

HIGH COURT OF KERALA CHRONICLES

In This Issue

JUDGES' CORNER

THE HISTORY
OF THE JUDICIAL
SYSTEM OF COCHIN

FRESH FROM THE
BENCH

IMPORTANT
EVENTS

JUSTICE CLOCK



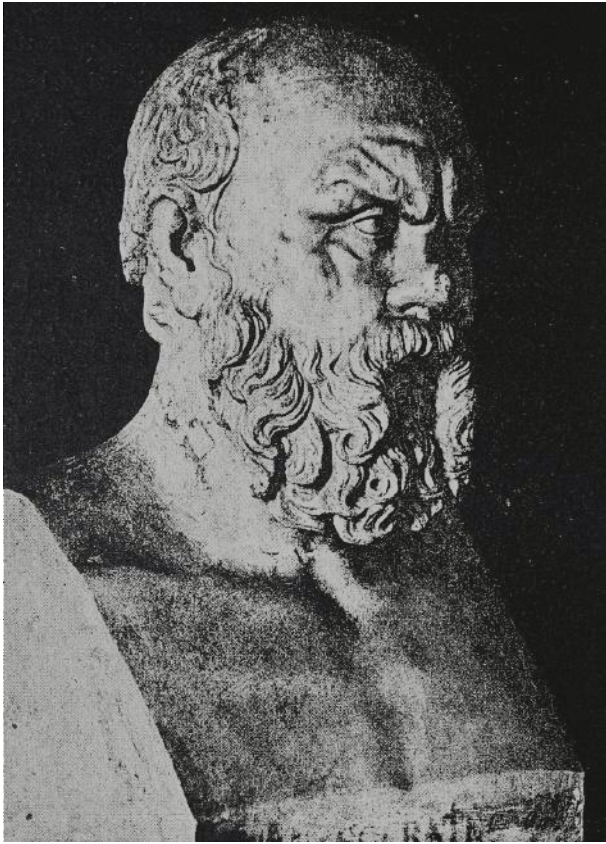
Justice Anil K. Narendran

"Judges interpret words. And words do not bind the interpreters; rather the interpreters give meaning to the words"

- Frank H. Easterbrook

All facets of human action revolve around the fulcrum of law. Thomas Aquinas describes law as "a certain rule and measure of acts whereby man is induced to act or is restrained from acting." Laws are adapted for the community and cannot stand away from the society. It is deeply embedded in the society. The theory of civil society as articulated by Locke is based on 'Law'. While Law pervades every aspect of society, it is obligatory on the part of individuals to obey the laws.

cont'd p.2




The ancient Greek philosopher, Socrates considered obeying the law of Athens as his obligation. This thought of obeying the law of Athens prevented Socrates from escaping from prison. The importance of law in the functioning of the Society is evident from the high pedestal in which the philosophers of the early days have placed law. Legislators lay down laws, while executive implements it and the judiciary interprets. While lawyers assist the Bench as officers of the Court, judiciary has a cardinal role of interpreting Law and also to lay down judge made law.

Words are tricky to start with and more difficult to interpret. In every interesting case, readers of words can reach contradictory conclusions. The task of lawyers and judges is to interpret laws in a manner so as to enhance the object of the legislation with due regard to the society. Judiciary has the most important role of delivering justice. They have to offer a solution to the conflicting rights and interests. The mammoth institution of our High Court adorned by the legal luminaries will definitely be able to achieve this obligation to the Society.

As we collate the next edition of the High Court Chronicles let us give a word of honour to uphold the values and obligations to the society in unison with the responsibilities cast on each one of us.

- Justice Anil K. Narendran



A stroll into the past –

THE HISTORY OF THE JUDICIAL SYSTEM OF COCHIN

Before the British intervention, the legal and judicial system of the province of Cochin functioned through religious practices and “nattu mariyada” (customs). The province of Cochin was divided into Nadus. Some of the Nadus were administered by Swarupi chiefs and some were administered by Prabhus. These local administrators were the judicial head of each Nadu.

Later, these local chiefs were replaced by Karyakars (similar to the present-day Tahsildars) who were in charge of Taluks and were well trained in dispute resolution of both civil and criminal matters, with policing powers. Disputes were also settled through Shastris who were well versed in Dharmashastras. More serious disputes were sometimes decided by the king himself; who was the highest judicial authority and he disposed of the matters personally. The king was the fountainhead of justice and he was assisted by ministers or deputies. Every decision of the king was based on getting permission from the Lord Poornathrayeesan, the family deity of the Cochin ruling family.

In civil litigations, if the parties were Christians or Muslims, the customs recognized were based on the personal laws of the respective religions. But if one of the parties is a Hindu, then Hindu Law prevails. In criminal cases death, mutilation, whipping, imprisonment, fine, reduction to slavery, and excommunication was the punishment in practise. Capital punishment was awarded to persons convicted of sacrilege, treason, murder, slaying, or wounding a Brahmin or a cow. Torture and oaths were also the methods used to find out the truth. Trial by ordeal was also common in both civil and criminal cases. Evidence given by the women and slaves were inadmissible in judicial proceedings. The courts functioned round the clock and there was no fixed time or special rooms for conducting judicial proceedings. Enquiries were held where the presiding officer sat and the proceedings were short and in summary. The final decisions were mainly non-speaking judgments.

During the Diwanship of Col. Munro in 1812 modern courts of law came to be established for the first time in Cochin. Col. Munro divided Cochin into six taluks known as Kovilalickathum Vathuckal. In 1813, by a Hukum-Nama two subordinate courts, one at Thrissur and one at Thripunithura were established. Each of the subordinate courts was presided over by a Hindu, a Christian judge, and a Shastri. A Huzur Court of Final Appeal with three judges, well versed in customs and Dharmashasthras was also established in Cochin. These courts were established with appellate jurisdiction of appeals from the Karyakkars and also with original jurisdiction in serious cases. The Diwan, when he was in the station, had the authority to preside over the Huzur Court.



Col. Munro

The Hukum-Nama issued in 1814 introduced in Cochin the concept of payment of court fees through Acchadiyolas (Stamp Cadjans). Nanjappayya, who was the Diwan of Cochin from 1818 – 1825 succeeding Col. Munro, introduced many reforms and remodelled the judicial administration by streamlining the administration of justice on lines with the British India. By a proclamation, the Huzur Court was named as the Appeal Court in 1818.

This system continued till 1834 when Venkitasubbaya was appointed as Diwan. During his term, various regulations were passed for the guidance of the courts. By Regulation IV of 1835, Tahsildars were entrusted with the powers of Police Officers. The Huzur Court was reconstituted as the Raja's Court of Appeal and the Sub Courts were reconstituted as Zilla Courts. The seat of the court at Thripunithura was shifted to Ernakulam, more popularly known as 'Anjikaimal' in those days. The Zilla Courts were given unlimited jurisdiction both in civil and criminal matters of the respective Zillas, with powers of awarding death sentences, but subject to confirmation by the Raja's Court of Appeal. For expeditious disposal of cases, Circuit Courts were also established and judges of the Appeal Courts were appointed as circuit judges for the trial of sessions cases.



Thottekatt Sankunni Menon

The next stage of development was during the Diwanship of Thottekatt Sankunni Menon from 1860 onwards. Regulation I passed in 1861 established the Munsiff Courts at Ernakulam and Chittur. Two years later two more Munsiff Courts were established, one for Cranganore (now Kodungallur) and Mukundapuram and the other for Thrissur and Talappilli. Zilla Courts were divested with the powers of Courts of Small Causes. By Regulation I of 1865 the Appeal Court was empowered to appoint a duly qualified Vakil. In 1868, a separate Munsiff Court was established exclusively for Thrissur, and a similar one for Cochin around 1877.

Regulation I of 1868 abolished the Circuit or Sessions Courts and empowered the Zilla Courts to try and dispose of cases of every description. In 1884, the Cochin Penal Code and the Cochin Criminal Procedure Code were enacted, which were adapted mutatis mutandis from the corresponding British Indian Acts.

Around 1886, a resolution was passed to conduct examinations for the enrolment of lawyers. Also, qualification in law was prescribed for appointment as judges and only barristers and graduates were to be appointed as judges. Criminal courts were separated and a District Magistrate with the powers of a modern-day collector was appointed for the maintenance of law and order. He was also given the power to hear appeals in criminal cases from the decisions of magistrates. More serious criminal appeals had to be heard by the Zilla Judges.

Around 1901, by Regulation II, the Raja's Court of Appeal was reconstituted as the Chief Court of Cochin with three permanent judges. S. Locke, who was already the Chief Judge of the Raja's Court of Appeal, was appointed as the first Chief Judge. By Regulation III, the Zilla Courts were renamed as District Courts. The pecuniary jurisdiction of the courts was fixed. It also raised the ordinary jurisdiction of the Munsiff Court to ₹1000 and the small causes jurisdiction to ₹50. The Regulation also bestowed the District Courts with a small causes' jurisdiction up to ₹200. All Appeals against the decisions of the District Courts in original suits were to be heard by a Full Bench consisting of all the three judges of the Chief Court. Appeals from the appellate decisions of the District Courts were to be heard by a Division Bench consisting of two judges of the Chief Court.

In 1902, the Chief Court framed rules regarding the qualifications and admission of Vakils which were practically the same as those prevailing in the Madras Presidency. In 1904, provision was made for Division Benches of the Chief Court with two judges. In 1938, during the Diwanship of R.K. Shanmukham Chettiyar, the status of the Chief Court of Cochin was raised to the High Court of Judicature of Cochin.



By the covenant entered into in May 1949, His Highness Chithira Thirunal Balarama Varma, the Maharaja of Travancore, and His Highness Rama Varma, the Maharaja of Cochin, agreed to form the United State of Travancore and Cochin with effect from 01.07.1949. Consequent to the formation of the new State, by Ordinance No.11 of 1949, the High Court of Judicature for the United State of Travancore and Cochin was constituted with its seat at Ernakulam.

Accordingly, the new Travancore-Cochin High Court was inaugurated in the Ram Mohan Palace, Cochin on 07.07.1949 by the Honourable Mr. Justice P.V. Rajamannar, the then Chief Justice of the Madras High Court. The first Chief Justice of the newly formed High Court was Honourable Mr. Justice Puthuppalli S. Krishna Pillai. The Travancore-Cochin High Court ceased to exist on 31.10.1956, after a prestigious service of seven odd years.



Photo taken after the Travancore-Cochin High Court was inaugurated

LEGAL MAXIMS

*Ignorantia Facti
Excusat – Ignorantia
Juris Non Excusat.*

*Ignorance of facts may be
excused but not ignorance of
law.*

MANU/RH/0695/2000

*Nemo debet esse Judex
in propria sua Causa.*

*No man can be judge in his
own cause.*

AIR 2007 SC 181

*Actus Curiae Neminem
gravabit.*

*An act of the Court shall
prejudice no man.*

2005 (3) SCC 353

*Vigilantibus et non d
ormientibus jura
subveniunt.*

*Law aids the vigilant and not
those who sleep upon/over
their rights.*

MANU/TN/3711/2010



Fresh from the Bench

2024: KER: 22064

“The dead are to rest where they have been laid unless reason of substance is brought forward for disturbing their repose.” – Justice Cordozo

The High Court while emphasising that the right to decent burial is a facet of the right to life guaranteed under Art 21, held that a burial in a stranger's property without their express consent can be construed as an abandonment of that body and thereby, the Kerala Panchayat Raj (Burial of Unclaimed Corpses and Carcasses) Rules, 1996 can be invoked in such instances. The court upheld the order of the Sub Divisional Magistrate, requiring the Secretary of the Panchayat to get the body exhumed and buried in accordance with the Rules.



2024 : KER : 20593

The High Court while taking a magnanimous and humanitarian approach, directed the bank officials to defer coercive proceedings under the SARFAESI Act, against the petitioner's husband and his assets, who is now in a comatose state. The court has also directed the Sub Divisional Magistrate/Revenue Divisional Officer to pass appropriate orders to grant limited guardianship under Section 14 of the Rights of Persons with Disabilities Act, 2016 to the wife for disposing of her husband's property for clearing his liabilities.

2024:KER:20127

The High Court held that one party cannot unilaterally withdraw from the terms of settlement entered through a mediation agreement after the other party has performed his part of the settlement terms. The High Court while upholding the judgment of the Family court granting divorce based on the settlement agreement, held that, once parties agree to file a joint petition, pursuant to an agreement or compromise in pending proceedings, the parties are estopped from resiling from the agreement.



2024 : KER : 68854

The High court held that a young child, whose right to life is guaranteed under Art 21 of the Constitution of India, which includes right to family life, also encompasses in its ambit, right to get love and affection of both parents. In relation to service matters, once there are other implications like those involving children, the authorities concerned are bound to deal with the situation like transfer and appointment, in a compassionate manner so as to respect the rights of not only the employee concerned, but also of the rights of the child in question. The High court opined that though there is no protective legislation to protect working women and single mother against compelling family responsibilities, the fundamental rights of the mother as well as the child cannot be overlooked or ignored.



2024 : KER : 12546

The High Court held that a lease deed for less than 12 months cannot be rejected for want of registration under Section 107 of the Transfer of Property Act. Section 107 of the Transfer of Property Act mandates that the requirement of compulsory registration of lease deed is applicable only in respect of a lease from year to year or for any term exceeding one year, or reserving an yearly rent. The High Court affirmed that lease of immovable property from month to month for 11 months need not be registered though reduced to writing, and that such a lease deed is admissible in evidence even though it was not registered.

2024:KER:23724

The Court held that pension is a savings of an employee that can be deprived only in accordance with the procedure established by law or when it is shown that the employment itself was obtained by playing fraud. The High Court thereafter, directed the disbursement of pensionary benefits to a woman who retired in 2013, stating that she had not committed any fraud even though issues regarding her caste status were pending before the Court.



2024 : KER : 21350

The High Court held that the law doesn't require husband's consent to terminate pregnancy during pending divorce proceedings. The court reasoned that 'marital status' cannot be a mere "legal status" in the context of the Medical Termination of Pregnancy Act and it has to be seen as "factual status" since there may be situations where a woman, though married, may effectively be without any benefits of marriage. While emphasizing on women's bodily autonomy the Court held that third party affirmation is not required in such cases and that there is no statutory requirement for the woman to obtain any such consent from her partner or husband to terminate pregnancy.

2024 : KER : 24929

The Kerala High Court has held that a dying declaration provided by the victim can be the sole basis of conviction if made in a fit state of mind, adding that it is for the court to determine whether the individual was in the fit state of mind from the evidence available on record. The court noted that since dying declarations as provided under Section 32(1) of The Indian Evidence Act, 1872, are the exception, the onus of establishing that the individual was in a fit state of mind which would bring the statement within the exception lies clearly upon the party who wants to rely upon the statement, i.e., on the prosecution.

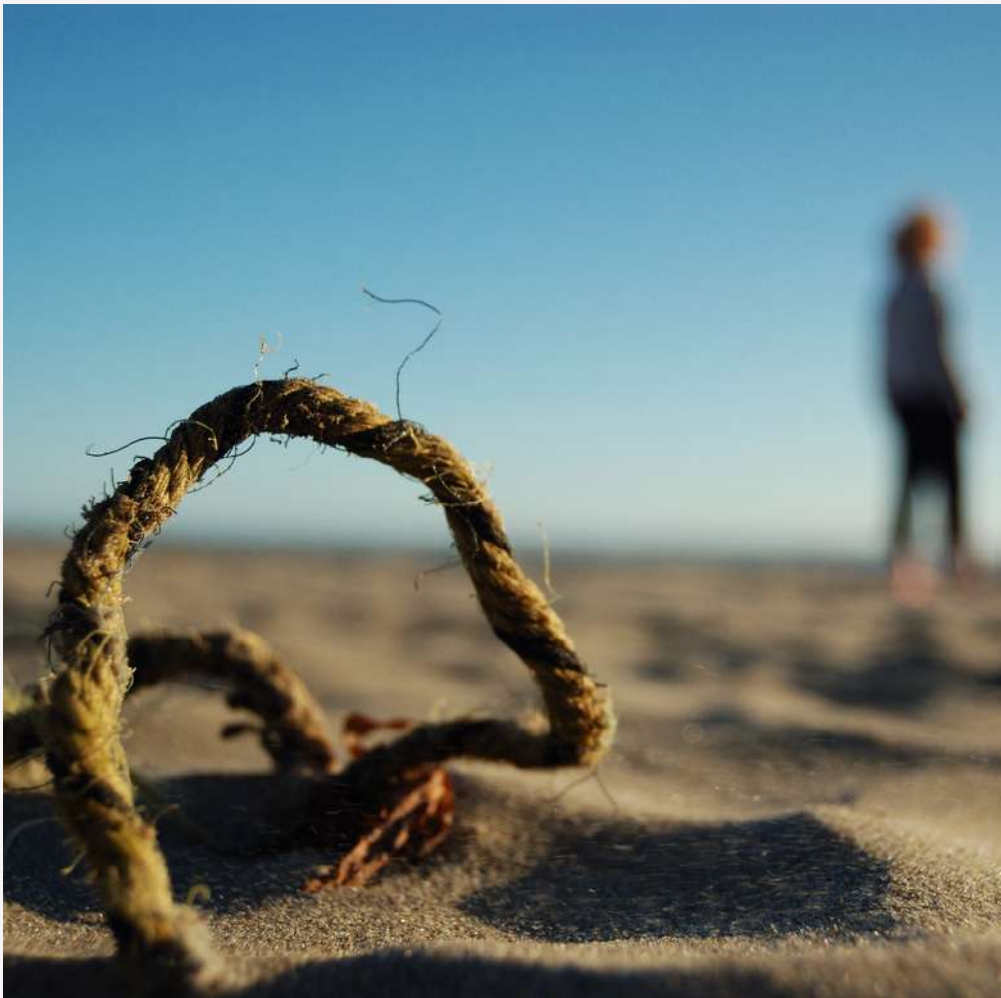


2024:KER:22209

The High Court held that the right to be enlarged on bail is an indefeasible part of the right to personal liberty under Article 21 of the Constitution and cannot be denied by imposing stringent or unreasonable conditions. The court opined that the amount fixed in bail bonds does not determine the sufficiency of surety and does not depend on the amount involved in criminal cases. Excessive bond amounts cannot be imposed for denying bail since bail bonds are only intend to secure the presence of the accused before the court.

2024:KER:21733

The High Court while quashing an inquiry report issued under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and rules made thereunder, held that, as per Rule 7 (2), the Internal Complaints committee has to ensure adherence to principles of natural justice. The Committee has to issue copies of complaint and other documents submitted by the complainant to the person accused, and witnesses must be examined in the presence of the accused, failing which the entire proceeding will be liable to be quashed.



2024:KER:21953

The High Court has held that ordinary quarrels in marital life without any overt act or instigation that would stimulate the deceased to commit suicide would not attract an offence of abetment to suicide under Section 306 of the IPC. The court opined that quarrels, fights or disputes in a marital relationship is not abnormal or uncommon and those quarrels cannot be reckoned as a conduct amounting to abetment of suicide unless there is something more in the form of instigation or aiding.

LEGAL TERMS

- **Abandonment :**
giving up a legal right.
- **Abuttals :**
the parts of the boundaries of a piece of land which touch pieces of land alongside.
- **Accessory :**
someone who encourages or helps another person to commit a crime.
- **Accomplice :**
someone who helps another person to commit a crime.
- **Ademption :**
when a gift in a will cannot be made because the item no longer exists.



“The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom.”

John Locke

Second Treatise of Civil Government (1690) ch. 6, sect. 57





Important Events in the Month of March



Farewell reference of Justice Anu Sivaram



Justice Mullapally Abdul Aziz Abdul Hakim sworn in as a Additional Judge of the Kerala High Court



Justice Syam Kumar Vadakke Mudavakkat sworn in as a Additional Judge of the Kerala High Court



Justice Harisankar Vijayan Menon sworn in as a Additional Judge of the Kerala High Court



Justice Manu Sreedharan Nair sworn in as a Additional Judge of the Kerala High Court



Justice Easwaran Subramani sworn in as a Additional Judge of the Kerala High Court



Justice Manoj Pulamby Madhavan sworn in as a Additional Judge of the Kerala High Court



Kerala High Court Confers Senior Designation On Twenty Advocates



The Kerala Judicial Academy in partnership with the CEELI Institute, Prague, the Federal Judicial Centre, Washington, and the National Judicial Academy hosted a training program at the Kerala Judicial Academy.

The training was imparted by Mira Gur-Arie from the Federal Judicial Center, Judge David Sanders, and Patricia D. Barksdale, a federal magistrate judge for the United States District Court and Maria Ladrón de Guevara of the CEELI Institute.



Photo taken during Samvada session



Consultation on the POSH Act



JUSTICE CLOCK

DISTRICT JUDICIARY

INSTITUTION, DISPOSAL & CASE CLEARANCE RATE			
DURATION	INSTITUTION	DISPOSAL	CCR
TODAY 15.04.2024	1536	1626	106%
LAST DAY	0	93	0.00%
LAST WEEK	10172	10727	105%
LAST MONTH	81348	138151	170%
THIS YEAR	280025	322968	115%
LAST YEAR	1019787	1145340	112%

AGEWISE PENDENCY & LISTED TODAY		
AGE (YEARS)	PENDENCY	LISTED TODAY
0-1	643803	10568
2-3	454076	6657
4-5	326418	5404
6-10	353685	6190
11-20	23287	575
21-30	812	9
ABOVE 30	154	0
TOTAL	1802235	29403

JUSTICE CLOCK

HIGH COURT OF KERALA

INSTITUTION, DISPOSAL & CASE CLEARANCE RATE

DURATION	INSTITUTION	DISPOSAL	CCR
TODAY 15.04.2024	71	1	1.41%
LAST DAY	4	0	0.00%
LAST WEEK	1997	2122	106.26%
LAST MONTH	9721	9616	98.92%
THIS YEAR	32308	32123	99.43%
LAST YEAR	100333	92738	92.43%

AGEWISE PENDENCY & LISTED TODAY

AGE (YEARS)	PENDENCY
0-1	77879
2-3	45132
4-5	42090
6-10	63869
11-20	25334
21-30	860
ABOVE 30	10
TOTAL	255174

HIGH COURT OF KERALA CHRONICLES

Editorial Board

Hon'ble Mr. Justice V. G. Arun

Hon'ble Mr. Justice C. S. Dias

with the assistance of

I. T. DIRECTORATE, HIGH COURT OF KERALA

ADV. KRISHNA S.

ADV. LEO LUKOSE

To subscribe please [click here](#)



“In law a man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of doing so.”

- Immanuel Kant