



Sitting (L to R) : Hon'ble Mr. Justice J.S. Khehar, Chief Justice, High Court of Karnataka, Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India, Hon'ble Dr. Ramesh Pokhriyal 'Nishank', Chief Minister, Uttarakhnad, Her Excellency Smt. Margaret Alva, Governor, Uttarakhnad, Hon'ble Mr. Justice V.S. Sirpurkar, Judge, Supreme Court of India, Hon'ble Mr. Justice Barin Ghosh, Chief Justice, High Court of Uttarakhnad, Hon'ble Mr. Justice Tarun Agarwala, Judge, High Court of Uttarakhnad.

Standing (L to R): Hon'ble Mr. Justice Sudhanshu Dhulia, Judge, High Court of Uttarakhnad, Hon'ble Mr. Justice V.K. Bist, Judge, High Court of Uttarakhnad, Late Hon'ble Mr. Justice Dharam Veer, Judge, High Court of Uttarakhnad, Hon'ble Mr. Justice B.S. Verma, Judge, High Court of Uttarakhnad, Hon'ble Mr. Justice Prafulla C. Pant, Judge, High Court of Uttarakhnad, Hon'ble Mrs. Justice Nirmal Yadav, Judge, High Court of Uttarakhnad.

CONTENTS

➤	Hon'ble Judges of Uttarakhand High Court	4
➤	From the Desk of Chief Justice	5
➤	District Judges of Uttarakhand	6
➤	Transfers and Promotion of Judicial Officers	7
➤	Vacancies in High Court and District Courts	8
➤	Institution, Disposal and Pendency of cases in High Court	9
➤	Institution, Disposal and Pendency of cases in District Courts	10
➤	Some recent Judgements of High Court	11
➤	Major activities and events in High Court	18
➤	Major activities in UJALA	21

UTTARAKHAND HIGH COURT

LIST OF JUDGES (As on 31st December, 2010)

SL. No.	Name of the Hon'ble Judge	Date of Appointment (assumed charge in Uttarakhand)
1-	Hon'ble Mr. Justice Barin Ghosh Chief Justice	12.08.2010
2-	Hon'ble Mr. Justice Tarun Agarwala	25.09.2009
3-	Hon'ble Mr. Justice Prafulla C. Pant	29.06.2004
4-	Hon'ble Mr. Justice B. S. Verma	15.07.2004
5-	Hon'ble Mrs. Justice Nirmal Yadav	11.02.2010
6-	Hon'ble Mr. Justice V.K. Bist	01.11.2008
7-	Hon'ble Mr. Justice Sudhanshu Dhulia	01.11.2008

RETIREMENTS (In the quarter ending 31-12-2010)

--NIL--

DEMISE

Hon'ble Mr. Justice Dharam Veer	16.11.2010
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Barin Ghosh



CHIEF JUSTICE
HIGH COURT OF UTTARAKHAND

Nainital - 263001


FROM THE DESK OF CHIEF JUSTICE

This is the second issue of Uttarakhand Court News. In this issue, as promised, we have tried to bring forth all necessary informations concerning the judiciary of the State. The changes, which have come about in the last quarter, have also been highlighted. Some important decisions rendered by this Court, have also been reproduced in short form.

We feel that the information supplied in the News letter will help people in understanding the judiciary of the State as well as the changing law.

Hopefully, we will be in a position to bring out improvements in the next issues.

December 15, 2010


(Barin Ghosh)

DISTRICT JUDGES



SL.No.	Name of the District	Name of the District Judge
1.	Almora	Mr. Kanta Prasad
2.	Bageshwar	Mr. Jai Deo Singh
3.	Chamoli	Smt. Meena Tiwari
4.	Champawat	Mr. Rajendra Singh
5.	Dehradun	Smt. Indira Ashish
6.	Haridwar	Mr. Servesh Kumar Gupta
7.	Nainital	Mr. R.D.Pandey
8.	Pauri Garhwal	Mr. Raj Krishna
9.	Pithoragarh	Mr. D.P.Gairola
10.	Rudraprayag	Mr. G.S. Dharamshaktu
11.	Tehri Garhwal	Mr. Alok Verma
12.	Udham Singh Nagar	Mr. K.D.Bhatt
13.	Uttarkashi	Mr. R. C. Khulbe

TRANSFERS & PROMOTION OF JUDICIAL OFFICERS IN DISTRICTS

SL. No.	Name of the Judicial Officer	From	To	Date of Transfer
1.	Mr. Varun Kumar Civil Judge (Sr. Div.)	Kotdwar (Pauri Garhwal)	Pauri Garhwal as (C.J.M)	09.09.2010
2.	Mr. Sujeet Kumar (C.J.M)	Pauri Garhwal	Kotdwar (Pauri Garhwal) as Civil Judge (Sr. Div.)	09.09.2010
3.	Smt. Archana Sagar Civil Judge (Jr. Div.)	Kotdwar (Pauri Garhwal)	Pauri Garhwal Civil Judge (Sr. Div.)	09.09.2010
4.	Smt. Indira Ashish Principal Secretary (Law)-cum-L.R. Govt. of Uttarakhand	Sachivalaya	Dehradun as Distt. Judge	20.09.2010
5.	Sri Ravindra Maithani Registrar General	High Court of Uttarakhand	Supreme Court of India as Registrar	20.09.2010
6.	Sri Umesh Chandra Dhyani District Judge	Dehradun	High Court as Registrar General	20.09.2010
7.	Sri Malik Mazhar Sultan IV th Addl. District & Session Judge Dehradun	Dehradun	Additional Director UJALA, Bhowali	24.12.2010

VACANCIES IN COURTS

(A) HIGH COURT (As on 31-12-2010)

Sanctioned Strength	Working Strength	Vacancies
09	07	02

B) District Courts (As on 31-12-2010)

SL. No.	Name of the District	Sanctioned Strength	Working Strength	Vacancies
1.	Almora	11	06	05
2.	Bageshwar	07	04	03
3.	Chamoli	10	05	05
4.	Champawat	05	05	Nil
5.	Dehradun	56	30	26
6.	Haridwar	40	19	21
7.	Nainital	28	11	17
8.	Pithoragarh	07	03	04
9.	Rudraprayag	07	04	03
10.	Tehri Garhwal	11	05	06
11.	Pauri Garhwal	13	08	05
12.	Udham Singh Nagar	34	21	13
13.	Uttarkashi	04	04	Nil
Total		233	125	108

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

A. HIGH COURT OF UTTARAKHAND (from 01.10.2010 to 31.12.2010)								
						Pendency (At the end of 30.09.2010)		
						Civil Cases	Criminal Cases	Total Pendency
						11992	5919	17911
Institution (01.10.2010 to 31.12.2010)			Disposal (01.10.2010 to 31.12.2010)			Pendency (At the end of 31.12.2010)		
Civil Cases	Criminal Cases	Total Matters	Civil Cases	Criminal Cases	Total Matters	Civil Cases	Criminal Cases	Total Pendency at the end of 31.12.2010
1572	1221	2793	1511	918	2429	12053	6222	18275

B. District Courts (From 01.10.2010 to 31.12.2010)

Sl. No.	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.12.10
		Opening Balance as on 01.10.10	Institution from 01.10.10 to 31.12.10	Disposal from 01.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 01.10.10	Institution from 01.10.10 to 31.12.10	Disposal from 01.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	Almora	753	127	141	739	1522	303	469	1356	2095
2.	Bageshwar	84	65	29	120	260	95	119	236	356
3.	Chamoli	367	68	65	370	1151	294	302	1143	1513
4.	Champawat	160	53	52	161	861	346	538	669	830
5.	Dehradun	13592	2074	2127	13539	66926	9429	21094	55261	68800
6.	Haridwar	7990	1599	1443	8146	27298	6691	10057	23932	32078
7.	Nainital	2868	629	658	2839	10519	2320	3083	9756	12595
8.	Pithoragarh	307	105	109	303	694	261	256	699	1002
9.	Rudraprayag	159	72	81	150	542	252	384	410	560
10.	Tehri Garhwal	503	144	173	474	1711	494	726	1479	1953
11.	Pauri Garhwal	1307	203	220	1290	3332	621	612	3341	4631
12.	Udham Singh Nagar	3841	844	801	3884	24616	3602	4110	24108	27992
13.	Uttarkashi	413	98	128	383	880	397	472	805	1188
	Total	32344	6081	6027	32398	140312	25105	42222	123195	155593

Some Recent Judgments of Uttarakhand High Court

Marriage & Divorce :

1. On 31st May, 2010, a Division Bench in *Rahul Samrat Tandon Vs. Smt. Neeru Tandon* (A.O. No. 113 of 2010) (reported in AIR 2010 Utt. 67) held that order passed by subordinate court under section 24 of the Hindu Marriage Act fixing maintenance pendente lite in the divorce proceedings is an order having the quality of finality. It may have nothing to do with the ultimate order, which may be passed by the Court in a matter relating to section 13 of the Hindu Marriage Act. In fact, it is a separate proceeding within a proceeding. Hence, the order passed under section 24 of the 1955 Act cannot simply be called an order of an interlocutory nature, as it is a judgment. Therefore, an appeal under section 19(1) of the Act of 1984 is maintainable against an order passed under section 24 of the Hindu Marriage Act, 1955.
2. On 31st August, 2010, a Division Bench in *Paramjeet Kaur and another Vs. State of Uttarakhand* (First Appeal No. 31 of 2010) (reported in 2010 (2) U.D. 171) held that the petition under Section 13-B Hindu Marriage Act, 1955 can not be dismissed on the ground of collusion, for the reason that if the same is dismissed for said reason, the object of inserting the provision vide Act No. 68 of 1976 would be defeated, as in every case the parties are required to file a joint petition with mutual consent. The bench observed that clause (c) of section 23 (1) of Hindu Marriage Act, 1955, which provides that a Court has to satisfy that a petition (not being a petition presented u/s 11) is not presented in collusion with the respondent, existed in the Act from 18-05-1955, and subsequently Section 13-B was inserted in the Act w.e.f. 27-05-1976, and the Legislature could not have intended to make clause (c) of section 23(1) applicable to such situation.
3. On 19th November, 2010, a Division Bench in *Pratap Singh Vs. Moksha* (Appeal from Order No. 411 of 2010) held that Sub-Section (2) of section 25 of Hindu Marriage Act, 1955, empowers

the Court to modify or verify the order passed under Sub-Section (1) of Section 25, in the changed circumstances. Sub-Section (3) also empowers the Court to change or verify the decree. But unless the decree changed or modified, the judgment debtor has no right to get cancelled the proceedings of the pending execution. The executing court is bound by decree passed by the trial court, which has attained finality.

Civil Matters :

4. On 2nd June, 2010, a Single Judge Bench in *Jaiwant Singh Negi Vs. Man Mohan Singh and Ors.* (W.P. No. 326 of 2010) (reported in AIR 2010 Utt. 100) held that proviso to Order VI, Rule 17 of C.P.C. puts an embargo on exercise of Courts power. Amendment application can not be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of the due diligence, the party could not have raised the matter before the commencement of trial.
5. On. 21st July, 2010, a Single Judge Bench in *Mizan Singh Vs. Smt. Munni Goel* (W.P. No. 1787 of 2009) (reported in AIR 2010 (NOC) 1090 (UTR.)) explaining the term "bonafide need" held that on an application of release under section 21 (1) (a) Act No. 13 of 1972, if tenant acquiring in vacant state a residential building in same city or municipality-tenant cannot object to release application by landlord.

In the same case, it has been held that requirement of land lady for release of ground floor on the ground that she was 73 years old and had arthritic problem would be genuine and bonafide.

Criminal Matters :

6. On 28th September, 2010, a Division Bench in *Pradeep Khandelwal Vs. State of Uttarakhand* (Criminal Appeal No. 74 of 2009) (reported in 2010 (71) All. Cr. Cases, Page 244) while placing reliance on the principle of law laid down in *Ram Singh Vs. Col. Ram Singh AIR 1986 S.C.*

Page No. 3, reiterated the principles regarding admissibility of evidence of tape recorded voice as under:-

- (i) The voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the Speaker.
- (ii) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.
- (iii) Every possibility to tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
- (iv) The Statement must be relevant according to the rules of Evidence Act.
- (v) The recorded cassette must be carefully sealed and kept in safe or official custody.
- (vi) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

7. On 22nd October, 2010, a Division Bench in **Amar Singh Rawat Vs. State of Uttaranchal (Uttarakhand)** (Criminal Jail Appeal No. 129 of 2004) observed that merely for the reasons that the two eyewitnesses are related to the deceased, their testimony can not be disbelieved. What is material is their natural presence at the spot.

In the same case, on delayed First Information Report, the bench observed that the incident had taken place at 6:00 P.M. on 25.04.2003, and the First Information Report was lodged at 10.30 P.M. on that day. The distance between the Police outpost and place of incident is only two kilometers. But the prosecution has successfully explained that the two eyewitnesses were more concerned to save life of their mother, who was taken from one hospital to another, before she succumbed to injuries. Considering the facts and circumstances, delay in lodging the First Information Report since explained, it was held that it does not create any doubt in the prosecution story.

8. On 15th November, 2010, a Division Bench in *Shailesh Kumar Vs. State of Uttar Pradesh (Criminal Appeal No. 888 of 2001)* held that the defence on the ground that there was no motive on the part of the accused to have killed deceased, is of little relevance in a case where there is a direct evidence against the accused. The Bench observed that it is a settled principle of law that in a case of direct evidence, motive has little relevance.
9. On 23rd November, 2010, a Single Judge Bench in *Ved Prakash Sharma and others Vs. State of Uttarakhand and others (Criminal Misc. Appeal (C-482) No. 916 of 2007)* held that where offence alleged is not compoundable but it is basically a Civil dispute of property, and parties have entered into compromise, the proceedings can be quashed. (reliance placed on Principle of Law laid down in *Nikhil Merchant Vs. C.B.I. (2008) 9 SCC 677*).

PIL Matters:

10. On 25th October, 2010, a Division Bench in *Smt. Sapna Gautam Vs. State of Uttarakhand and others (Writ Petition (P.I.L.) No. 104 of 2009)*, while dismissing the petition, observed that the State Government has taken no step to remove those squatters from forest area and directed that it is high-time for the State and its machinery to act, and further directed that a copy of the order to be sent to the Chief Secretary of the State for taking necessary steps.

11. On 26th October, 2010, a Division Bench in ***Social Development Foundation, NGO registered under Indian Trust Act Vs. State of Uttarakhand and Others*** (Writ Petition (PIL) No.75 of 2010) held that the mandate of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 upon the State is to distribute surplus land in accordance with the provisions contained therein. The purpose thereof was, amongst others, to ensure increased agricultural production, to provide land to landless agricultural labourers and for other public purposes so as to subserve the common good. Accordingly the bench directed the state Government to decide within a period of one year as to how much and to what portion of the land in question the State Government was proposing to utilize for a public purpose, for which the land could be acquired under the Land acquisition Act, 1894. If the Government does not decide to utilize the land in its entirety for such public purposes, to ensure that each Gram Sabha situate in the vicinity of the land has 15 acres to be used for planting trees, growing fodder or such other community purposes, as prescribed. If it transpires that even after utilizing a part of the land for the aforementioned public purposes and a part of the remaining by distributing land to Gram Sabhas in the manner as indicated above, there remains further surplus land, the State Government shall take a decision within the time as mentioned above in accordance with the mandate contained in Section 198 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.
12. On 10th November, 2010, a Division Bench in ***Deepak Malik Vs. State of Uttarakhand and others*** (Writ Petition (PIL) No. 40 of 2009) directed the State Government to be vigilant and to ensure that in future Licencee/ Lessee does not carry out mining activities beyond 5.80 hectares of land as mentioned in the schedule to the Licence/lease granted by the State Government and in the event of failure on the part of Licencee/Lessee, State Government is directed to initiate prosecution against the respondent and also held that above direction shall be applicable not only to respondent No.6 but also to his successors.
13. On 24th November, 2010, a Division Bench in ***Sufi Aziz-Ur-Rehman Vs. State of Uttarakhand and others*** (Writ Petition (PIL) No. 53 of 2010) while hearing a challenge to the composition of

the Board of Waqfs for the State of Uttarakhand, on the question, Is it permissible for a reasonable person to prosecute a person on the premise that the person has committed an offence involving moral turpitude, and at the same time, to nominate him as a member of a statutory authority of the State. Does such an action on the part of the State repose public confidence in the actions of the State? bench observed it does not think so.

In this case, the bench passed the order that henceforth, in the matter of nomination, the State must ensure that it does not nominate a person against whom it has itself taken steps under the Criminal Jurisprudence.

Service Matters :

14. On 22nd November, 2010, a Division Bench in *Rinku Verma & Others Vs. State of Uttarakhand & Others* (Writ Petition (S/B) No. 261 of 2010, in the matter of recruitment of persons other than District Judges to the Judicial Service, while dismissing the writ petition, observed that High Court has made a recommendation, in the month of April, 2010, to the Governor of the State for alteration of the Rules to some extent but Rules have not yet been altered. It would be appropriate to request the Governor of the State to consult the State Public Service Commission on the recommendations of this Court and to do the needful at an early date and preferably before the process of selecting the next batch commences.

Miscellaneous :

15. On 5th October, 2010, a Division Bench in *Prashant Jaiswal Vs. State of Uttarakhand and another* (Special Appeal No. 145 of 2010) (reported in 2010 (2) U.D. 434) held that where the provisions of one Statute are, by reference, incorporated in another and the amending Statute afterwards repealed, the provisions so incorporated obviously continue in force so far as they form part of the amended enactment. Quoting the Section 4 of the Repealing and Amending Act

2001 (Central Act No. 30 of 2001), bench observed that it clearly provides that repeal shall not affect in any other enactment in which repealing enactment has been applied, incorporated or referred to.

- 16. On 27th October, 2010, a Division Bench in **Jasbir Singh Vs. The State of Uttarakhand and Others** (Special Appeal No. 160 of 2010) held that Judicial Review is available in respect of an action, which is per se illegal, but it is not necessarily available in respect of an action, which is irregular. Judicial Review against an irregular action is available only when by reason of such action any interest of the person seeking judicial review has been interfered.

MAJOR EVENTS AND INITIATIVES

1) COMPLETION OF 10 YEARS OF ESTABLISHMENT OF HIGH COURT OF UTTARAKHAND

High Court of Uttarakhand was established on 09.11.2000 at Nainital with the establishment of new State of Uttarakhand as 27th State of Indian Republic. This year High Court of Uttarakhand has completed 10 years of its establishment. On this occasion various programmes were organized from 09.11.2010 to 13.11.2010.

- a) **MEGA LOK ADALAT :-** On 09.11.2010, under the banner of SLSA, a Mega Lok Adalat was organized in High Court campus as well as in all District Courts of Uttarakhand. 69 cases were disposed of in the High Court including 3 cases of Matrimonial disputes. In District Courts 28,577 cases were disposed of. On this occasion, to impart Legal Knowledge to general public, booklets published by SLSA were also distributed.
- b) **EXHIBITION :-** From 09.11.2010 to 13.11.2010, a photo exhibition namely "Uttarakhand through the aegis" was organized in the hall of Chief Justice Block. The exhibition depicted the religious, natural, historical and cultural heritage of Uttarakhand. Exhibition was witnessed besides several dignitaries by students of several schools of Nainital and also by the general public and they appreciated the exhibition.

- c) **BLOOD DONATION CAMP** :- On 10.11.2010, a blood donation camp was organized in the premises of High Court dispensary. 43 persons donated their blood and hundreds of persons received counseling. Awareness regarding AIDS was also imparted during the camp.
- d) **PLANTATION** :- On 11.11.2010, a plantation drive was launched in the High Court premises. Plants of various species were sown by Hon'ble the Chief Justice, all Hon'ble Judges, Advocate General, President of High Court Bar Association, members of the Bar and by Officers & staff of the registry.
- e) **MAIN FUNCTION** :- On 13.11.2010, main function on the completion of 10 years of establishment of High Court was organized in the Chief Justice's Court. Hon'ble Mr. Justice V.S.Sirpurkar, Judge Supreme Court graced the occasion as Chief Guest. Hon'ble Mr. Justice Cyriac Joseph, Judge Supreme Court, Hon'ble Mr. Justice J.S.Khehar, Chief Justice, High Court of Karnataka and Hon'ble Chief Minister Shri Ramesh Pokhriyal 'Nishank' graced the occasion as Guests of Honour. Her Excellency the Governor of Uttarakhand Smt. Margret Alva presided over the function. Hon'ble Judges of High Court of Allahabad, High Court of Jharkhand and High Court of P&H also graced the occasion. A Souvenir was released commemorating ten years of High Court of Uttarakhand at the function. High Court of Uttarakhand also decided to come out with the release of a Quarterly News Letter and the inaugural issue was released on 13-11-2010.



Hon'ble dignitaries on the dais releasing of souvenir commemorating ten years of High Court of Uttarakhand on 13.11.2010.

- f) **CULTURAL EVENING** :- A cultural evening was organized in Chalet Hall, State Guest House, Nainital on 13.11.2010.
- g) **SPORTS ACTIVITIES** :-From 08.11.2010 to 12.11.2010, sports activities were organized in the premises of Uttarakhand Academy of Administration, Nainital. Various activities like Badminton, Table-Tennis, Chess and Billiards were organized. Judges, Advocates and staff of the High Court participated in the sports. On 29-12-2010, prizes and certificates were distributed by Hon'ble the Chief Justice and all Hon'ble Judges to the winners and runners-up of sports activities and to the participants of cultural evening.

2) MAJOR ACTIVITIES OF UJALA

Foundation Training Programme for Newly recruited Addl. District & Sessions Judges (from 01-09-2010 to 30-10-2010): Two months foundation training programme was organized for 08 directly recruited H.J.S. Officers. During the programme, besides basic legal aspects, trainees were made aware with financial matters, Government Servant Conduct Rules and Judicial Ethics etc.



Newly recruited Higher Judicial Service officers training session at UJALA, Bhowali.

Workshop on Mediation for Advocates (from 25-10-2010 to 29-10-2010) :

The Indian Judiciary is facing all round challenges due to huge pendency of cases. Amicable settlement of cases through Mediation is an effective way of dispute resolution. Advocates may perform a better

role in effective disposition of cases through Mediation. To sharpen their skill in this branch, a workshop on Mediation was organized, in which 24 Advocates from Districts Dehradun, Haridwar and Udham Singh Nagar participated.



Group Photo of Participants of workshop on mediation with resource persons and Director UJALA

Workshop on Protection of Women from Domestic Violence Act, 2005 (from 08-12-2010 to 09-12-2010 and from 29-12-2010 to 30-12-2010) : Indian Parliament has enacted the Protection of Women from Domestic Violence Act in 2005 to protect the women from violence occurred within the precinct of home, but due to the lack of awareness regarding procedure, Act is far behind to achieve its object. To make protection officers, aware of its procedure, a two day workshop was organized for the protection officers of the State of Uttarakhand.



Hon'ble Judges and dignitaries attending the main function on 13.11.2010 after completion of ten years of establishment of High Court of Uttarakhand



Her Excellency Smt. Margaret Alva, Governor of Uttarakhand and other dignitaries lighted the lamp in the gracious presence of Hon'ble Chief Minister Dr. Ramesh Pokhriyal 'Nishank', Hon'ble Mr. Justice V.S. Sirpurkar, Judge, Supreme Court of India, Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India, Hon'ble Mr. Justice Barin Ghosh, Chief Justice, High Court of Uttarakhand and Hon'ble Mr. Justice Tarun Agarwala, Sr. Judge, High Court of Uttarakhand on 13-11-2010.