



CHHATTISGARH STATE JUDICIAL ACADEMY

News Letter

(Third Issue) - August 2018



High Court Campus, Bilaspur (C.G.) 495 220

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Glimpses of Inaugural Ceremony of New Building of CSJA on 25/08/2018



Arrival & Welcome of Hon'ble Mr. Justice Dipak Misra, Chief Justice of India



Ceremonial Inauguration of New Building of Chhattisgarh state Judicial Academy



Hon'ble CJI, Hon'ble Chief Justice & Hon'ble C.M. in the Smart Classroom



Lighting of Ceremonial Lamp & Felicitation in the Auditorium of High Court



Address by Hon'ble Chief Justice of India



Address by Hon'ble Chief Justice Mr. Ajay Kumar Tripathi



Address by Hon'ble Mr. Justice Prashant Kumar Mishra, Chairman CSJA



Vote of Thanks by Mr. Justice M.M. Shrivastava, Member CSJA



Presentation of Memento to Hon'ble Guests



National Anthem



With Media Person(s)

07/05/2017

Workshop on "Negotiable Instrument Act", held on 7th May, 2017 at CSJA, Bilaspur.

13/05/2017




Workshop on POCSO Act, held on 13th May, 2017 at CSJA, Bilaspur.




Workshop on Family Law (Maintenance & Adoption), held on 13th May, 2017 at CSJA, Bilaspur.



Workshop on SC & ST Act, held on 13th May, 2017 at CSJA, Bilaspur.

19/06/2017 to 24/06/2017

***Phase -I of Refresher Course for Civil Judges (Entry Level),
2015 Batch From 19th June, 2017 to 24th June, 2017***



To keep the Officers of Lower Judicial Service vibrant and sensitize towards Law and Challenges of progressive society, this Academy has designed Refresher Course in two phases for them. To achieve this object, Phase-I of Refresher Course for Civil Judges (2015 batch) was organised from 19th June, 2017 to 24th June, 2017 in the Academy. Programme was chaired by the Chairman of the Academy Hon'ble Shri Justice

Prashant Kumar Mishra and presided over by Hon'ble Shri Justice Manindra Mohan Shrivastava, Judge High Court of Chhattisgarh & member CSJA.

Hon'ble Chairman has said that training programme is designed to enhance the skill of Judges towards grey field faced by them in the Court. His Lordship has further motivated the participant Judges by saying that there is always an area which needs improvement which can be achieved by hardworking, self standing and training programme. Judges must use modern techniques to upgrade their skill, Knowledge and Judicial approach to keep pace with progressive society. His Lordship has also thrown light as to how evidence should be recorded and board should be controlled.

25/06/2017

Divisional Workshop on “Civil Trial: Best Practices in Delay and Arrears Reduction particularly with reference to old pending cases”, of Bilaspur Division (Bilaspur, Janjgir-Champa, Korba, Raigarh and Mungeli) held on 25th June, 2017 at CSJA, Bilaspur.

The Workshop was inaugurated by Hon'ble Shri Justice Manindra Mohan Shrivastava, Judge High Court of Chhattisgarh & Member, Governing Body of CSJA in the august presence of Hon'ble Shri Justice Goutam Bhaduri, Judge High Court of Chhattisgarh & Portfolio Judge of participating two districts.



Hon'ble Shri Justice Manindra Mohan Shrivastava has invited attention of gathering towards the fact that every one knows their legal as well as constitutional rights and the realization of their rights depends upon functioning of Justice delivery system. As such heavy duty is cast over the Judiciary to dispense justice well within time and make all endeavour to curb the delay in Civil & Criminal trial. If delay is there in trial, the common man blames us because he has been made to believe so. However, his Lordship further emphasised that we have to decide the lis and the ensuring deliberations must be helpful for the participating Judges to deal with delay in trial and to combat hick-ups in the way of speedy trial.

Hon'ble Shri Justice Goutam Bhaduri, inspired the participating Judges by conveying the fact that in our State, cases per Judge are not too much that cannot be dealt with in time. People have faith in the Judiciary, hence open yourself up to optimum so that everyone can be





benefitted. The idea behind this Divisional Workshop is only to share each others view point to redress the problem of the common man. His Lordship has advised that cases should not be decided otherwise than on its own merits or should not be taken on fast-track without giving proper opportunity to the litigants.

22/07/2017

Hon'ble Shri Justice R.C.S. Samant has addressed the Judges of Civil Judge (entry level) 2016 Batch and Additional District & Session Judge (2017 batch) and said that special list pattern as introduced by the High Court of Chhattisgarh should be implemented specially in court situated in district place. His Lordship has further advised that every Judge should know how to manage oneself and board diary as well. Every order passed in Judicial side must be reasoned and speaking one. The Judge must adhere to case flow management and try to fast-track the case pending before him. His Lordship shared tools and techniques to deal with the Bar.



17/07/2017 to 29/07/2017



***Orientation Course / Foundation Course Phase-I for
Newly Promoted / Directly Recruited District Judge
(Entry Level) 2017 Batch from 17th July, 2017 to 29th July, 2017.***

Hon'ble Shri Justice Pritinker Diwaker, Judge, High Court of Chhattisgarh while addressing the joint session of Civil Judge (Entry Level) 2016 batch and Additional District Judge (Entry Level) 2017 batch has said that body language of Judge should always be respectful and never be adamant. Patient hearing is hallmark of a Judge and he should never compare his service condition with the other person holding other office. His Lordship has advised the participants about ethics, conduct and behavior.

15/07/2017 to 16/07/2017

Training on Ubuntu-Linux Operating System Cum CIS (Phase-I) from 15/07/2017 to 16/07/2017 for the Judicial officers posted in District Uttar Bastar Kanker, Kondagaon, Dhamtari, Mahasamund, Baloda-Bazar, Raipur, Ambikapur, Bemetara, Koriya, Surajpur and Durg.

03/07/2017 to 02/09/2017

2nd Part of Institutional Training Programme for Newly Appointed Civil Judges (Entry Level), 2016 Batch from 03rd July, 2017 to 02nd September, 2017.

Hon'ble Shri Justice Sanjay Agrawal has addressed the newly appointed Civil Judges (Entry Level) 2016 batch undergoing training from 03/07/2017 to 02/09/2017 and congratulated to have been chosen to impart justice, the privileged service. His Lordship made them learn as how case file should be read. His Lordship also advised that issues in the civil cases and charges in criminal cases should be framed in home office. His Lordship has further motivated them by saying that they should work hard and make habit of reading to discharge the duties as Judge so that Justice should be delivered to each and every person coming to the Court. His Lordship has also explained principle as to necessary and proper parties, maintainability of partition suits, division of shares, suit for specific performance and suit based on contract as well, law and procedure to bring legal heirs on record and result of it in failing to do so. Lastly but not least his Lordship has advised trainee Judges to earn respect of the bar from own work, knowledge, conduct and behavior and not otherwise.



Hon'ble Shri Justice Thottathil. B. Radhakrishnan, Chief Justice, High Court of Chhattisgarh & Patron-in-Chief, CSJA has been pleased to address the Civil Judge (Entry Level) 2016 Batch at conference hall of High Court of Chhattisgarh on **01/09/2017**.

Hon'ble the Chief Justice has said that adjudication process is not superhuman task, it can be done by average people by adhering to commitment and hard work. However, His Lordship warned that the judges should never do over hard work otherwise their mental ability to do justice will adversely affect. His Lordship further advised that Judge should be multifarious. They should show anger without being anguished. Every Judge must learn to maintain his emotional equilibrium. He must maintain his dignity and also of others including staff.



2nd Part Institutional Training Programme for Newly Appointed Civil Judges (Entry Level), 2016 Batch.

Address By:

Hon'ble Shri. Justice T.B. Radhakrishnan,
Chief Justice, High Court of Chhattisgarh



02/09/2017 Valedictory function

**2nd Part of Institutional
Training Programme
for Newly Appointed Civil Judges
(Entry Level), 2016 Batch**

Hon'ble Former Chief Justice, High Court of Chhattisgarh and Senior Counsel of Supreme Court of India Mr. Justice Yatindra Singh has been pleased to talk Civil Judge (Entry Level), 2016 batch in the academy, on 02/09/2017, on the topic "Talk on Cyber Laws and Cyber Crime." He said Invention, discoveries and Techniques not only widen scientific horizon but has also posed new challenges for the legal world. Computers, Internet and Cyber space together known as Information Technology which have also posed new problems in jurisprudence, he added further. While making participants friendly with the terminology of Information Technology, he also made them aware about Cyber Laws consisting of Information Technology Act, 2000, Copy Right Act, 1957, Design Act, 1911, Patent Act, 1970 and Trade & Merchandise Mark Act, 1958.



19/08/2017

State Level Workshop of Judicial Officers of Chhattisgarh on the topic "Speedy Civil & Criminal Trial & Provisions of PC & PNDT Act, 1994" was held on 19.08.2017.



In this conference **Hon'ble Shri Justice M.M. Shrivastava**, while addressing the Judicial Officers of the State has said that a challenging situation has come-up for Judiciary of entire country. Debates, Seminars, Workshops are being organised to address the issue of delay in disposal of cases. His Lordship further elaborated that identification of causes of delay is important to ensure timely disposal of cases. **Hon'ble Shri Justice Prashant Kumar Mishra**, emphasised on the need to achieve 10 + 0 mission (disposal of cases pending for more than 10 years). His lordship expressed that dispensation of Justice includes pure and unadulterated justice. **Hon'ble Shri Justice Pritinker Diwaker** has said that the faith in any institution remains untill system works properly. Judges must do home work and learn how to allocate 24 hours of a day in a manner so that optimum output is gained. **Hon'ble the then Chief Justice Thottathil B. Radhakrishnan**



has said that if one is to go by numbers, then per Judge disposal is merely half of national average. Statistics do not matter much, qualitative disposal matters and cannot be compromised in the altar of quantitative disposal.

In the afternoon session **Hon'ble Shri Justice Sanjay K. Agrawal** while addressing the Judicial Officers on Delay and Arrears including Tools and Techniques for speedy disposal of cases asked the Judges that the summons for settlement of issue and for filing of written statement must be according to the format given in CPC. Framing of issue is an important Judicial function, It must not be delegated to anyone.



In third and last working session **Mrs. Ranu Sahu, Director Health Services Chhattisgarh**, gave power point presentation on the provisions of PC & PNDT Act, 1994. **Shri K. L. Charyani, Director, CSJA** informed the gathering about the purpose behind Workshop on PC & PNDT Act and need for enactment of Law in this regard.

11/09/2017

Workshop on the topic on "Law, Procedure & its Application (PC Act- Gratification by a Public Servant, Sanction for Prosecution & Presumption of offence and Speedy Trial)" for all Judges of Special Courts (PC Act) and Special Judge (CBI) on 11th November, 2017.

08/10/2017

Judicial Conference Law, Procedure & its application (Court Fees Act, Suit Valuation Act & Stamp Act) for the Member's of Lower Judicial Services on 08th October, 2017.

09/10/2017 to 13/10/2017

- Orientation Course / Foundation Course Phase-I for Newly Promoted / Directly Recruited District Judge (Entry Level) 2017 Batch from 09th October, 2017 to 13th October, 2017.
- Workshop on the topic on "Management Tools & Skill - Planning Communication, Motivation and Execution", for Court Manager's of Chhattisgarh State on 11th November, 2017.

16th & 17th December, 2017

East Zone-I Regional Conference of Judicial Officers of High Court of Jharkhand, Patna, Orissa & Chhattisgarh, on "Enhancing Excellence of the Judicial Institution: Challenges & Opportunities"

The Chhattisgarh State Judicial Academy had the opportunity and privilege to host the East Zone-I Regional Conference on "Enhancing Excellence of the Judicial Institution: Challenges & Opportunities" from 16th to 17th December, 2017 at Raipur. The conference has encompassed the various topics inter-alia Constitutional Vision of Justice, Elements of Judicial Behavior, Social context of Judges for the benefit of Judicial Fraternity of cluster of High Court Jurisdictions comprising



High Court of Jharkhand, Patna, Orissa & Chhattisgarh. The conference has also been benefitted by the experience and knowledge shared by Mr. Justice Dr. B.S. Chauhan, Former Judge Supreme Court of India and Chairperson Law Commission of India, Justice Thottathil B. Radhakrishnan, Chief Justice High Court of Chhattisgarh, Justice Prashant Kumar Mishra, Judge High Court of Chhattisgarh & Chairman Chhattisgarh State Judicial Academy, Justice Dr. S. Muralidhar, Judge High Court of Delhi and Justice P. Sam Koshy, Judge High Court of Chhattisgarh & Member CSJA.

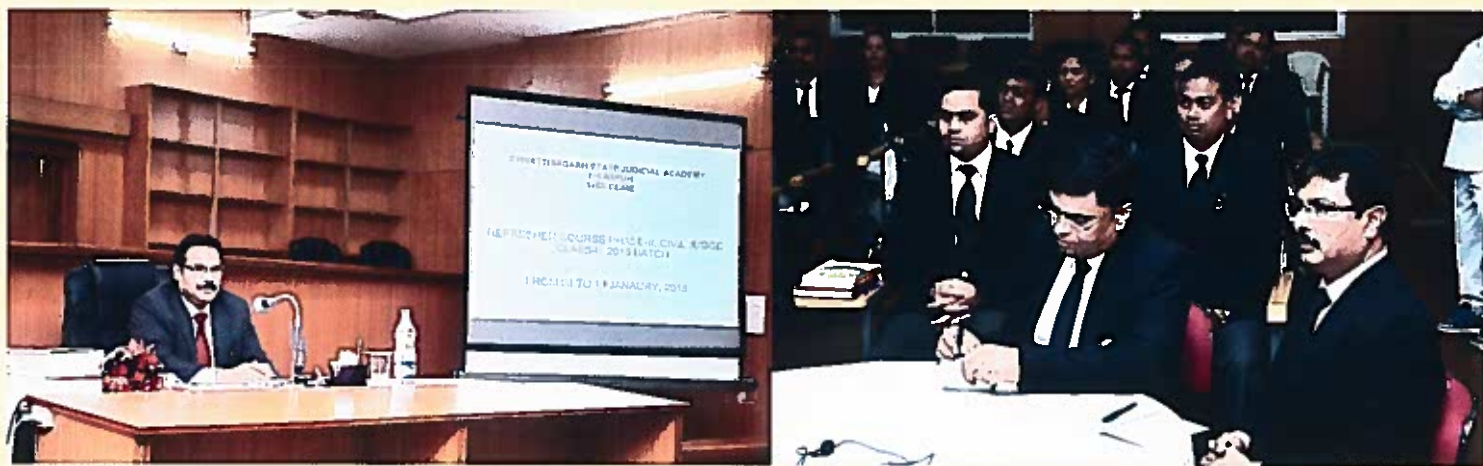
Challenges and Opportunities" Judicial Academy, Bilaspur



08/01/2018 to 13/01/2018

Phase -II of Refresher Course for Civil Judges (Entry Level), 2015 Batch From 08th January, 2018 to 13th January, 2018.

Phase -II of Refresher Course for Civil Judges (Entry Level), 2015 Batch was held at Academy from 08th January, 2018 to 13th January, 2018. On 12/01/2018, the auspicious day of birth of Swami Vivekananda, celebrated as "Youth Day" all over the country, Hon'ble the Chairman of monitoring Committee of CSJA Mr. Justice Prashant Kumar Mishra has been pleased to address the participating judges and reminded that it is a day of learning as legendary Vivekananda has always been treated as an Academician. His



Lordship further stated, in civil & criminal trials, it is expected that judge should not be a mute spectator. A person who has committed an offence should not be set scot-free and an innocent person should not be punished, is the thumb rule of dispensation of justice. His Lordship also stated that mind of the judge starts judging the case from initially opening the file. Basic requirement is, how the judge apply the literature on given set of facts. His Lordship further added that quest for justice does not only mean delivery of judgment, it means knowing the file in entirety and law applicable thereto.

20/01/2018

Judicial Conference on Law, Procedure and its Application (Court Fees Act, Suit Valuation Act & Stamp Act) for Judicial Officers of Higher Judicial Service was held on 20th January, 2018.

26/01/2018

Republic Day celebration at CSJA. National Flag hoisted by Hon'ble Mr. Justice Prashant Kumar Mishra, Judge High Court of Chhattisgarh & Chairman CSJA, in the august presence of Hon'ble High Court Judges & Judicial Officers.



17/02/2018



Divisional Workshop on "Mediation: Role of Referral Judge - how it can be more effective, Mediation Process: out of box thinking, Use of Mediation for reducing litigation and pre-litigation, The Mediator: Role & Liabilities" for Judges of Surguja at Ambikapur Division (comprising of Ambikapur, Korea at Baikunthpur, Surajpur, Jashpur and Balrampur at Ramanujganj) at Ambikapur (C.G.) on 17th February, 2018.

18/03/2018

Fourth Round of State Level Consultation on Effective Implementation of "Juvenile Justice (Care and Protection of Children) Act, 2015 - Focus on Status of Integrated Child Protection Services" under the aegis of the High Court Committee on Juvenile Justice in collaboration with the Chhattisgarh State Judicial Academy.

Fourth Round of State Level Consultation on Effective Implementation of "Juvenile Justice (Care and Protection of Children) Act, 2015 - Focus on Status of Integrated Child Protection Services" under the aegis of the High Court Committee on Juvenile Justice in collaboration with the Chhattisgarh State Judicial Academy was held on 18/03/2018 at the Auditorium of High Court of Chhattisgarh, Bilaspur. The stakeholders were enlightened by motivational, inspirational and valuable thoughts of speakers including Hon'ble Shri Justice Prashant Kumar Mishra, Hon'ble Shri Justice Manindra Mohan Shrivastava, Hon'ble Shri Justice R. C. S. Samant and Smt. Prabha Dubey, Chairperson, State Commission for protection of Child Rights.



29/04/2018

Divisional Judicial Seminar on "(i) Objections over marking exhibit on documents during recording of evidence about their admissibility - How to be dealt with, (ii) Practice & Procedure of Summary & Summons Trial under the Negotiable Instruments Act, 1881- Change in Magnitude after dictum of Hon'ble Supreme Court in M/s Meters and Instruments Private Limited & another Vs. Kanchan Mehta-2017 AIR SCW 4594, (iii) Complaints to Magistrate- Powers under Chapter XII & XV of Cr.P.C. & (iv) Adjournments of hearing qua speedy Civil Trial for Judicial Officers of Bastar Division (comprising of Jagdalpur, Dantewada, Kanker and Kondagaon) at Jagdalpur on 29/04/2018.



06/05/2018

The State Level Conference of Judicial Officers / Collectors/ Senior Superintendent of Police / Prosecutors and Investigating Officers for "Enhancing Tools & Techniques for Scientific Investigation : Effective Prosecution : Speedy Trial" was organized at Raipur on 06/05/2018. The conference was chaired by Hon'ble the Chief Minister Dr. Raman Singh and presided over by Hon'ble the then Chief Justice Shri Thottathil B. Radhakrishnan. His Lordship has said that the

parameters fixed to achieve for the Judges is cannot be less than excellence. His Lordship has further added that if each and every organ of Justice delivery system perform their duty honestly and with due dedication then goal of effective and speedy trial can easily be achieved. His Lordship has appreciated the Sincerity and hardwork of all participant and motivated them to go ahead with the same. Hon'ble the Chief Minister in his inaugural address, assured the Judiciary to have all support from the State to make it effective, speedy and result oriented so that the last man of the society shall have access to justice.



State Level Conference of Judicial Officers, Collectors, SsP, Prosecutors and



08/05/2018 to 18/05/2018

1st Part of Induction Training for Newly Appointed Civil Judges (Entry Level), 2018 Batch, held from 08th May, 2018 to 18th May, 2018.



*1st Part of Induction Training for Newly Appointed Civil Judges (Entry Level), 2018 Batch was held from 08th May, 2018 to 18th May, 2018 at CSJA, Bilaspur. They have been administered oath of the office by Hon'ble Shri Justice **Prashant Kumar Mishra**, Judge, High Court of Chhattisgarh & Chairman, CSJA. Valedictory session of winding up training of Civil Judge*

*(Entry Level) 2016 Batch has also been held together with and laptops have been distributed amongst all of them in the august presence of Hon'ble Shri Justice **M.M. Shrivastava** and Hon'ble Shri Justice **P. Sam Koshy**, Judges of High Court of Chhattisgarh and Members of the Monitoring Committee of the Academy.*



14/05/2018 to 18/05/2018

Winding-up Training Programme for Civil Judge-II, 2016 Batch, held from 14th May, 2018 to 18th May, 2018.



07/07/2018

**Swearing-in Ceremony of Newly Appointed
Chief Justice, High Court of Chhattisgarh
on 07/07/2018 at Rajbhawan Raipur**



Hon'ble Shri Justice Ajay Kumar Tripathi, Judge High Court of Patna has been appointed as the Chief Justice of High Court of Chhattisgarh and swearing in Ceremony was held at Rajbhawan, Raipur on Saturday 7th July, 2018. Oath was administered by Hon'ble Governor of State of Chhattisgarh Shri Balramji Das Tandon.



Thereafter, Ovation Ceremony, as per judicial tradition, was held in the High Court of Chhattisgarh, Bilaspur on Monday, 09th July, 2018.

14/07/2018

**Address by Hon'ble Shri Justice Deepak Gupta,
Judge Supreme Court of India, to Civil Judge (Entry Level) 2018 Batch,
under going 1st part of Induction Training, on 14/07/2018.**

Hon'ble Shri Justice Deepak Gupta, Judge Supreme Court of India has been pleased to address Civil Judge (Entry Level) 2018 Batch undergoing first part of Induction Training in the Academy, on 14th July 2018 on the Topic- **"Role, Responsibilities & Attributes of a Judge"** to inculcate amongst them the qualities of a Judge i.e. honesty, patience, open-mindedness, courtesy, tact, courage, punctuality, firmness, understanding, compassion, humility and commonsense. His lordship told the gathering that a Judge should not be less than excellent. The trainee Judges have also been addressed by Hon'ble the Chief Justice Shri Ajay Kumar Tripathi.



15/08/2018

Independence Day Celebration

On 15/08/2018 Independence Day was celebrated at Chhattisgarh State Judicial Academy with full fervor and gaiety, in the august presence of Hon'ble Chairman, Committee Members, Hon'ble Judges of High Court, trainee Judges and other Judicial Officers. National Flag was hoisted by Hon'ble Mr. Justice Prashant Kumar Mishra, Chairman CSJA.



25/08/2018

Inauguration of New Building of Chhattisgarh State Judicial Academy



The New Building of Chhattisgarh State Judicial Academy has been constructed in the campus of Chhattisgarh High Court. New Building is spread over six acres of land, having two separate wings namely Administrative Block and Hostel. Area of construction is nearly ninety thousand square feet. On Saturday, 25th August, 2018, New Building of CSJA was Inaugurated by **Hon'ble Mr. Justice Dipak Misra**, Chief Justice of India, in the august presence of Hon'ble Dr. Raman Singh, Chief Minister of Chhattisgarh, Hon'ble Mr. Justice Ajay Kumar Tripathi, Chief Justice High Court of Chhattisgarh & Patron-in-Chief CSJA, Hon'ble Mr. Justice Prashant Kumar Mishra, Chairman CSJA, Hon'ble Mr. Justice Manindra Mohan Shrivastava, Member CSJA, Hon'ble Mr. Justice P. Sam Koshy, Member CSJA, Hon'ble puisne Judges of High Court of Chhattisgarh and other distinguished guests.



On this occasion Hon'ble Chief Justice of India has been pleased to address the Civil Judges (Entry Level), 2018 Batch, undergoing first part of induction training, in the Smart Classroom. Hon'ble CJI interacted with the trainee judges in the presence of other dignitaries.

Hon'ble Dr. Raman Singh, Chief Minister of Chhattisgarh unveiled the bust of Swami Vivekananda situated in the Central Courtyard of New Academy Building.

Hon'ble CJI addressed the distinguished guests and Judicial Officers of the State. While addressing the audience in the auditorium of Chhattisgarh High Court Hon'ble Mr. Justice Dipak Misra said that - "Access to Justice is a constitutional concept, but one cannot have access to Justice without



the fundamental infrastructure. We have think of an infrastructure we immediately think of as some kind of building. I do not dispute that for the purpose of infrastructure a building is a categorical imperative its a must. Today we

have inaugurated all of us collectively and participatively the Judicial Academy of High Court of Chhattisgarh. I must tell you its a great achievement for the High Court and as-well-as for the State".

Hon'ble Chief Justice of India further told the gathering that - "I go to various places and find the Judicial Academies, the infrastructure have taken a quantum leap. This is the physical infrastructure. I would like to convey you apart from physical infrastructure there has to be intellectual infrastructure. An intellectual infrastructure here means the mental ability to understand and the academic aspects of law when you come to Judicial Academy as a learner or as a resource person. The purpose of saying so is this when you come as a trainee, be you a District Judge or Additional District Judge or a Trainee Judge you must harbor the idea as a student. Similarly a Judge who also comes to address he must disrobe himself and must feel he is a teacher and he has come to educate people in the field of law both conceptually as well as practically. There has to be participative learning and practical learning. You must always feel humble that I have to learn and unless I learn I can't catch-up".

Hon'ble Dr. Raman Singh, Chief Minister of Chhattisgarh and Hon'ble the Chief Justice Shri Ajay Kumar Tripathi have also addressed the gathering. Hon'ble Chairman Mr. Justice Prashant Kumar Mishra delivered welcome address and Hon'ble Mr. Justice M.M. Shrivastava, member CSJA has proposed vote of thanks.

NOTABLE EXCERPTS OF CASES (HIGH COURT OF CHHATTISGARH)

- ✦ **(Hon'ble P. Sam Koshy, Judge High Court of Chhattisgarh) National Insurance Company Limited, Chhattisgarh Vs. Smt. Ritu Dubey and Others, ILR 2018 Chhattisgarh 73** - (A) Motor Vehicles Act (59 of 1988), S. 147 - Liability of insurer - Accident compensation - Plea of insurance company that driver of offending vehicle not having proper endorsement to drive passenger carrying vehicle - Merely because there is no proper endorsement - Insurance company, not absolved of its liability to pay compensation.
- ✦ **(Hon'ble Sanjay K. Agrawal, Judge High Court of Chhattisgarh) Cholamandalam Investment and Finance Company Limited Vs. Hem Trinath Singh and Others, ILR 2018 Chhattisgarh (SN) 56** - Arbitration and Conciliation Act (26 of 1996), S.36 - Civil P.C. (5 of 1908), S. 39 - Execution of arbitral award - Transfer of decree - Applicability of S. 39 of C.P.C in executing arbitral award - Arbitral award not conferred with status of decree but it has to be executed in same manner as if it is a decree of court - S. 39 of C.P.C. is not applicable in execution of arbitral awards.
- ✦ **(Hon'ble Arvind Singh Chandel, Judge High Court of Chhattisgarh) Devendra Kumar Sahu Vs. State of Chhattisgarh and Others, ILR 2018 Chhattisgarh 263** - (A) Prevention of Corruption Act (49 of 1988), Ss. 19-A, 7, 13(1)(d), (2) - Illegal gratification - Sanction for prosecution - Accused, Revenue inspector demanding bribe from complainant, for removing encroachment from his plot - Chief Executive Officer according sanction, only after careful examination of documents and evidence lead on record by Lokayukta - Sanction order containing brief facts of offence - Mere non-mention of date of according sanction on sanction order, not hinting towards non-application of mind- Sanction order, valid. (Para 8).
- ✦ **(Hon'ble Prashant Kumar Mishra And Arvind Singh Chandel, JJ. High Court of Chhattisgarh) Bhagwat Prasad Sahu Vs. Smt. Bhuneshwari, ILR 2018 Chhattisgarh 295** - (A) Criminal P. C. (2 of 1974), S. 125 - Maintenance - Entitlement - Wife has statutory right under S. 125 to seek maintenance - Any private agreement dis-entitling party to claim their statutory right, would be opposed to public policy and not-enforceable - Agreement between spouses whereby wife allegedly relinquishes her right to seek maintenance has no legal sanctity - Husband cannot avail benefit of agreement between parties to deny maintenance.
- ✦ **(Hon'ble Prashant Kumar Mishra, Judge High Court of Chhattisgarh) Bajrang Lal Sen Vs. A. Rajjak Dalla and others, ILR 2018 Chhattisgarh 326** - Civil P. C. (5 of 1908), O.7, R. 11(a) - Rejection of plaint - Non-disclosure of cause of action - Plaintiff filing suit for declaration of title on basis of alleged purchase of suit property by his father in auction - No

document of title in favour of plaintiff - Suit claiming title over immovable property not based either on successory title or on sale deed or grant by Govt. or auction sale confirmation letter - Not disclosing any clear right to sue -
Plaint liable to be rejected. Specific Relief Act, S. 34

♦ **(Hon'ble Sanjay Agrawal, Judge High Court of Chhattisgarh) Shyam Bihari Sharma & Others Vs. Rajesh Sharma and Others, ILR 2018 Chhattisgarh 337** (A) Civil P. C. (5 of 1908), Ss. 17, 16(d) - Suit relating to immovable property - Territorial jurisdiction - Suit property situated within jurisdiction of different Courts - Suit can be instituted in any of Courts within whose jurisdiction portion of said property is situated.

♦ **(Hon'ble Sanjay Agrawal, Judge High Court of Chhattisgarh) Tikaram (Since Dead), L.Rs. Vs. Kehar Singh (Since Dead)), L.Rs, ILR 2018 Chhattisgarh 350** - Civil P. C. (5 of 1908), O. 22, R.9 - Setting aside of abatement - Death of defendant during pendency of appeal - Delay in filing application for setting aside of abatement - By itself not sufficient to deny relief to legal representatives of defendant - Especially when there is no mala-fide intention of applicants in belated filing of application under O.22, R. 9 - Abatement order set aside and appeal restored.

♦ **(Hon'ble Sanjay K. Agrawal, Judge High Court of Chhattisgarh) Sukhalu Pao and another Vs. South Eastern Coalfields Limited and another, ILR 2017 Chhattisgarh (SN) 265**- Constitution of India, Art. 16 - Appointment on compassionate ground - Son-in-law totally dependent on deceased-employee - Eligible for compassionate employment.

♦ **(Hon'ble Sanjay K. Agrawal, Judge High Court of Chhattisgarh) Atul Kumar Mishra Vs. Mohar Singh Chhabra (died & deleted) by L.Rs. and others, ILR 2017 Chhattisgarh (SN) 214**- Motor Vehicles Act (59 of 1988), S. 169 - Civil P.C. (5 of 1908), O. 47, R.1- Powers of Claims Tribunal - Power of reviewing its award on merits is not available to Tribunal - Tribunal has inherent power of review only to rectify procedural, arithmetical, clerical error or defect made by Tribunal to prevent abuse of its process - It can also review its award in case award was obtained by practicing fraud.

♦ **(Hon'ble Pritinker Diwaker And Ram Prasanna Sharma, JJ., Judge High Court of Chhattisgarh) ILR 2017 Chhattisgarh 2217** - Penal Code (45 of 1860), Ss. 149, 148, 302 - Evidence Act (1 of 1872), Ss. 3,8 - Murder - Accused persons brutally murdering victim in mid-night - Presence of all accused persons on spot and acts performed by them established by eye-witness - Sole eye-witness, son of deceased stated that he saw entire incident from hole in the door of his room - Testimony of sole eye-witness corroborated with medical evidence - Act of not alarming anybody and not intervening due to fear of life does not make his conduct unnatural - Conviction, proper.

- ♦ **(Hon'ble Thottathil B. Radhakrishnan, C.J. and Sharad Kumar Gupta, Judge High Court of Chhattisgarh), ILR 2017 Chhattisgarh 2279** - (A) Prevention of Corruption Act (49 of 1988) Ss. 19, 13(1)(e) - Constitution of India, Arts. 14, 21 - Sanction for prosecution - Opportunity of hearing - Amassing wealth disproportionate to income - Act of granting sanction only administrative and not quasi judicial - No adjudication of any issue involved - Grant of opportunity of hearing to public servant, not necessary - Denial of such opportunity, not impairing dignity of individual or fundamental right to life.
- ♦ **(Hon'ble Prashant Kumar Mishra And Arvind Singh Chandel, JJ. High Court of Chhattisgarh) Smt. Kamla Bai Dansena and others Vs. Subran Dansena, ILR 2018 Chhattisgarh 396**- Guardians and Wards Act (8 of 1890) S. 25 - Custody of Minor - Claims by father - Father and mother living separately - Divorce proceeding pending - Father having sound earning whereas mother is dependent on her parents, incapable of taking care of her children - Merely on account of attachment of children with mother their future cannot be destroyed - Motherly love and affection should not be blindly accepted to ruin minor's future - Custody of minor children granted in favour of father - Visitation rights granted to mother.
- ♦ **(Hon'ble Pritinker Diwaker And Rajendra Chandra Singh Samant, JJ. High Court of Chhattisgarh) Ram Kumar & others Vs. State of Chhattisgarh, ILR 2017 Chhattisgarh 1916** - (B) Penal Code (45 of 1860), S. 149 - unlawful assembly - Common object - Accused, persons allegedly forming unlawful assembly with common object to kill deceased - All of them armed with clubs and crowbars - Even if one of them committing offence, others cannot escape from criminal liability - Conviction proper.
- ♦ **(Hon'ble Manindra Mohan Shrivastava, Judge High Court of Chhattisgarh) Mehattrin Bai Ramswarup Nirmalkar Vs. Sanju Beldar, ILR 2017 Chhattisgarh 1322** - Motor Vehicles Act (59 of 1988), S. 168 - Compensation - Application for part release of compensation amount - Requirement of money for solemnization of marriage of eldest daughter of petitioner widow and also for carrying out bore-well in agriculture field - Rejection of application, not proper - Direction to withdraw Rs. 1,00,000/- out of Rs. 2,50,000/- deposited in name of petitioner-widow to meet expenses.
- ♦ **(Hon'ble Manindra Mohan Shrivastava, Judge High Court of Chhattisgarh) Asmi Raut Vs. State of Chhattisgarh, ILR 2017 Chhattisgarh 1118**- Criminal P. C. (2 of 1974), S. 311 - Recalling of witnesses - Permissibility - Failure to conduct cross-examination of witnesses on certain point, by mistake and occurrence of some lapses in cross-examination - Cannot be grounds to recall witnesses - Re-examination of witnesses to fill in lacunae in cross-examination, impermissible.

Notable Citations (Supreme Court of India)

- ◆ **Independent Thought Vs. Union of India And Another, AIR 2017 SC 4904 -**
(A) Penal Code (45 of 1860), S. 375, Exception 2- Constitution of India, Arts. 14, 15, 21- Constitutional validity - Sexual intercourse with girl below 18 years of age- Is rape irrespective of whether she is married or not- Exception 2 to S. 375 creating distinction between married girl child and unmarried girl child - Violative of Arts. 14, 15 and 21 - It be read as "Sexual intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape". It is, however, made clear that this judgment will have prospective effect.
- ◆ **United India Insurance Co. Ltd. Vs. Sunil Kumar and another, AIR 2017 SC 5710 -**
Motor Vehicles Act (59 of 1988), Ss. 163A, 166 - Compensation on structured formula basis - Is in nature of final award - Not open for insurer to raise defence of negligence on part of victim in claim proceedings under S. 163A.
- ◆ **M/s. Meters and Instruments Private Limited and another Vs. Kanchan Mehta, AIR 2017 SC 4594 : (2018) 1 SCC 560 -**
(B) Negotiable Instruments Act (26 of 1881), Ss. 138, 143 - Criminal P.C. (2 of 1974), Ss. 204, 206, 260 - Dishonour of cheque - Guidelines for Courts - Summons to indicate that if accused deposits cheque amount, interest and costs as assessed by Court within specified date, accused need not appear - Proceedings may be closed subject to valid objections by complainant.
(C) Criminal P.C. (2 of 1974), S. 258 - Negotiable Instruments Act (26 of 1881), Ss. 138, 143 - Cheque dishonour cases - Closure of proceedings - Payment of cheque amount with interest and cost by accused as assessed by Court within specified date - Court can close proceedings u/S. 143 of Act of 1881 read with S. 258 of Criminal P. C. .
- ▶ **Asharfi Vs. State of Uttar Pradesh, AIR 2017 SC 5819 -**
(A) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), S. 3(2)(v)(as amended by Act 1 of 2016) - Offence of atrocities - Punishment for - Mere knowldge of accused that victim belongs to SC/ST Community is sufficient for prosecution under amended S. 3(2)(v) of Act.
- ▶ **Nitya Dharmanada alias K. Lenin and another Vs. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and another with State of Karnataka Vs. Gopal Sheelum Reddy also known as Nithya Bhaktananda, AIR 2017 SC 5846 -**
Criminal P. C. (2 of 1974), Ss. 91, 227, 228 - Summons to produce documents - Stage of framing of charge - Court satisfied that material of sterling quality

withheld by investigator/prosecutor - Not debarred from summoning such document even though not part of charge-sheet.

◆ **Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948-**

(A) Criminal P. C. (2 of 1974), S. 167(2)(i), Proviso (a) - Default bail - Grant of Words "not less than" occurring in clause (i) to proviso (a) of S. 167(2) - Relates to an offence punishable with a minimum of 10 years' imprisonment - Accused charged for offence under S. 13(1) of P.C. Act punishable with imprisonment which may extend to 10 years i.e. minimum sentence is less than 10 years - Non-submission of charge-sheet within statutory period of 60 days - Accused entitled to be released on bail.

(B) Criminal P.C. (2 of 1974), S. 167(2), Proviso(a) - Indefeasible right of 'default bail' - Cannot be frustrated by prosecution on any pretext.

◆ **National Insurance Company Limited Vs. Pranay Sethi and Others, AIR 2017 SC 5157 : (2017) 16 SCC 680 -**

Future income of salaried or self-employed person to be considered while computing compensation under MV Act. In reference relating to the computation of compensation under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (MV Act) and the methodology for computation of future prospects, giving a unanimous decision, the 5-judge bench of Dipak Misra, CJ and Dr. AK Sikri, AM Khanwilkar, Dr. DY Chandrachud and Ashok Bhushan, JJ held that the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. The age of the deceased should be the basis for applying the multiplier. The decision in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, is to be relied upon for determination of the multiplicand, the deduction for personal and living expenses, and the selection of multiplier.

◆ **Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya (Deceased) through Legal Representatives & Others, (2017) 9 SCC 700 -**

A. Civil Procedure Code, 1908 - S. 11 and Or. 1 R. 10 and Or. 22 - Res judicata - Applicability - First application under Or. 22 R. 4 dismissed without adjudication on merits, subsequent application under Or. 1 R. 10 not barred by res judicata.

C. Civil Procedure Code, 1908 - Or. 1 Rr. 10(2) and Ss. 151 & 153 - Discretionary power of court to order name of any person, whose presence before court is necessary to settle all questions involved, to be added by amending defect/error in application in interest of ends of justice - Discretion has to be exercised according to reason and fair play - Expression "to settle all questions involved" should be interpreted widely and liberally -

Hypertechnical approach should be avoided.

D. Practice and Procedure - Generally - Wrong mention of statutory provision in application - Not sufficient to invalidate application.

Dilawar Vs. State of Haryana and another, AIR 2018 SC 2269 -

Constitution of India, Art. 21 - Speedy trial - Encompasses speedy investigation, inquiry, appeal, revision and retrial - Inordinate delay in investigation may be taken as presumptive proof of prejudice and affects reasonableness of procedure specially when person is in custody and unable to furnish bail - Timeliness for completing investigation to give effect to mandate of Art. 21, necessary.

Mangla Ram Vs. Oriental Insurance Co. Ltd. And others, AIR 2018 SC 1900-

(B) Motor Vehicles Act (59 of 1988), S. 168 - Accident - Negligence - Proof - Spot where motorcycle found lying after accident cannot be basis to assume that it was driven on wrong side of road at relevant time.

Satyendra Kumar Mehra alias Satendra Kumar Mehra Vs. State of Jharkhand, AIR 2018 SC 1587 -

Criminal P. C. (2 of 1974), S. 357(2) - Order to pay compensation - Applicability of S. 357 (2) - Is only when order of payment of compensation out of fine imposed as part of sentence is made - In absence of such order, order imposing payment of fine cannot be stayed and S. 357(2) cannot be made applicable.

Bharatkumar Rameshchandra Barot Vs. State of Gujarat, AIR 2018 SC 1598 -

(B) Penal Code (45 of 1860), Ss. 302, 53 - Murder - Sentence - Enhancement of - Accused found guilty of offence of murder - Can only be awarded "Death penalty" or "life imprisonment" and 'fine' - No discretion left with Court for awarding lesser punishment - Trial Court imposing R.I. of 10 years - Order of High Court enhancing sentence to life imprisonment, justified.

Auto Cars Vs. Trimurti Cargo Movers Pvt. Ltd. And Others, AIR 2018 SC 1165 -

Civil P. C. (5 of 1908), O.5, R.20, O.9, R.13, S.27 - Substituted service - Service of summons to defendants by way of publication - Not mentioning specific day, year and time for defendants' appearance in Court - Is not in conformity with requirements of S. 27 r.w. Appendix B, Process-IA and O.5, R.20(3) of Code - Summons cannot be said to be duly served on defendants - Consequently ex-parte decree, set aside.

Dinesh Kumar Kalidas Patel Vs. State of Gujarat, AIR 2018 SC 951-

(B) Penal Code (45 of 1860), S. 201 - Causing disappearance of evidence -

- ◆ Independent conviction is permissible even after acquittal from main offence.
Santhini Vs. Vijaya Venketesh, (2018) 1 SCC 1 -
A. Family and personal Laws - Family Courts Act, 1984 - Ss. 11, 9 and 10 - Conduct of proceedings under Family Courts Act, 1984 through video conferencing upon request of only one party, held (per majority), impermissible - Mandate of S.11 explained - However, only after settlement fails, either upon consent and application of both parties, or, if Family Court finds it appropriate, direction for videoconferencing may be made by Family Court only - Direction for Videoconferencing cannot be passed in transfer proceedings - Present directions to apply only prospectively.
D. Family and Personal Laws - Family Courts Act, 1984- Generally - Speedy settlement of disputes - Court should adopt a balanced approach avoiding procrastination as well as undue haste and be sensitive to the cause and schematic purpose.
- ◆ **Latesh alias Dadu Baburao Karlekar Vs. State of Maharashtra & Another, AIR 2018 SC 659 -**
(C) Criminal P. C. (2 of 1974), S.154 - FIR- Absence of name of accused persons in FIR - Cannot be ground to doubt contents of FIR. (D) Evidence Act (1 of 1872), S.9 - Criminal P. C. (2 of 1974), S. 54-A- Test Identification Parade - Is not substantial piece of evidence - But useful for corroboration with other evidence.
- ◆ **Mohinder Kumar Mehra Vs. Roop Rani Mehra and Others, (2018) 2 SCC 132 -**
A. Civil Procedure Code, 1908 - Or. 6 R. 17 proviso - Proviso barring entertainment of application for amendment of pleadings after commencement of trial - Trial when commences - After framing of issues, case was fixed for recording of evidence of plaintiff, but instead of producing evidence, plaintiff took adjournment and in meantime he filed application under R. 17 - Plaintiff led evidence thereafter - According to plaintiff, he led evidence even on amended pleadings - Held, amendment application deserved to be allowed.
- ◆ **Sundaram Finance Limited Vs. Abdul Samad and Another, (2018) 3 SCC 622 -**
Arbitration and Conciliation Act, 1996 - Ss. 36, 32 and 42 - Execution/enforcement of arbitral award - Court through which may be effected - Held, execution/enforcement of award can be done/filed anywhere in country where such decree can be executed and there is no requirement for obtaining a transfer of decree from court which has jurisdiction over arbitral proceedings/award/within whose jurisdiction award is passed - Civil Procedure Code, 1908, Ss. 47, 151, 37, 38 & 46 and Or. 21 Rr. 6, 11(2) and 27.

Kerala State Electricity Board & Another Vs. Kurien E. Kalathil and Another, (2018) 4 SCC 793 -

A. Contract and Specific Relief - Performance of Contract - Modes and Order of Performance - Appropriation of payments - Appropriation of payments firstly towards the interest and then towards the principal amount - When not permissible - Agreement/Understanding between the parties as to manner of appropriation of payments and direction of court as to appropriation - Binding effect of.

B. Civil Procedure Code, 1908 - S. 34 - Future interest - Not payable, in the absence of a specific direction of the court to pay such interest.

Jasmeet Kaur Vs. Navtej Singh, (2018) 4 SCC 295 -

Family and Personal Laws - Guardians and Wards - Custody of Child/Minor - Jurisdiction/Judicial Interference / Parens Patriae Jurisdiction/Conflict of Laws/Private International Law - Inter-country dispute - Jurisdiction of Indian Courts - Paramount consideration is best interest of child - Re-emphasised-Ignoring this aspect in custody matters at threshold by applying Or. 7 R. 11 CPC, while giving primacy to principles of intimate contact/comity of courts/forum convenience - Impropriety.

Gurdwara Sahib Vs. Gram Panchayat Village Sirthala & Another, (2014) 1 SCC 669 -

A. Contract and Specific Relief - Specific Relief Act 1963 - S. 34 - Declaratory decree - Declaration of ownership of land on basis of adverse possession cannot be sought by plaintiff - But claim of ownership by adverse possession can be made by way of defence when arrayed as defendant in proceedings against him.

Dharampal (Dead) through Legal Representatives Vs. Punjab Wakf Board and Others, (2018) 11 SCC 449 - A. Property Law - Adverse Possession - Plea of adverse possession - Rights to raise - Said plea, reiterated, cannot be set up by plaintiff to claim ownership over suit property - But, can be raised by defendant by way of defence in his written statement in answer to plaintiff's claim - Hence, since by virtue of Or. 8 R.6-A(4) CPC, a counterclaim is treated as a plaint, in present case, plea of adverse possession raised by appellant-Defendant 1 in his counterclaim (filed against plaintiff) seeking declaration of his ownership over suit land on basis thereof, held, not permissible - Civil Procedure Code, 1908, Or. 8 R.6-A(4).

Chanda Devi Daga and others Vs. Manju K. Humatani and others, ILR 2018 Chhattisgarh 88 -

Criminal P. C. (2 of 1974), Ss 302, 256 - Permission to conduct prosecution - Death of complainant pending petition before High Court - Order allowing legal heirs of complainant to prosecute before High Court - Not erroneous.

ARTICLE SECTION

CHHATTISGARH STATE JUDICIAL ACADEMY, BILASPUR

Impleadment of Adulterer as a co-respondent ...?

Question which has been put to the Director of the Chhattisgarh State Judicial Academy is that - "Whether the Family Court could have decided the application for divorce on the ground of adultery, without the alleged adulterer as a co-respondent, unless, ofcourse, the plea was as to multifarious adulterous activities without the identity of the adulterer being available to be traced."

Analysis-

It has now been settled by catena of judgments rendered by several High Courts and the Supreme Court as well, that - the allegation of adultery is a serious charge and the Court must be satisfied beyond all reasonable doubt that the charge of adultery is established. It is not necessary and really not possible to prove adultery by any direct evidence. At the same time, it cannot be a matter of inference merely on slender evidence. By clear and cogent evidence and circumstances, the charge of adultery has to be established by the party alleging adultery.

Legislative Provisions-

Adultery is a statutory ground available for divorce to estranged couple under number of matrimonial laws. In this context if we go through the provisions of the Divorce Act, 1869, then we find the grounds for dissolution of marriage are available under Section 10 of Part-III of the Act. There is a special provision in Section 11 of the Act which provides that adulterer or adulteress shall be impleaded as co-respondent by petitioner. Section reads as under,-

- 11. Adulterer or adulteress to be co-respondent:-*** *On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petition shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the court from so doing on any of the following grounds, namely:*

- (a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;
- (b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;
- (c) that the alleged adulterer or adulteress is dead.

Here, statute is providing that adulterer/adulteress are to be impleaded mandatorily in a petition seeking divorce on the ground of adultery, only significant point is that if petitioner is unable to identify the adulterer/adulteress, though he has made due efforts, in that case he may be excused by the Court from doing so. But if we look at the provisions of the Hindu Marriage Act, 1955 [impugned order has been passed on a petition filed U/S 13 (1)(i) of HMA, which is adultery, an available ground for decree of divorce], here we do not find any provision which commands that a petitioner seeking divorce on the ground of adultery has to implead alleged adulterer as co-respondent.

Section 21 of the Hindu Marriage Act, 1955 says that-

21. Application of Act 5 of 1908:- Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

The Code of Civil Procedure, 1908 nowhere says that in a petition for divorce on the ground of adultery, it is incumbent upon the petitioner to implead alleged adulterer as co-respondent. Nor has the High Court of Chhattisgarh made any Rule(s) in this behalf.

It's not the position that rules are not in force. But, the rules available under the title- The High Court of Madhya Pradesh (substituted by Chhattisgarh) Family Court Rules, 1988 (as adopted under the Adaptation of Laws Act), and the Family Courts (CG High Court) Rules, 2005 do not contain any provision which says that the petitioner has to implead alleged adulterer

as co-respondent. Whereas number of High Courts viz. Allahabad, Andhra Pradesh, Mumbai, Delhi, Gujrat, Himachal Pradesh, Kerala, Chennai, Orissa, Patna, Punjab & Rajasthan have framed rules which specifically require that the alleged adulterer should be impleaded as a co-respondent in a petition under Section 13(1)(i) of the Hindu Marriage Act, even though no relief may be claimed against him.

Though the Family Court, established under Section 3 of the Family Courts Act, 1984 has been conferred with special power that it can lay down its own procedure in respect of the subject matter of the suit or proceedings or at the truth of the fact alleged by one party and denied by the other [sub section (3) to Section 10] but this is limited only for the purpose of arriving at a settlement not beyond that.

Since, we do not have any statutory provision or rule which provides that in a petition filed for divorce under Section 13(1)(i) of the Hindu Marriage Act on the ground of adultery, the alleged adulterer should/must be impleaded as a co-respondent, then we have to find out the answer to the question put to us on the basis of available legal provisions and Judgments of superior Courts in this regard.

Number of High Courts have, while deciding petitions seeking divorce on the ground of adultery, categorically observed/directed that the alleged adulterer or adulteress must be made party to the petition. Some cases are,-

If husband has sought divorce against wife on the ground of adultery then alleged adulterer should be made party- **Archana Vs. Vinod, 1998 (1) J.L.J 227 MP.**

When divorce is sought on the ground of adultery then adulterer will be necessary party- **Mirapala Venkata Ramana Vs. Mirapala Peddiraju, AIR 2000 AP 328 : 2000(2) ALD 723 (DB).** Similar view has been taken by Allahabad High Court in **Udai Narain Bajpai Vs. Smt. Kusum Bajpai, AIR 1975 ALL. 94.** Hon'ble Division Bench of Calcutta High Court in the matter of **Sikha Singh Vs. Dina Chakrabarty, AIR 1982 Cal 370** has observed that the Rule requiring joinder of the adulterer as a co-respondent proceeds on a public policy to prevent collusion and character assassination.

*The Division Bench of Karnataka High Court in the matter of **Arun Kumar Agarwal Vs. Radha Arun & Anr.** ILR 2004 KAR 808, 2003(6) KarLG 120 has discussed this issue in very specific details. The Court has put certain questions and then have answered those-*

In a petition under Section 13(1)(i) of the Hindu Marriage Act, whether the adulterer is a necessary and proper party to the petition? HELD ON FACTS, the presence of Adulterer before the Court is necessary to enable it to effectually and completely adjudicate upon and settle all questions involved in the petition, therefore he is a proper party, though not necessary party.

-- Person impleaded as a co-respondent in a petition under Section 13(1) (i) on the HM Act, 1955 as alleged adulterer can such person seek deletion on the ground that no relief is sought against him or he HELD -- The alleged adulterer is a proper party to a proceedings under Section 13(i) of Hindu Marriage Act though no relief is claimed against him, his presence is necessary for complete and final decision on the question involved in the suit -- Therefore he can not seek deletion from the petition.

The thread which runs commonly, as sound legal principle, through all the judgments mentioned above is that all those persons whose presence (as party to a proceeding) is necessary to decide the matter in dispute and in whose absence no effective decree can be passed are ought to have been joined as party to adjudicate the matter.

We have seen that there are certain statutes and rules framed by some of the High Courts which says that alleged aduterer or adulteress, as the case may be, must be impleaded as co-respondent. But what if the rules are not available or do not require the impleading of alleged adulterer as co-respondent? It is mentioned in the above paragraphs that in a petition of divorce filed under provisions of Hindu Marriage Act, the procedure laid down by Code of Civil Procedure, 1908 is to be followed.

In the absence of any Rule, one has to look back upon Rules 3, 5 and 10 (2) of Order 1 CPC. Rule 3 provides that all persons against whom any right to relief in respect of or arising out of the same act/s or transaction/s is alleged to exist, whether jointly or severally or in the alternative, may be joined as defendants in a suit.

Object of Order 1 Rule 10(2) CPC is -- (a) To bring on record all persons who are parties to the dispute relating to the subject matter -- (b) To determine the dispute in their presence, without any protraction, inconvenience and to avoid multiplicity of proceeding. When the Court is of the view that by adding a party, it would be in a better position to effectually and completely adjudicate upon and settle all the questions involved in suit -- The Court may at any stage order for addition of any person.

Question may arise as to who is a "necessary party", or "proper party", this is no longer *res integra*. The Supreme Court in the matter of - **Mumbai International Airport Private Limited V. Regency Convention Centre & Hotels Private Limited and Others, (2010) 7 SCC 417**, thus observed that,- the general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has not right to be impleaded against the wishes of the plaintiff. But that general rule is subject to the provisions of Order 1 Rule 10(2) CPC by which the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. (Para 13 to 15)

3. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matter in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him against the wishes of the plaintiff. (Para 15)

Likewise Hon'ble Supreme Court in the matter of **Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, (1995) 3 SCC 147** has held that - "A person may be added as a party defendant to the suit though no relief may be claimed against him/her provided his/her presence is necessary for a

complete and final decision on the question involved in the suit."

There can be no doubt that in a proceeding where the Court has to decide whether the spouse of the petitioner had voluntary sexual intercourse with another person, by adding such person (alleged adulterer) as a Respondent, the Court would be in a better position to effectually and completely adjudicate upon the controversy. Nor can it be said that in a proceeding under Section 13(1)(i) of HM Act, when the spouse and alleged adulterer are impleaded as respondents, the alleged adulterer is improperly joined as a Respondent.

It can, therefore, on the basis of above, safely be concluded that the alleged adulterer will be a proper party to a proceedings under Section 13(1)(i) of HM Act. Unless of course petitioner is not in a position to identify the alleged adulterer, though he has exhausted all the options to enable him to identify the alleged adulterer, in that case Court may excuse him, otherwise it would be appropriate and lawful to implead the alleged adulterer as co respondent to serve the ends of Justice.

Answer to the question put to Academy, therefore, would be that Family Court could not have decided the application for divorce on the ground of adultery, without the alleged adulterer as a co-respondent.

**K.L. Charyani, Director,
Chhattisgarh State Judicial Academy
& Santosh Kumar Tiwari and Ajay Singh Rajput,
Additional Directors.**

Under the able Guidance of Hon'ble the Chief Justice & Patron-in-Chief and Monitoring Committee of CSJA, following activities inter-alia have taken place from May, 2017 to April, 2018 by CSJA

- ◆ Workshop on "Negotiable Instruments Act", held on 7th May, 2017 at CSJA, Bilaspur.
- ◆ Workshop on POCSO Act, held on 13th May, 2017 at CSJA, Bilaspur.
- ◆ Workshop on Family Law (Maintenance & Adoption), held on 13th May, 2017 at CSJA, Bilaspur.
- ◆ Workshop on SC & ST Act, held on 13th May, 2017 at CSJA, Bilaspur
- ◆ Phase -I of Refresher Course for Civil Judges (Entry Level), 2015 Batch From 19th June, 2017 to 24th June, 2017
- ◆ Divisional Workshop on "Civil Trial: Best Practices in Delay and Arrears Reduction particularly with reference to old pending cases", of Bilaspur Division held on 25th June, 2017 at CSJA, Bilaspur.
- ◆ Orientation Course / Foundation Course Phase-I for Newly Promoted / Directly Recruited District Judge (Entry Level) 2017 Batch from 17th July, 2017 to 29th July, 2017.
- ◆ 2nd Part of Institutional Training Programme for Newly Appointed Civil Judges (Entry Level), 2016 Batch from 3rd July, 2017 to 2nd September, 2017.
- ◆ Training on Ubuntu-Linux Operating System Cum CIS (Phase-I) from 15/07/2017 to 16/07/2017 for the Judicial officer's posted in District Uttar Bastar Kanker, Kondagaon, Dhamtari, Mahasamund, Baloda-Bazar, Raipur, Ambikapur, Bemetara, Koriya, Surajpur and Durg.
- ◆ State Level Workshop of Judicial Officers of Chhattisgarh on the topic "Speedy Civil & Criminal Trial and Provisions of PC & PNDT Act, 1994" was held on 19.08.2017 in the Auditorium of High Court.
- ◆ Two Days Training on Ubuntu-Linux Operating System Cum CIS training for the Master Trainer Judicial Officers of Chhattisgarh State was held on 31/08/2017 to 01/09/2017 at CSJA, Bilaspur.
- ◆ Training on Ubuntu-Linux Operating System Cum CIS (Phase-I) from 16/08/2017 to 20/08/2017 for the Judicial Officers posted in District :-

Rajnandgaon, Balod, Jagdalpur, Dantewada, Raipur, Korba, Jashpur, Janjgir-Champa and Raigarh.

- ◆ Training on Ubuntu-Linux Operating System Cum CIS (Phase-I) from 16/09/2017 to 19/09/2017 (Two Days & Three Days as per schedule) for the Staff of Subordinate Court in District :- Balod, Balodabazar, Bastar, Bemetara, Bilaspur, Dantewada, Dhamtari, Durg, Janjgir-Champa, Jashpur, Kanker, Kawardha, Kondagaon, Korba, Koriya, Mahasamund, Raigarh, Raipur, Rajnandgaon, Surajpur & Surguja.
- ◆ Judicial Conference on Law, Procedure & its application (Court Fees Act, Suit Valuation Act & Stamp Act) for the Members of Lower Judicial Services on 08th October, 2017.
- ◆ Orientation Course / Foundation Course Phase-I for Newly Promoted / Directly Recruited District Judge (Entry Level) 2017 Batch from 09th October, 2017 to 13th October, 2017.
- ◆ Workshop on the topic on "Law, Procedure & its Application (PC Act- Gratification by a Public Servant, Sanction for Prosecution & Presumption of offence and Speedy Trial)" for all Judges of Special Courts (PC Act) and Special Judge (CBI) on 11th November, 2017.
- ◆ Workshop on the topic on "Management Tools & Skill - Planning Communication, Motivation and Execution", for Court Managers of Chhattisgarh State on 11th November, 2017.
- ◆ East Zone -I Regional Conference for Judicial Officer of State of Jharkhand, Orissa, Bihar and Chhattisgarh State was held on 16th & 17th December, 2017 at Raipur.
- ▶ Phase -II of Refresher Course for Civil Judges (Entry Level), 2015 Batch From 08th January, 2018 to 13th January, 2018.
- ▶ Training of Trainers for staff of Subordinate Courts was held on 13.01.2018 at CSJA, Bilaspur.
- ▶ Judicial Conference on Law, Procedure and its Application (Court Fees Act, Suit Valuation Act & Stamp Act) for Judicial Officers of Higher Judicial Service was held on 20th January, 2018.
- ▶ Divisional Workshop on "Mediation: Role of Referral Judge - how it can be more effective, Mediation Process: out of box thinking, Use of Mediation for reducing litigation and pre-litigation, The Mediator: Role & Liabilities"

for Judges of Surguja Division (comprising of Ambikapur, Korea at Baikunthpur, Surajpur, Jashpur and Balrampur at Ramanujganj) at Ambikapur (C.G.) on 17th February, 2018.

- ◆ Fourth Round of State Level Consultation on Effective Implementation of "Juvenile Justice (Care and Protection of Children) Act, 2015 - Focus on Status of Integrated Child Protection Services" under the aegis of the High Court Committee on Juvenile Justice in collaboration with the Chhattisgarh State Judicial Academy on 18/03/2018.
- ◆ Training on "Latest Version of CIS 3.0 (Ubuntu Software), Discussion on Features and Planning for Implementation" for the Technical Staff of subordinate Court of State of Chhattisgarh held at Chhattisgarh State Judicial Academy, Bilaspur.
- ◆ Workshop on Negotiable Instruments Act, 1881 was held on 14/04/2018 at Rajnandgaon, comprising of Judicial officer's of districts Balod, Durg, Kabirdham and Rajnandgaon.
- ◆ Divisional Judicial Seminar on "(i) Objections over marking exhibit on documents during recording of evidence about their admissibility - How to be dealt with, (ii) Practice & Procedure of Summary & Summons Trial under the Negotiable Instruments Act, 1881-Change in Magnitude after dictum of Hon'ble Supreme Court in M/s Meters and Instruments Private Limited & another Vs. Kanchan Mehta-2017 AIR SCW 4594, (iii) Complaints to Magistrate- Powers under Chapter XII & XV of Cr.P.C. & (iv) Adjournments of hearing qua speedy Civil Trial for Judicial Officers of Bastar Division (comprising of Jagdalpur, Dantewada, Kanker and Kondagaon) at Jagdalpur on 29/04/2018.

Special Events -

- ◆ The State level conference of Judicial Officer's/Collectors/Senior Superintendent of Police/Prosecutors/Investigating Officers was held on 06/05/2018 at Raipur in the Auditorium of CG Samvad.
- ◆ Hon'ble Mr. Justice Deepak Gupta has addressed the Civil Judge (Entry Level), 2018 Batch, undergoing 1st part of Induction Training, in the conference hall, High Court of Chhattisgarh on 14/07/2018.
- ◆ Hon'ble Mr. Justice Dipak Misra, Chief Justice of India has been pleased to Inaugurate the New Building of Chhattisgarh State Judicial Academy on Saturday, 25th August 2018 in the campus of Chhattisgarh High Court.



CHHATTISGARH STATE JUDICIAL ACADEMY



Hon'ble Mr. Justice Ajay Kumar Tripathi
The Chief Justice & Patron-in-Chief, CSJA



Hon'ble Mr. Justice Prashant Kumar Mishra
Judge High Court of Chhattisgarh &
Chairman, Monitoring Committee, CSJA



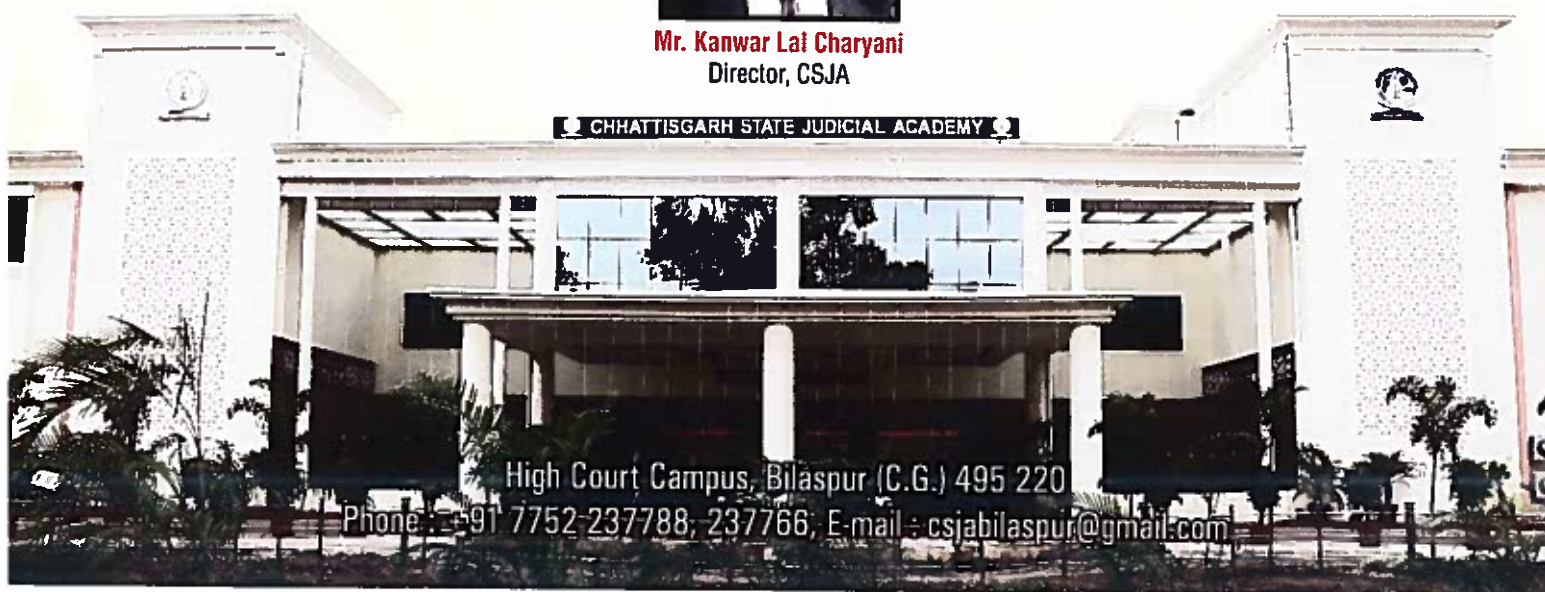
Hon'ble Mr. Justice Manindra Mohan Shrivastava
Judge High Court of Chhattisgarh &
Member, Monitoring Committee, CSJA



Hon'ble Mr. Justice P. Sam Koshy
Judge High Court of Chhattisgarh &
Member, Monitoring Committee, CSJA



Mr. Kanwar Lal Charyani
Director, CSJA



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