



COURT NEWS

Vol. V Issue No. 1

January-March, 2010



EDITORIAL BOARD

Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India
Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India

COMPILED BY

M.P. Bhadran, Secretary General, Supreme Court of India
Bibhuti Bhushan Bose, Asstt. Editor, Supreme Court Reports

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LIST OF SUPREME COURT JUDGES

(As on 31st March, 2010)

S.No.	Name of the Hon'ble Judge	Date of Appointment	Date of Retirement
1	Hon'ble Mr. Justice K.G. Balakrishnan, Chief Justice of India (CJI)	08.06.2000 As CJI: On 14.01.2007	12.05.2010
2	Hon'ble Mr. Justice S.H. Kapadia	18.12.2003	29.09.2012
3	Hon'ble Mr. Justice Altamas Kabir	09.09.2005	19.07.2013
4	Hon'ble Mr. Justice R.V. Raveendran	09.09.2005	15.10.2011
5	Hon'ble Mr. Justice Dalveer Bhandari	28.10.2005	01.10.2012
6	Hon'ble Mr. Justice D.K. Jain	10.04.2006	25.01.2013
7	Hon'ble Mr. Justice Markandey Katju	10.04.2006	20.09.2011
8	Hon'ble Mr. Justice H.S. Bedi	12.01.2007	05.09.2011
9	Hon'ble Mr. Justice V.S. Sirpurkar	12.01.2007	22.08.2011
10	Hon'ble Mr. Justice B. Sudershan Reddy	12.01.2007	08.07.2011
11	Hon'ble Mr. Justice P. Sathasivam	21.08.2007	27.04.2014
12	Hon'ble Mr. Justice G.S. Singhvi	12.11.2007	12.12.2013
13	Hon'ble Mr. Justice Aftab Alam	12.11.2007	19.04.2013
14	Hon'ble Mr. Justice J.M. Panchal	12.11.2007	06.10.2011
15	Hon'ble Dr. Justice Mukundakam Sharma	09.04.2008	18.09.2011
16	Hon'ble Mr. Justice Cyriac Joseph	07.07.2008	28.01.2012
17	Hon'ble Mr. Justice Asok Kumar Ganguly	17.12.2008	03.02.2012
18	Hon'ble Mr. Justice Rajendra Mal Lodha	17.12.2008	28.09.2014
19	Hon'ble Mr. Justice H.L. Dattu	17.12.2008	03.12.2015
20	Hon'ble Mr. Justice Deepak Verma	11.05.2009	28.08.2012
21	Hon'ble Dr. Justice B.S. Chauhan	11.05.2009	02.07.2014
22	Hon'ble Mr. Justice A.K. Patnaik	17.11.2009	03.06.2014
23	Hon'ble Mr. Justice T.S. Thakur	17.11.2009	04.01.2017
24	Hon'ble Mr. Justice K.S. Radhakrishnan	17.11.2009	15.05.2014
25	Hon'ble Mr. Justice S.S. Nijjar	17.11.2009	07.06.2014
26	Hon'ble Mr. Justice Swatanter Kumar	18.12.2009	31.12.2012
27	Hon'ble Mr. Justice C.K. Prasad	08.02.2010	15.07.2014

RECENT APPOINTMENTS INCLUDING APPOINTMENT OF THE NEW CHIEF JUSTICE OF INDIA

S.No.	Name of the Hon'ble Judge	Date of Appointment	Date of Retirement
1	Hon'ble Mr. Justice S.H. Kapadia, Chief Justice of India (CJI)	As CJI: On 12.05.2010	29.09.2012
2	Hon'ble Mr. Justice H.L. Gokhale	30.04.2010	10.03.2014
3	Hon'ble Mrs. Justice Gyan Sudha Misra	30.04.2010	28.04.2014
4	Hon'ble Mr. Justice Anil R. Dave	30.04.2010	19.11.2016



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5, Krishna Menon Marg,
New Delhi - 110 011

K. G. Balakrishnan
Chief Justice of India

FROM THE DESK OF CHIEF JUSTICE OF INDIA

This quarter has witnessed the completion of 60 years of the Supreme Court of India. It is a happy co-incidence that with this issue, "Court News" too has reached a milestone, as it has entered its 5th year of publication.

I am very glad that the newsletter continues to be appreciated in all quarters and is thus serving the purpose for which it was launched i.e. providing authentic up-to-date information on the various aspects of Indian judiciary.

The foundation stone for the Additional building complex of the Supreme Court has been recently laid at Pragati Maidan (Across the road from Supreme Court), Mathura Road, New Delhi. The Additional building complex will definitely meet the long standing requirement for additional infrastructure in Supreme Court.

Besides, an updated edition of the "Handbook of Information - Practice and Procedure" has been recently published by the Supreme Court. The same is available at the Reception Counter and Filing Counters of the Supreme Court.

Any suggestion for improvement of the newsletter would be gladly considered by the Supreme Court Registry.

10th May, 2010


[K.G. BALAKRISHNAN]

S. H. Kapadia
Chief Justice of India



FROM THE DESK OF THE PRESENT CHIEF JUSTICE OF INDIA

This issue of "Court News" is the first being published after my assuming the office of the Chief Justice. I am glad that "Court News" has not only endeared itself to the Bar, the Bench and the common citizens of this country, but also won praise from its readers abroad.

Judiciary is facing huge problems and I and my brother Judges and sister Judge are committed to tide over them. I am gearing up the Judiciary as a whole to establish not merely Rule of Law but also Rule of Justice.

I am sure that "Court News" would keep on disseminating authentic and useful information about the functioning of the Indian judiciary, and would continue to be appreciated by its readers, both in India and abroad.

A handwritten signature in blue ink, appearing to read 'S.H. Kapadia'.

[S.H. KAPADIA]

20th May, 2010

APPOINTMENTS AND RETIREMENTS IN SUPREME COURT

APPOINTMENTS

Name of the Hon'ble Judge	Date of Appointment
Hon'ble Mr. Justice S.H. Kapadia, Chief Justice of India (CJI)	As CJI: On 12-05-2010
Hon'ble Mr. Justice C.K. Prasad	08-02-2010
Hon'ble Mr. Justice H.L. Gokhale	30-04-2010
Hon'ble Mrs. Justice Gyan Sudha Misra	30-04-2010
Hon'ble Mr. Justice Anil R. Dave	30-04-2010

RETIREMENTS

Name of the Hon'ble Judge	Date of Retirement
Hon'ble Mr. Justice K.G. Balakrishnan, Chief Justice of India (CJI)	12-05-2010
Hon'ble Mr. Justice Tarun Chatterjee	14-01-2010

APPOINTMENTS IN HIGH COURTS (From 01-01-10 to 31-03-10)

S. No.	Name of the High Court	Name of the Hon'ble Judge	Date of Appointment
1	Andhra Pradesh	N.A. Kakru (As Chief Justice)	19-02-10
2	Bombay	S.V. Gangapurwala	13-03-10
3	Himachal Pradesh	Kurian Joseph (As Chief Justice)	08-02-10
		V.K. Sharma	07-01-10
4	Karnataka	B.V. Pinto	12-03-10
		B. Manohar	12-03-10
		K. Govindarajulu	12-03-10
		H.S. Kempanna	12-03-10
5	Madras	T. Mathivanan	17-02-10
		A. Arumughaswamy	17-02-10
		KBK Vasuki	17-02-10
6	Orissa	V. Gopalagowda (As Chief Justice)	25-03-10
7	Patna	Birendra Prasad Verma	18-02-10
		Dinesh Kumar Singh	18-02-10
		Akhilesh Chandra	15-03-10
		Gopal Prasad	15-03-10
		Mungeshwar Sahoo	15-03-10

- Above statement is compiled on the basis of information received from the High Courts

TRANSFERS BETWEEN HIGH COURTS (From 01-01-10 to 31-03-10)

S. No.	From	To	Name of the Hon'ble Judge	Date of Transfer
1	Andhra Pradesh	Bombay	A.R. Dave (Chief Justice)	11-02-10
2	Gauhati	Kerala	J. Chelameswar (Chief Justice)	17-03-10
3	Madhya Pradesh	Rajasthan	Abhay Manohar Sapre	11-02-10
4	Madras	Andhra Pradesh	Raja Elango	25-03-10
5	Orissa	Chhattisgarh	I.M. Quddusi	26-03-10
6	Punjab & Haryana	Uttaranchal	Nirmal Yadav	11-02-10

- Above statement is compiled on the basis of information received from the High Courts

VACANCIES IN COURTS

A) SUPREME COURT OF INDIA

Sanctioned Strength	Working strength	Vacancies
31	29	02

B) HIGH COURTS (As on 31-03-10)

S. No.	Name of the High Court	Sanctioned strength	Working strength	Vacancies
1	Allahabad	160	76	84
2	Andhra Pradesh	49	33	16
3	Bombay	75	64	11
4	Calcutta	58	36	22
5	Chhattisgarh	18	12	6
6	Delhi	48	41	7
7	Gauhati	24	20	4
8	Gujarat	42	24	18
9	Himachal Pradesh	11	11	0
10	Jammu & Kashmir	14	9	5
11	Jharkhand	20	14	6
12	Karnataka	50	40	10
13	Kerala	38	31	7
14	Madhya Pradesh	43	33	10
15	Madras	60	54	6
16	Orissa	22	16	6
17	Patna	43	29	14
18	Punjab & Haryana	68	47	21
19	Rajasthan	40	27	13
20	Sikkim	3	2	1
21	Uttaranchal	9	9	0
TOTAL		895	628	267

- Above statement is compiled on the basis of figures received from the Department of Justice

C) DISTRICT & SUBORDINATE COURTS (As on 31-12-2009)

S. No.	Concerned State/Union Territory	Sanctioned Strength	Working Strength	Vacancies
1.	Uttar Pradesh	2184	1932	252
2.	Andhra Pradesh	930	808	122
3a.	Maharashtra	2056	1786	270
3b.	Goa	49	42	7
3c.	Diu Daman & Silvassa	3	3	0
4.	West Bengal and A&N Islands	933	779	154
5.	Chhattisgarh	293	261	32
6.	Delhi	605	439	166
7.	Gujarat	1099	830	269
8a.	Assam	326	223	103
8b.	Meghalaya	10	7	3
8c.	Tripura	92	59	33
8d.	Manipur	33	31	2
8e.	Nagaland	27	26	1
8f.	Mizoram	67	32	35
8g.	Arunachal Pradesh #	2	0	2
9.	Himachal Pradesh	126	117	9
10.	Jammu and Kashmir	207	166	41
11.	Jharkhand	546	400	146
12.	Karnataka	913	820	93
13a.	Kerala	436	417	19
13b.	Lakshadweep	3	3	0
14a.	Tamil Nadu	824	803	21
14b.	Puducherry	20	15	5
15.	Madhya Pradesh	1288	1122	166
16.	Orissa	491	449	42
17.	Bihar	1367	1063	304
18a.	Punjab	348	294	54
18b.	Haryana	406	290	116
18c.	Chandigarh	20	19	1
19.	Rajasthan	896	720	176
20.	Sikkim	15	9	6
21.	Uttarakhand	265	130	135
Total		16880	14095	2785

• Above statement is compiled on the basis of figures received from the High Courts.

2 Judicial posts are there in the State, which are lying vacant. Executive Officers are discharging Judicial functions in the State.

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

A) SUPREME COURT OF INDIA (FROM 01-01-2010 TO 31-03-2010)

						Pendency (At the end of 31-12-2009)		
						Admission Matters	Regular matters	Total matters
						34,976	20,815	55,791
Institution (01-01-2010 to 31-03-2010)			Disposal (01-01-2010 to 31-03-2010)			Pendency (At the end of 31-03-2010)		
Admission matters	Regular matters	Total matters	Admission matters	Regular matters	Total matters	Admission matters	Regular matters	Total matters
18,134	2,842	20,976	19,758	2,145	21,903	33,352	21,512	54,864

B) HIGH COURTS (FROM 01-10-09 TO 31-12-09)

S. No	NAME OF High Court	Civil Cases				Criminal Cases				Total Pendency of Civil and Criminal Cases at the end of 31-12-09
		Opening Balance as on 01-10-09	Institution from 01-10-09 to 31-12-09	Disposal from 01-10-09 to 31-12-09	Pendency at the end of 31-12-09	Opening Balance as on 01-10-09	Institution from 1-10-09 to 31-12-09	Disposal from 01-10-09 to 31-12-09	Pendency at the end of 31-12-09	
1	Allahabad	675142	31401	38514	668029	272995	32438	22598	282835	950864
2	Andhra Pradesh	158654	13753	9937	162470	22931	4556	2907	24580	187050
3	Bombay	294415	28002	26703	295714	41625	6579	5735	42469	338183
4	Calcutta	267169	14403	8281	273291	45622	5487	4554	46555	319846
5	Chhattisgarh	43069	2903	3271	42701	17966	1781	2030	17717	60418
6	Delhi	51785	6294	8410	49669	11921	3129	3442	11608	61277
7	Gujarat	76134	5294	9091	72337	26017	4826	5557	25286	97623
8	Gauhati	54351	4909	8643	50617	8682	1924	1887	8719	59336
9	Himachal Pradesh	48541	5884	9281	45144	6445	815	761	6499	51643
10	Jammu & Kashmir	50229	6930	3803	53356	1973	593	334	2232	55588
11	Jharkhand	29774	2803	2107	30470	24439	4494	4197	24736	55206
12	Karnataka	139694	37710	22834	154570	16336	5671	4275	17732	172302
13	Kerala	84977	15664	15459	85182	27595	5469	4820	28244	113426
14	Madhya Pradesh*	131680	16722	13521	134881	60226	10690	8876	62040	196921
15	Madras	421810	53549	80851	394508	44022	28039	35179	36882	431390
16	Orissa	225912	16085	10728	231269	26179	9784	7414	28549	259818
17	Patna	80517	9204#	7075	82646	45813	12790@	12342	46261	128907
18	Punjab & Haryana	196889	13652	14565	195976	47031	12165	11390	47806	243782
19	Rajasthan	196155	13477	8852	200780	56656	8342	6591	58407	259187
20	Sikkim	63	18	17	64	25	3	7	21	85
21	Uttaranchal	11614	1612	1842	11384	6533	1118	1178	6473	17857
	TOTAL	3238574	300269	303785	3235058	811032	160693	146074	825651	4060709

- Above statement is compiled on the basis of figures received from the High Courts

* Previous quarter figures have been revised by the concerned High Court

Includes 531 Civil Cases which were restored during this quarter.

@ Includes 100 criminal cases which were restored during this quarter.

C) DISTRICT AND SUBORDINATE COURTS (FROM 01-10-09 TO 31-12-09)

S. No	Concerned State/Union Territory	Civil Cases				Criminal Cases				Total Pendency of Civil and Criminal Cases at the end of 31-12-09
		Opening Balance as on 01-10-09	Institution from 01-10-09 to 31-12-09	Disposal from 01-10-09 to 31-12-09	Pendency at the end of 31-12-09	Opening Balance as on 01-10-09	Institution from 1-10-09 to 31-12-09	Disposal from 01-10-09 to 31-12-09	Pendency at the end of 31-12-09	
1	Uttar Pradesh	1288914	136212	126078	1299048	4075051	626994	596460	4105585	5404633
2	Andhra Pradesh	461844	77649	77657	461836	500280	79005	82111	497174	959010
3(a)	Maharashtra	979721	88691	89752	978660	3199485	310877	330564	3179798	4158458
3(b)	Goa	16041	2517	2729	15829	13250	4823	4965	13108	28937
3(c)	Diu and Daman	935	102	136	901	998	134	96	1036	1937
3(d)	Dadra and Nagar Haveli	1011	37	39	1009	2506	184	125	2565	3574
4(a)	West Bengal	526296	27573	20713	533156	2041328	202694	179523	2064499	2597655
4(b)	A & N Islands	1874	177	169	1882	12523	2456	2274	12705	14587
5	Chhattisgarh	53001	8143	7665	53479	221702	51254	49516	223440	276919
6	Delhi	233520	27042	28670	231892	771211	9004	93721	686494	918386
7	Gujarat	699847	43595	48176	695266	1511767	255209	299643	1467333	2162599
8(a)	Assam	77620	8893	10269	76244	157319	49100	49706	156713	232957
8(b)	Nagaland	2024	42	90	1976	3749	224	352	3621	5597
8(c)	Meghalaya	4341	596	967	3970	7891	1801	1106	8586	12556
8(d)	Manipur	3298	994	885	3407	4388	4047	3582	4853	8260
8(e)	Tripura	6721	1323	1255	6789	57869	34901	32194	60576	67365
8(f)	Mizoram	2202	211	566	1847	4132	434	882	3684	5531
8(g)	Arunachal Pradesh	821	65	70	816	4796	676	480	4992	5808
9	Himachal Pradesh	68240	13949	12791	69398	87636	35634	32702	90568	159966
10	Jammu and Kashmir	66128	12047	12355	65820	117522	54572	55727	116367	182187
11	Jharkhand	46728	3974	2818	47884	219995	26057	20640	225412	273296
12	Karnataka	565901	80151	85672	560380	555682	198221	174592	579311	1139691
13(a)	Kerala	363077	71586	72866	361797	625161	235395	225850	634706	996503
13(b)	Lakshadweep	100	9	9	100	95	21	29	87	187
14	Madhya Pradesh	213319	63228	66532	210015	917242	342434	339149	920527	1130542
15(a)	Tamil Nadu	625314	243964	225168	644110	449119	193256	191588	450787	1094897
15(b)	Puducherry	15333	3686	3932	15087	10713	4337	4363	10687	25774
16	Orissa	193244	14885	12030	196099	876259	65850	59244	882865	1078964
17	Bihar	252883	12778	11161	254500	1226416	69743	59766	1236333*	1490833
18(a)	Punjab	269473	32995	33854	268614	307331	75768	77395	305704	574318
18(b)	Haryana	220600	32229	33654	219175	342349	59330	60711	340968	560143
18(c)	Chandigarh	21035	2121	2157	20999	77757	27630	31234	74153	95152
19	Rajasthan	374029	39570	31823	381776	998756	229758	191407	1037107	1418883
20	Sikkim	255	33	17	271	882	198	223	857	1128
21	Uttarakhand	32504	5811	5466	32849	147428	39192	30749	155871	188720
	Total	7688194	1056878	1028191	7716881	19550588	3291213	3282669	19559072	27275953

* Above statement is compiled on the basis of figures received from the High Courts.

60 Criminal Cases were amalgamated/transferred during this quarter.

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE (From 01-01-10 to 31-03-10)

1. On 5th January, 2010, a two Judges Bench in *Gangula Mohan Reddy v. State of Andhra Pradesh* [Crl.A. No. 1301 of 2002] held that “in order to convict a person under Section 306 IPC, there has to be a clear *mens rea to commit* the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

2. On 15th January, 2010, a two Judges Bench in *Darshan Singh v. State of Punjab and Anr.* [Crl. A. No.1057 of 2002] summarised the principles of right of private defence as under:-
 - “i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
 - (ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
 - (iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

- (iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
- (v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
- (vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
- (vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
- (viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.
- (ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.
- (x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened”.

3. On 18th January, 2010, a two Judges Bench in *State of Uttaranchal v. Balwant Singh Chauhal & Ors.* [C.A. Nos. 1134-35 of 2002] issued the following directions in order to preserve the purity and sanctity of the PIL:-

- (1) “The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations”.
- (2) “Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High

Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives.”

- (3) “The courts should *prima facie* verify the credentials of the petitioner before entertaining a PIL.”
 - (4) “The court should be *prima facie* satisfied regarding the correctness of the contents of the petition before entertaining a PIL.”
 - (5) “The court should be fully satisfied that substantial public interest is involved before entertaining the petition.”
 - (6) “The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.”
 - (7) “The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.”
 - (8) “The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”
4. On 8th February, 2010, a two Judges Bench in *Mulla & Anr. v. State of U.P.* [Crl. A. No. 396 of 2008] held that “it is open to the sentencing Court to prescribe the length of incarceration. This is especially true in cases where death sentence has been replaced by life imprisonment. The Court should be free to determine the length of imprisonment which will suffice the offence committed.”
5. On 10th February, 2010, a two Judges bench in *Manisha Tyagi v. Deepak Kumar* [C A. No. 5387 of 2007] held that for the purpose of mental cruelty in matrimonial causes “it would be sufficient to show that the conduct of one of the spouses is

so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it.”

“The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty”, said the Bench.

6. On 10th February, 2010, a two Judges Bench in *Kusum Sharma & Others v. Batra Hospital & Medical Research Centre & Others* [C.A. No. 1385 of 2001] held that while deciding whether a medical professional is guilty of medical negligence or not, the following well known principles must be kept in view:-
 - I. “Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”
 - II. “Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.”
 - III. “The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence law requires.”

- IV. "A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field."
- V. "In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor."
- VI. "The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence."
- VII. "Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession."
- VIII. "It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck."
- IX. "It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension."

- X. “The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.”
- XI. “The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.”
7. On 15th February, 2010, a two Judges Bench in *National Small Industries Corp. Ltd. v. Harmeet Singh Paintal & Anr.* [Crl. A. No. 320-326 of 2010] examined the issue as to what should be the averments in a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 against the Director of a Company before he can be subjected to criminal proceedings. The Bench laid down the following principles in this regard:-
- (i) “The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.”
- (ii) “Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.”

- (iii) “Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.”
 - (iv) “Vicarious liability on the part of a person must be pleaded and proved and not inferred.”
 - (v) “If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.”
 - (vi) “If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.”
 - (vii) “The person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”
8. On 17th February, 2010, a Constitution Bench in *Economic Transport Organisation v. M/s. Charan Spinning Mills (P) Ltd. and Anr.* [C A. No. 5611 of 1999] held that

the insurer, as subrogee, can file a complaint under the Consumer Protection Act, 1986 either in the name of the assured (as his attorney holder) or in the joint names of the assured and the insurer for recovery of the amount due from the service provider. The insurer may also request the assured to sue the wrong doer (service provider). The Bench held that “even if the letter of subrogation executed by the assured in favour of the insurer contains in addition to the words of subrogation, any words of assignment, the complaint would be maintainable so long as the complaint is in the name of the assured and insurer figures in the complaint only as an attorney holder or subrogee of the assured.” The Bench said that “the insurer cannot in its own name maintain a complaint before a consumer forum under the Act, even if its right is traced to the terms of a Letter of subrogation-cum-assignment executed by the assured.”

9. On 17th February, 2010, a Constitution Bench in *State of West Bengal & Ors. v. The Committee for Protection of Democratic Rights, West Bengal & Ors* [C.A. No. 6249-6250 of 2001] examined the issue as to whether the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the Central Bureau of Investigation (CBI), established under the Delhi Special Police Establishment Act, 1946, to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without the consent of the State Government.

In the final analysis, the Bench held that “a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law.”

“Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly”, the Bench said.

However, before parting with the case, the Bench emphasised that “despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise”.

“In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations”, said the Bench.

10. On 22nd March, 2010, a three Judges Bench in *State of Haryana v. Jagdish* [Crl. A. No. 566 of 2010] held that the “State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict,

at the time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date.”

“In case a liberal policy prevails on the date of consideration of the case of a “lifer” for pre-mature release, he should be given benefit thereof”, said the Bench.

11. On 22nd March, 2010, a two Judges Bench in *K. Neelavani v. State Rep. By Insp. of Police & Ors.* [Crl. A. No. 574 of 2010] held that “the Magistrate is not bound by the conclusion of the investigating agency in the police report i.e. in the charge sheet and it is open to him after exercise of judicial discretion to take the view that facts disclosed in the report do not constitute any offence for taking cognizance.”
12. On 25th March, 2010, a three Judges Bench in *Kunga Nima Lepcha & Ors. v. State of Sikkim & Ors.* [W. P. (C) No.353 of 2006] held “that it is not viable for a writ court to order the initiation of an investigation.”

“That function clearly lies in the domain of the executive and it is upto the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation”, the Bench said.

The Bench said that “this court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a Constitutional Court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court

may have far reaching persuasive effect on the Court which may ultimately try the accused.”

“It is always open to the petitioners to approach the investigative agencies directly with the incriminating materials and it is for the investigative agencies to decide on the further course of action”, the Bench said.

13. On 29th March, 2010, a Constitution Bench in *Ramdas Athawale v. Union of India & Ors.* [W. P. (C) No.86 of 2004] reiterated the principle that “whenever a person complains and claims that there is a violation of any provision of law or a Constitutional provision, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It is not possible to accept that an allegation of breach of law or a Constitutional provision is an action in breach of fundamental right.”
14. On 31st March, 2010, a three Judges Bench in *Dalco Engineering Pvt. Ltd. v. Satish Prabhakar Padhye & Ors.* [C.A. No. 1886 of 2007] held that though “socio-economic legislations should be interpreted liberally”, the courts cannot “expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations.”

“Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself”, the Bench said.

MAJOR EVENTS AND INITIATIVES

(From 01-01-10 to 31-03-10)

- I. **SUPREME COURT LOK ADALAT:** The 6th Supreme Court Lok Adalat was organized on 16th January, 2010 for settlement of cases pending in the Supreme Court of India. 24 cases were settled in the said Lok Adalat.

- II. **NEW CONFERENCE HALL IN SUPREME COURT:** A new regular Conference Hall in the Supreme Court was inaugurated by Hon'ble the Chief Justice of India on 17th February, 2010.

- III. **INDO-CANADIAN LEGAL FORUM MEET:** The 5th Indo-Canadian Legal Forum Meet was held in Supreme Court on 23rd and 24th February, 2010. The Canadian delegation was headed by Hon'ble Mrs. Justice Beverly McLachlin, Chief Justice of Canada. The Indian delegation was headed by Hon'ble Shri K.G. Balakrishnan, Chief Justice of India and other members of the delegation included Hon'ble Mr. Justice S.H. Kapadia, Judge, Supreme Court of India (as His Lordship then was) and Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India. The topics discussed in the Meet were: a) Freedom of Expression and Defamation; b) Extra-Territorial Boundaries of Judicial Review; and c) Right to Freedom of Expression and Right to Information.

- IV. **MAJOR ACTIVITIES OF NJA:**

NATIONAL JUDICIAL WORKSHOP ON TRIAL PROCESS MANAGEMENT (8-10 JANUARY, 2010): The programme discussed strategies to counter tactics of advocates and other stakeholders to delay

trials; the role of appellate and revisional courts in ensuring timely completion of trials; the impact of judicial performance evaluation systems on incentives for timely completion of trials; and appropriate planning and management systems to ensure timely justice. The programme discussed the application of “game theory” to the development of more effective strategies for trial process management. Approximately thirty judges from the District judiciary attended the workshop.

NATIONAL JUDICIAL SEMINAR ON GLOBALIZATION: KEY CHALLENGES FOR THE DISTRICT JUDICAIRY (8-10 JANUARY, 2010):

The overall objective of this programme was to discuss how the judicial system at the district level needs to evolve so as to effectively respond to the challenges of globalization. This three days program was organized for district judiciary judges, covering the themes such as: Criminal Justice System and the Experience of the Poor in the New Economy; Judging in Cases involving Prostitution and Trafficking in the light of globalization; Safeguarding Rights of the working class: Developments in the Labour Law, Role of Subordinate Courts in protecting the Environment, and Oversight Role of District Judges in Planning and Management of Cases falling in Special Categories and Democratic Space to Dissent and Organize in a Globalized Polity. This programme analysed how globalization is affecting local populations and the work of Subordinate Courts in the country and discussed appropriate responses to address emerging challenges. Around twenty five judges from the district judiciary participated in this workshop.

NATIONAL JUDICIAL WORKSHOP ON ADJUDICATION MANAGEMENT: ADJUDICATION OF CASES INVOLVING SOCIAL REFORM, PROTECTION OF CONSTITUTIONAL RIGHTS AND CIVIL LIBERTIES CASES (15-18 JANUARY, 2010): This Programme focused on “how” to deal with the stipulated category of litigation. The main themes of the program were poverty, social exclusion, social justice, social reform, civil liberties and Constitutional rights. The discussion also focused on the “demand side”, i.e., how to view social justice from society’s point of view.

NATIONAL JUDICIAL SEMINAR ON POVERTY, SOCIAL EXCLUSION AND SOCIAL JUSTICE: KEY CHALLENGES FOR THE DISTRICT JUDICIARY (15-17 JANUARY, 2010): This seminar was organized with the objective of sensitizing the subordinate court judges towards poverty and social justice concerns. Around thirty district judges from across the country participated in the seminar.

NATIONAL CONFERENCE OF HIGH COURT JUSTICES ON ENVIRONMENTAL PROTECTION: KEY ISSUES AND CHALLENGES (16-17 JANUARY, 2010): The aim of the Conference was to draw the attention of senior members of the higher judiciary towards the continuing environmental degradation brought upon by wasteful and unscrupulous activities of various segments of human society. The two-day discussions were guided by distinguished panelists including Hon’ble Justice Mukundakam Sharma, Judge, Supreme Court. The idea that permeated in the mindset of all those present was that poverty, social exclusion and environment are closely interconnected. Therefore the study of environmental law cannot be done to the exclusion of Human, Civil and Political Rights.

NATIONAL JUDICIAL WORKSHOP ON MANAGEMNT OF APPEALS AND REVISION PROCEEDINGS (22-24 JANUARY, 2010): The objective of the programme was to analyze and enhance excellence in *core judicial skills* that *cut across various types of Appeals and Revision Proceedings* both Civil and Criminal. Twenty five judges from the district judiciary participated in this workshop.

NATIONAL CONFERENCE OF HIGH COURT JUSTICES ON THE CONTRIBUTION OF HIGH COURTS TO THE DEVELOPMENT OF LAW (2008-TILL DATE) (23-24 JANUARY, 2010): The brief objective of this programme was to bring together High Court Judges from across the country to discuss new areas of legal development and challenges facing the judicial system and contribution to the law through the decisions of various High Courts. Around thirty High Court judges from all over the country participated in the Conference.

NATIONAL JUDICIAL WORKSHOP ON EFFECTIVE USE OF ADR AND PLEA BARGAINING FOR REDUCTION OF DELAY AND ARREARS IN COURT (5-7 FEBRUARY, 2010): The overall objective of the program is to develop methodologies to reduce delay and arrears in courts by using ADR and Plea Bargaining. This three-day program was organized for district judiciary judges, covering the themes (1) ADR and Justice Issues (2) ADR Modes: Critical Evaluation (3) Arbitration and Conciliation Act and Its Relevance to Subordinate Courts (4) How to Use ADR in Matrimonial Cases (5) Skills for Implementing Sec.89 C.P.C. (6) Plea Bargaining for Criminal Cases: (i) Current Issues and Challenges (ii) Constitutional Safeguards (7) Role of NALSA and (8) Spirit of ADR.

NATIONAL JUDICIAL WORKSHOP ON ADJUDICATION MANAGEMENT: ADJUDICATION OF CIVIL DISPUTES (12-15 FEBRUARY, 2010): The aim of this programme was to strengthen approach and capacity of Civil Courts in making current civil adjudication more effective and growing new areas of civil jurisdiction. The programme intended to make the participants equipped with a strategy for more effective adjudication of current civil cases and growing new areas. The programme covered such aspects as: Diminishing Civil Jurisdiction of Subordinate Judiciary, Assessment of Effectiveness of Adjudication Management in Current Areas of Civil Litigation (Land and Property); Contract Disputes (including Money Suits), Growing New Areas of Civil Adjudication in Response to Social Needs such as (1)Torts (2) Environmental Protection (3)Civil Rights and Personal Disputes, (4)Corporate& Company Laws (5) IPR, Section 89 CPC, ADR and Role of Courts, Court Management and Case Management of Civil Dispute. Approximately thirty judges from the District judiciary attended the workshop.

NATIONAL CONFERENCE OF HIGH COURT JUSTICES ON THE CONTRIBUTION OF THE SUPREME COURT TO THE DEVELOPMENT OF LAW (2008-TILL DATE) (13-14 FEBRUARY, 2010): The programme focused on major decisions delivered by the Supreme Court since January 2008 contributing and augmenting to the course of development of law. The idea was to explore new initiatives and approaches and to discuss new areas of legal development and challenges facing the judicial system and contribution to development of the law through decisions of various High Courts. Hon'ble Justice Dalveer Bhandari, and Hon'ble Justice A.K.Patnaik co-chaired two days of the conference and richly contributed to the post-presentation discussions. Around Thirty High Court judges from across the country participated in this Conference.

NATIONAL JUDICIAL WORKSHOP ON ADJUDICATION MANAGEMENT: ADJUDICATION OF CONSUMER DISPUTES (5-8 MARCH, 2010):

Nineteen Presidents from the District Consumer Fora across the country participated in this workshop. The objective of the programme was to strengthen the quality of management of adjudication in the main areas of adjudication cutting across various knowledge and skill requirements. The programmes covered such aspects as Consumer Protection Law, functioning of Consumer Courts in India, Tort Law in India, Scope & Stages of Proceedings before Consumer Fora, Assessment of Just Compensation, Ensuring speedy disposal of cases, Enforcement of Judgments and quality of decision making underlying judgments etc.

NATIONAL JUDICIAL WORKSHOP ON JUDGEMENT WRITING (19-21 MARCH, 2010):

The programme aimed to analyze and enhance excellence in *core judicial skills* that *cut across various types of adjudication*. This programme focused on enhancing judgment writing skills. The Programme was centered around the themes as: Define a Good Judgment, Discussion of the NJA framework for Quality of Judgments, a critical discussion of selected judgments; how to evaluate Judgment, Quality of Decision Making Underlying judgments, Evaluation of Quality of communicability and implementability of judgments and developing Best Practices Guidance on Standards & Practices for Judgment Writing. Approximately thirty judges from the District judiciary from various states attended the workshop.

NATIONAL CONFERENCE OF HIGH COURT JUSTICES ON INDIAN JUDICIARY: THE NEXT DECADE (20-21 MARCH, 2010):

Approximately 27 High Court Justices attended the conference. The distinguished panelists

held discussions with Hon'ble Justice T. S. Thakur, Judge, Supreme Court and other dignitaries. The discussions were broadly based on themes such as 'Promises to the people under the Indian Constitution', 'Challenges before the Indian Polity in the 21st Century', 'Enhancing Judicial accountability and transparency' and others.

V. MAJOR ACTIVITIES OF NALSA

CYBER LAW ENFORCEMENT PROGRAMME & NATIONAL CONSULTATION MEETING: The National Project Committee on Enforcement of Cyber Law in association with Cyber Appellate Tribunal, Department of IT, Ministry of Communication and Information Technology, Govt. of India and NALSA organized a programme – Launching of Cyber Law Enforcement Programme & National Consultation Meeting at New Delhi on 31st January, 2010. The Programme was inaugurated and the Project was launched by Hon'ble Chief Justice of India while the Hon'ble Judges of the Supreme Court of India took part in the different sessions thereof.

INTERNATIONAL WOMEN'S DAY- 8th MARCH, 2010: On the direction of NALSA, the State Legal Services Authorities observed the National Legal Aid Week for women from 1st – 8th March, 2010 on the occasion of International Women's Day on 8th March, 2010 for spreading awareness amongst the women about their legal rights and encourage them to take free legal services.

8th ALL INDIA MEET OF THE STATE LEGAL SERVICES AUTHORITIES: The 8th All India Meet of the State Legal Services was organised on 13th and 14th March, 2010 at Chandigarh. The Meet was inaugurated by

Hon'ble Mr. Justice K.G. Balakrishnan, Chief Justice of India in the presence of Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India and Executive Chairman, NALSA and Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India and Chairman, Supreme Court Legal Services Committee. The National Plan of Action 2010-11 for the legal services was approved in the Meet.

SOME IMPORTANT VISITS AND CONFERENCES (From 01-01-10 to 31-03-10)

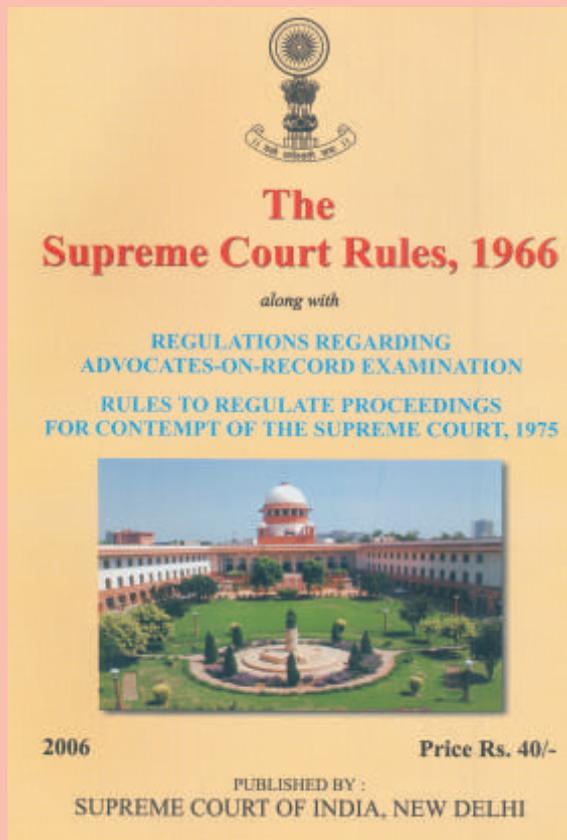
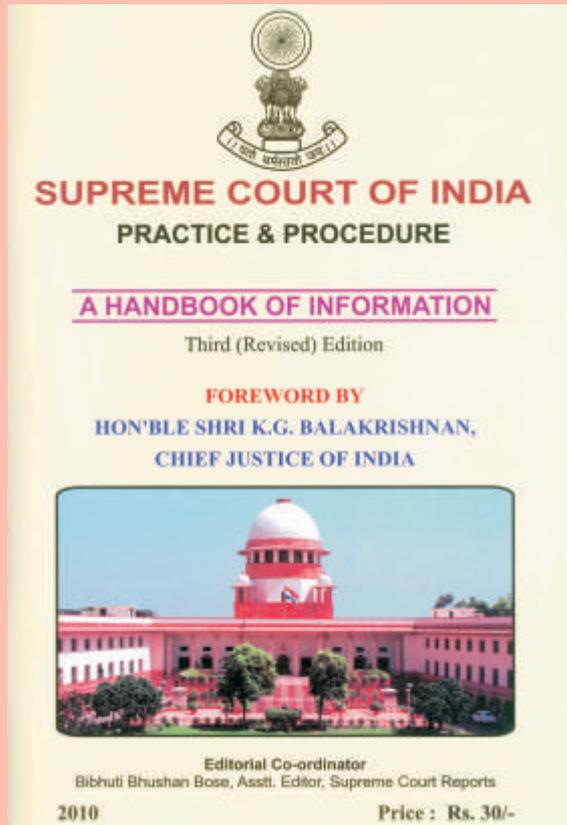
OVERSEAS

1. Hon'ble Mr. Justice Markandey Katju attended the meeting of the Regional Conference of the Australasian Chapter of International Association of Refugee Law Judges (IARLJ) at Sydney from 11th February to 12th February, 2010.
2. Hon'ble Mr. Justice B. Sudershan Reddy participated in the Second Judicial Seminar on Commercial Litigation at Hong Kong from 12th January to 14th January, 2010.
3. Hon'ble Mr. Justice P. Sathasivam alongwith Hon'ble Mr. Justice Cyriac Joseph participated in the "International Conference of Jurists on Sea: Global Warming & Rule of Law" organized by the International Council of Jurists, London from 28th February to 3rd March, 2010 on the Super Star Virgo Cruise which sailed from Singapore to Penang (Malaysia) and Phuket (Thailand) and back to Singapore.

INLAND

1. Hon'ble Shri K.G. Balakrishnan, Chief Justice of India inaugurated the New Building of the Armed Forces Tribunal at Jaipur on 23rd January, 2010.
2. Hon'ble Mr. Justice Cyriac Joseph delivered the Inaugural Address in the Workshop on Growth, Success and Challenges of Mediation in India organized by Confederation of Indian Industry on 13th March, 2010 at Bangalore.
3. A seven member Australian Delegation led by Justice Annabelle Bennet, Judge of the Federal Court of Australia visited the Supreme Court of India on 10th February, 2010 and met Hon'ble Shri K.G. Balakrishnan, Chief Justice of India, Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice D.K. Jain.

OTHER PUBLICATIONS



N.B. Both the aforesaid publications are available at:
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