

HIGH COURT OF SIKKIM



NEWSLETTER

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Hon'ble Mr. Justice Narendra Kumar Jain, Chief Justice unveiling the plaque during the foundation stone laying ceremony of the District and Sessions Court Building at Kyongsha, Gyalshing, West Sikkim in the presence of Hon'ble Mr. Justice Sunil Kumar Sinha, Hon'ble Judge and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim

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VACANCIES IN COURTS**(i) Vacancies in the High Court of Sikkim as on 30.09.2014**

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	03	0

(ii) Vacancies in the District & Subordinate Courts as on 30.06.2014

Sl. No.	Sanctioned Strength	Working Strength	Vacancies
1.	<p>(i) Sikkim Superior Judicial Service (SSJS) -10</p> <p>(ii) Sikkim Judicial Service (SJS) - 08</p>	<p>(i) SSJS - 8</p> <p>(ii) SJS - 7</p>	<p>(i) SSJS - 2 <i>(1 post of District & Sessions Judge (Spl. Div.-I) & 1 recently created post (in compliance to the decision passed in Brij Mohan Lal Vs. Union of India).</i></p> <p>(ii) SJS - 1 <i>(1 post of CJM-cum- Civil Judge (South & West))</i></p>
Total	18	15	03

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

- (1) Statement of Main & Misc. cases in the High Court of Sikkim from 01.07.2014 to 30.09.2014

Sl. No.	Pending as on 01.07.2014		Institution		Total Disposal		Pending as on 30.09.2014	
	Main Case	Misc. Appl	Main Case	Misc. Appl	Main Case	Misc. Appl	Main Case	Misc. Appl
1	141	19	54	149	88	145	107	23

- (2) Total Institution, Disposal and Pendency of cases in the Subordinate

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14	Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14
East District at Gangtok	Main Cases	169	35	30	174	483	214	171	526
	Misc Cases	72	70	65	77	14	280	275	19
West District at Gyalshing	Main Cases	12	8	4	16	39	32	36	35
	Misc Cases	5	27	21	11	2	53	52	3
North District at Mangan	Main Cases	6	11	5	12	25	21	23	23
	Misc Cases	1	7	7	1	2	13	14	1
South District at Namchi	Main Cases	62	23	41	44	74	178	167	85
	Misc Cases	24	34	34	24	5	165	164	6
Family Courts	Main cases	33	64	28	69	25	30	21	34
	Misc Cases	1	3	3	1	6	13	7	12
Fast Track Court	Main Cases					5	2	1	6
	Misc Cases					1	2	3	0
Juvenile Justice Boards	Main cases					15	18	25	8
	Misc cases					0	5	5	0
Total Main Cases		282	141	108	315	666	495	444	717
Total Misc Cases		103	141	130	114	30	531	520	41

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Details of Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.07.2014 to 30.09.2014

(i) **East District at Gangtok**

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14	Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14
Principal District & Sessions Judge (East)	Main Cases	70	10	16	64	73	29	23	79
	Misc Cases	55	61	60	56	4	85	87	2
District & Sessions Judge (Spl. Div.-I)	Main Cases	1	1	1	1	1	0	1	0
	Misc Cases	0	1	0	1	0	0	0	0
District & Sessions Judge (Spl. Div.-II)	Main Cases	2	2	2	2	0	1	0	1
	Misc Cases	8	1	2	7	0	0	0	0
Chief Judicial Magistrate-cum-Civil Judge (East & North)	Main Cases	5	2	1	6	270	145	122	293
	Misc Cases	3	1	0	4	4	127	123	8
Civil Judge-cum-Judicial Magistrate (East)	Main Cases	91	20	10	101	139	39	25	153
	Misc Cases	6	6	3	9	6	68	65	9
Total Main Cases		169	35	30	174	483	214	171	526
Total Misc. Cases		72	70	65	77	14	280	275	19

(ii) West District at Gyalshing

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14	Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14
District & Sessions Judge (West)	Main Cases	5	5	3	7	25	11	17	19
	Misc Cases	5	24	20	9	1	10	8	3
Civil Judge-cum-Judicial Magistrate (West)	Main Cases	7	3	1	9	14	21	19	16
	Misc Cases	0	3	1	2	1	43	44	0
Total Main Cases		12	8	4	16	39	32	36	35
Toal Misc. Cases		5	27	21	11	2	53	52	3

(iii) North District at Mangan

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14	Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14
District & Sessions Judge (West)	Main Cases	1	6	3	4	3	4	2	5
	Misc Cases	1	5	5	1	0	3	3	0
Civil Judge-cum-Judicial Magistrate (West)	Main Cases	5	5	2	8	22	17	21	18
	Misc Cases	0	2	2	0	2	10	11	1
Total Main Cases		6	11	5	12	25	21	23	23
Toal Misc. Cases		1	7	7	1	2	13	14	1

(iv) South District at Namchi

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14	Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14
District & Sessions Judge (South)	Main Cases	36	9	18	27	46	23	22	47
	Misc Cases	21	28	27	22	1	29	29	1
Chief Judicial Magistrate-cum-Civil Judge (South & West)	Main Cases	1	1	2	0	13	115	114	14
	Misc Cases	1	2	2	1	0	118	115	3
Civil Judge-cum-Judicial Magistrate (South)	Main Cases	25	13	21	17	15	40	31	24
	Misc Cases	2	4	5	1	4	18	20	2
Total Main Cases		62	23	41	44	74	178	167	85
Toal Misc. Cases		24	34	34	24	5	165	164	6

(v) Family Courts

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14	Opening Balance as on 1.07.14	Institution from 1.07.14 to 30.09.14	Disposal from 1.07.14 to 30.09.14	Pendency at the end of 30.09.14
Family Court, East at Gangtok	Main Cases	20	41	13	48	16	20	13	23
	Misc Cases	0	1	0	1	5	7	3	9
*Family Court, West at Gyalshing	Main Cases	0	8	0	8	0	3	0	3
	Misc Cases	0	0	0	0	0	0	0	0
*Family Court, North at Mangan	Main Cases	0	1	0	1	0	0	0	0
	Misc Cases	0	0	0	0	0	0	0	0
Family Court, South at Namchi	Main Cases	13	14	15	12	9	7	8	8
	Misc Cases	1	2	3	0	1	6	4	3
Total Main Cases		33	64	28	69	25	30	21	34
Total Misc Cases		1	3	3	1	6	13	7	12

*Family Court at Mangan, North Sikkim and Gyalshing, West Sikkim started functioning from August, 2014.

(vi) Fast Track Court

Name of the Court		Criminal Cases			
Fast Track Court (east & north at Gangtok)	Main cases	2	0	1	1
	Misc cases	1	0	1	0
Fast Track Court (South & West at Gyalshing)	Main cases	3	2	0	5
	Misc cases	0	2	2	0
Total Main cases		5	2	1	6
Total Misc cases		1	2	3	0

(vii) Juvenile Justice Boards

Name of the Court		Criminal Cases			
Juvenile Justice Board East at Gangtok	Main cases	8	6	9	5
	Misc cases	0	0	0	0
Juvenile Justice Board West at Gyalshing	Main cases	2	7	7	2
	Misc cases	0	1	1	0
Juvenile Justice Board North at Mangan	Main cases	2	1	3	0
	Misc cases	0	0	0	0
Juvenile Justice Board South at Namchi	Main cases	3	4	6	1
	Misc cases	0	4	4	0
Total Main cases		15	18	25	8
Total Misc cases		0	5	5	0

SOME RECENT HIGH COURT JUDGMENTS OF PUBLIC IMPORTANCE

1. An employee retiring before the passing of Regulations made effective prospectively providing gratuity shall not be entitled to the benefit of the said

Regulations: On 26/08/2014, a Single Bench of the Court in WP (C) No. 04 of 2014 (Tseten Tashi Bhutia Vs. State Bank of Sikkim & Ors.) Held that the State Bank of Sikkim Service Regulations came into force with effect from 01/03/2011, Regulation 49 Fourth Pay Commission dated 18/11/2009 publishing the Sikkim Government Service (Revised Pay) Rules, 2009 to enhance the pay and allowances of the persons appointed in the state services. Since the petitioner retired 01/03/2011, he unfortunately would not be entitled to the benefits provided therein. It was further held that although the decision of the Board of Directors dated 31/07/1971 taken in its 16th meeting prescribing the gratuity will prevail as a statutory Rule to be followed by the Bank, the said Regulation stands superseded w.e.f. 01/03/2011 on and from which date the Regulations came into force after the retirement of the petitioner and as such, in view of the said reasons, the petitioner would not be entitled to the benefit of the said Regulations.

2. Mental disorder alone is not sufficient to exempt an accused from criminal responsibility, in the absence of proof of legal insanity:

on 27/08/2014, the Division Bench of the Court in Crl. A. No. 14 of 2013 (Narad Pariyar @ Navin Vs. State of Sikkim) has held that while deciding on the plea of “unsoundness of mind”, the standard to be applied is as to whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. Every person having mental disorder is not by that reason alone exempted from criminal responsibility. The burden of proof of unsoundness of mind is on the accused, and that the Court is concerned with legal insanity and not medical insanity. As such, the act of the accused having found acting abnormally preceding the incident of murder of his wife and screaming outside or queer behavior exhibited by the appellant but are certainly not sufficient to prove legal insanity and to attract the application of Section 84 IPC.

3. Facts not pleaded in the plaint cannot be considered in evidence: On 11th September, 2014 a Single Bench of the Court in RFA no. 22/2013 (Subhash Kumar Pradhan Versus Shanti Devi) held that in the absence of pleading, evidence, if any produced by the parties cannot be considered. The plaint itself was completely lacking in 'material facts' which was the basic requirement under Order VI Rule 2 CPC and on this ground the evidence led by the Appellant relating to the facts not pleaded was not required to be considered. It was further held that in a suit for eviction, the burden of providing the grounds for eviction always lies on the Plaintiff. Therefore, the Appellant should have discharge his burden successfully and not that he would simply jumped upon to fined out the alleged defects in the verification of the affidavit file in support of the Respondent, as it is cardinal principal of law that the Plaintiff is required to prove his own case and can only succeed on the strength of his own case and not on the weakness found in the case of the Defendant.

4. Non-commencement of the projects allotted to the companies on account of the imposition of embargo cannot be the ground for withdrawal of the projects allotted to them: On 17/09/2014, the Division Bench of the Court in common judgment rendered in WP(C) for No. 18 of 2014 (M/s. Chungthang Hydro Power Pvt. Ltd. Vs. High Powered Committee (HPC) for Hydro Electric Projects), WP(C) No. 19 Of 2014 (M/s.Lachung Hydro Power Project Pvt. Ltd. Vs. High Powered Committee for Hydro Electric Projects & Ors.) And WP(C) No. 20 of 2014 (M/s. Teesta Hydro Power Pvt. Ltd. Vs. High Powered Committee for Hydro Electric Projects & Ors.), Has turned down the decision of the High Powered Committee recommending the withdrawal of the hydro power project awarded to the petitioners on ground of non-completion of the period for achieving the financial closure within the stipulated period of signing the agreements, non-commencement of the construction of the workers within six months of the financial closure and non-achievement of the commercial operation of the projects within the stipulated period. The Court held that the said failure on the part of the petitioners could be attributed to the imposition of the absolute embargo imposed by the Ministry of Environment and Forests on the project on 08/10/2008, which was lifted only on 18/11/2010, and also the occurrence of the earthquake on 2011, thereby further delaying the commencement of the project in terms of the agreement. The fact of imposition of the embargo and its upliftment at a belated stage being completely ignored by the Committee while recommending withdrawal of the projects, is arbitrary and unfair and without application of mind. The Court set aside the Impugned order of the HPC and allowed the writ petition.

5. **Failure to discharge burden of proof by accused as regards homicidal death of his wife become a grave circumstances against the accused:** on 25.09.2014, a single Bench of the court in criminal appeal no. 20/2014 (Lall Bahadur Rai versus The State of Sikkim) held that under section 106 of the Evidence Act, the facts relating to homicidal death of the wife of the accused must be within the knowledge of the accused. The accused / appellant has not discharged his burden by making any explanation in this regard. Thus, it was a grave circumstance against him. further, it was held that, in a case based on circumstantial evidence, the principle of law is that the circumstances set forth by the prosecution must be fully established. All the circumstances so established must be of conclusive nature and tendency. The circumstances should not be capable of being explained and the chain of circumstantial evidence also must be complete.

MAJOR DEVELOPMENTS AND EVENTS

(1) SWEARING IN CEREMONY OF HON'BLE MR. JUSTICE SUNIL KUMAR SINHA AS JUDGE, HIGH COURT OF SIKKIM



On 14th July, 2014 Hon'ble Mr. Justice Sunil Kumar Sinha, Judge of Chhattisgarh High Court was sworn in as a Judge of the High Court of Sikkim. The Oath of Office was administered by the Hon'ble Governor of Sikkim, Shri Shrinivas Patil at Ashirwad Hall, Raj Bhavan in the presence of Hon'ble the Chief Justice, Hon'ble Speaker, Hon'ble Judge, Cabinet Ministers, Chief Secretary, Dignitaries of the State Government, Advocate General, Additional Advocate General, Judicial Officers, Senior Advocates, Members of the Bar and local gentry.

Hon'ble Shri Justice Sunil Kumar Sinha was born in a lawyer's family at Ambikapur (Chhattisgarh) on 7th July, 1954. He completed his Secondary Education from a Government Multipurpose Higher Secondary School, Ambikapur. He took his B.Sc. Degree from Government

Post Graduate College, Ambikapur in the year 1973 and thereafter also took Masters Degree in Botany from the same Institution in the year 1975. He did his LL.B. in the year 1980 from Government Post Graduate College, Ambikapur and was placed in first division. He was enrolled as an advocate in the State Bar Council of Madhya Pradesh on 3rd September, 1980. He started his practice in the District and Sessions Court at Ambikapur under the guidance of his father, Late S.P. Sinha, Advocate, who was an eminent lawyer of Civil, Criminal and Revenue side.

He has worked in all branches in the Trial Court at Ambikapur from 1980 to 1993. Thereafter he shifted to the High Court of Madhya Pradesh at Jabalpur where he practiced till October 2000 in Civil, Criminal and Constitutional side. Further, he practiced in the State Administrative Tribunal at Jabalpur and handled many cases of different nature.

After re-organization of the state of Madhya Pradesh, he shifted to High Court of Chhattisgarh at Bilaspur in the month of November 2000. There he practiced in various branches of law. He was appointed as Additional Advocate General of Chhattisgarh in May 2003 and held that post till February 2004. He thereafter started private practice till his elevation as permanent Judge of the High Court of Chhattisgarh on 1st December, 2004.

(2) INDEPENDENCE DAY CELEBRATION

The High Court of Sikkim celebrated the 68th Independence Day on 15th August, 2014. The National Flag was unfurled by Hon'ble Mr. Justice N.K. Jain, Chief Justice, High Court of Sikkim. A Cultural Programme was presented by staff of the High Court and children from a local NGO, Sri Satya Sai Sewa Organisation, Gangtok.

Also present on the occasion were Hon'ble Mr. Justice Sunil Kumar Sinha, Judge, High Court of Sikkim, Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim, Madam Madhu Bala Jain, Madam Sudha Rani Sinha, Madam T.T. Wangdi, Judicial Officers, Senior Advocates, Members of the Bar, Officers and staff of the Registry, Persons from the Electronic and Print Media.

(3) RECRUITMENT OF JUDICIAL OFFICERS

The recruitment process for filling up of three vacant post in the cadre of Sikkim Judicial Service was completed in the month of August, 2014.



Hon'ble Mr. Justice N.K. Jain, Chief Justice

(4) FOUNDATION STONE LAYING CEREMONY OF THE DISTRICT & SESSIONS COURT AT GYALSHING, WEST SIKKIM

On 13th September, 2014 Hon'ble Mr. Justice N.K. Jain, Chief Justice, High Court of Sikkim laid the Foundation Stone of the District & Sessions Court at Gyalshing, West Sikkim in the presence of Hon'ble Mr. Justice S.K. Sinha, Judge, High Court of Sikkim and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim.

Also present on the occasion were Officers of High Court of Sikkim, Government Officers from West District, Senior Advocates, Bar Members (West), officers of the District & Sessions Court, Gyalshing, West Sikkim.



IMPORTANT VISITS & CONFERENCES

- Hon'ble Mr. Justice N.K. Jain, Chief Justice, High Court of Sikkim, Hon'ble Mr. Justice S.K. Sinha, Judge, High Court of Sikkim and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim visited Gyalshing, West Sikkim to lay the Foundation Stone of the District & Sessions Court at Kyongsa, West Sikkim.
- On 2nd & 3rd August, 2014 Hon'ble Mr. Justice S.K. Sinha, Judge, High Court of Sikkim attended the Meeting of Chairpersons of Computer Committees and CPCs e-Courts of all High Courts at New Delhi.

His Lordship also attended a Regional and National Round Table Conference for North Eastern Region on Juvenile Justice at Guwahati on 23rd and 24th August, 2014.

- Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim attended a Meeting with Hon'ble Executive Chairman, NALSA and Hon'ble Executive Chairperson of other State Authorities at New Delhi.

Glimpses of Independence Day Celebration

