



# COURT NEWSLETTER

## HIGH COURT OF SIKKIM

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*L-R: Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India, Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim 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 31.03.2012

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	02	1

(ii) Vacancies in the District & Subordinate Courts as on 31.03.2012

Sl. No.	Name of the State	Sanctioned Strength	Working Strength	Vacancies
1.	SIKKIM	13	09	04

(iii) Vacancies in the High Court of Sikkim as on 30.06.2012

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	02	1

(iv) Vacancies in the District & Subordinate Courts as on 30.06.2012

Sl. No.	Name of the State	Sanctioned Strength	Working Strength	Vacancies
1.	SIKKIM	17	11	06

## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

### (1) High Court of Sikkim from 1.01.12 to 31.03.12

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1	52	16	14	54	15	08	08	15	69

### (2) District & Subordinate Courts from 1.01.12 to 31.03.12 (East & North) & (South & West)

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	371	56	34	393	733	340	236	837	1230

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	182	95	79	198	26	382	381	27	225

### (3) Family Court (East & North) at Gangtok from 1.01.12 to 31.03.12

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	41	19	25	35	16	03	10	09	44

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	1	2	0	3	9	3	7	5	8

(4) Family Court (South & West) at Namchi from 1.01.12 to 31.03.12

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	24	21	20	25	9	5	3	11	36

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 31.03.12
	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	0	0	0	0	5	0	3	2	2

(5) Lok Adalat Cases from 1.01.12 to 31.03.12

Sl. No.	Name of Lok Adalat	Opening Balance as on 1.01.12	Institution from 1.01.12 to 31.03.12	Disposal from 1.01.12 to 31.03.12	Pendency at the end of 31.03.12	Cases returned
1.	High Court Lok Adalat	4	3	4	3	0
2.	District Lok Adalat at Gangtok	23	150	114	50	9
3.	District Lok Adalat at Namchi	14	14	7	21	0
4.	Taluk Lok Adalats at Gyalshing	3	35	34	4	0
5.	Taluk Lok Adalats at Ravangla	0	36	36	0	0
6.	Taluk Lok Adalats at Mangan	0	0	0	0	0
	Total	44	238	195	78	9

## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

### (1) High Court of Sikkim from 01.04.12 to 30.06.12

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1	54	30	29	55	15	09	09	15	70

### (2) District & Subordinate Courts from 1.04.12 to 30.06.12 (East & North) & (South & West)

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1.	393	59	125	327	837	277	337	777	1104

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1.	198	110	138	170	27	412	382	57	227

### (3) Family Court (East & North) at Gangtok from 1.04.12 to 30.06.12

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1.	35	28	24	39	9	15	9	15	54

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1.	3	1	2	2	5	3	2	6	8

(4) Family Court (South & West) at Namchi from 1.04.12 to 30.06.12

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1.	25	9	25	9	11	6	7	10	19

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.06.12
	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	
1.	0	0	0	0	2	0	1	1	1

(5) Lok Adalat Cases from 1.04.12 to 30.06.12

Sl. No.	Name of Lok Adalat	Opening Balance as on 1.04.12	Institution from 1.04.12 to 30.06.12	Disposal from 1.04.12 to 30.06.12	Pendency at the end of 30.06.12	Cases returned
1.	High Court Lok Adalat	3	6	0	9	0
2.	District Lok Adalat at Gangtok	50	218	168	92	8
3.	District Lok Adalat at Namchi	21	6	17	10	0
4.	Taluk Lok Adalats at Gyalshing	4	24	27	1	0
5.	Taluk Lok Adalats at Ravangla	0	29	29	0	0
6.	Taluk Lok Adalats at Mangan	0	0	0	0	0
	Total	78	283	241	112	8





**SOME RECENT  
HIGH COURT JUDGMENTS  
OF PUBLIC IMPORTANCE**



1. **Provisions of Section 138 of the Negotiable Instruments Act, 1881 are not attracted where the cheque has not been drawn by the person issuing the same:**

On 29/02/2012, a Single Bench of the Court in CrI. Appeal No. 04 of 2011 (Dr. Deoki Nandan Joshi Vs. Pramod Kumar Joshi) has held that Section 138 of the Negotiable Instruments Act, 1881 which is a penal provision providing for penalties in case of dishonour of cheque for insufficiency of funds etc. in the account requires the cheque to be drawn by the person issuing the same, which means that the cheque should be duly filled in with the name of the person in whose favour the cheque is drawn with date and necessary particulars. As such, where all the particulars in the cheque issued by the respondent in favour of the complainant including date, name etc. that has been dishonoured have been filled up by the complainant himself, the cheque said to be signed by the respondent cannot be said to have been drawn in accordance with law and accordingly, the judgment of acquittal of the Ld. Trial Court deserves no interference.

*[No cases referred]*

2. **Court can invoke power under Order XVI Rule 14 of the CPC to summon and examine a witness at the instance of the parties:**

On 06/03/2012, a Single Bench of the Court in CRP No. 07 of 2011 (Kenneth Brian Cashmore Vs. Principal, Tashi Namgyal Academy) has held that there can be no manner of doubt that powers under Order XVI Rule 14 CPC can be exercised by the court at any time if it thinks necessary to examine a person as a witness. But there is also no bar for the parties under the said provision to bring to the notice of the court the necessity for examining any person as court witness by application or otherwise, and thereupon it is for the court to invoke its power under Order XVI Rule 14 CPC. As such, it is permissible for a party in a suit to invoke such power of the court and for the court to exercise its jurisdiction at the behest of any party to the suit.

*[Some of the cases referred are: (1) Shaik Mohammed Umar Saheb Vs. Kalaskar Karimsab & Ors. : AIR 1970 SC 61; (2) G. Balaqiah Vs. G. Ramchander & Ors. : 1997 (5) ALT 463]*

3. **Besides the object, facts discovered in consequence of the information received from the accused in police custody are also relevant:**

On 12.03.2012, the Division Bench of the Court in Criminal Appeal No. 9 of 2011 (Man Bahadur Subba Vs. State of Sikkim) has held that it is now established proposition of law that facts discovered as a consequence of information received from accused in police custody are relevant and admissible under Section 27 of the Evidence Act and not only discovery of the object. It was also held that the settled law is that the statement made in expectation of death where the injured survives though inadmissible under Section 32 of the Evidence Act, is admissible under Section 157 of the Evidence Act.

*[Some of the cases referred are: (1) Pulukuri Kottaya & Ors. Vs. Emperor: AIR 1947 Privy Council 67; (2) Aftab Ahmed Ansari Vs. State of Uttaranchal: (2010) 2 SCC 583; (3) State of U.P. Vs. Veer*

*Singh & Ors.: (2004) 10 SCC 117; 4. Ranjit Singh & Ors. Vs. State of M.P.: (2011) 4 SCC 336; 5. Sunil Kumar Vs. State of M.P.: (1997) 10 SCC 570; 6. Maqsoodan Vs. State of U.P.: (1983) 1 SCC 218; 7. Ramprasad Vs. State of Maharashtra: (1999) 5 SCC 30; 8. Golla Yelugu Govindu Vs. State of A. P.: AIR 2008 SC 1842, 9. Mariadasan & Ors. Vs. State of Tamil Nadu: (1980) 3 SCC 68; 10. Hari Ram Vs. State of Haryana: AIR 1983 SC 185; 11. Sanjay Subba Vs. State of Sikkim: 2004 CRI.L.J. 3285]*

**4. In order to attract the bar of double jeopardy, there must be a determination on the same offence in the earlier proceedings:**

On 15.03.2012, a Single Bench of the Court in CrI. Rev. Petition No. 09 of 2011 (Dil Hasan Ansari & Ors. Vs. State of Sikkim) has held that in order to attract the bar of double jeopardy as contained in Article 20 (2) of the Constitution or Section 300 of the Cr. P. C., 1973, it is necessary and imperative that there must be a determination on the same offence in earlier proceedings. As such, where there has been no determination of the acquittal on merits on the basis of the evidence in the earlier proceedings, rather the acquittal has been endured in the absence of the evidence which could not be produced by the investigating agency, it does not provide any ground for the petitioners to seek quashing of the subsequent proceedings on the basis of the so-called acquittal in the earlier proceeding, as the essential ingredients of Article 20 (2) of the Constitution and Section 300 of the Cr. P. C. are not established. The court further held that the bar of double jeopardy is not attracted where the person has not been charged for the same offence in both the cases.

*[ Some of the cases referred are: (1) The Assistant Collector of Customs, Bombay & Ano. Vs. L. R. Melwani & Ano.: AIR 1970 SC 962; 2. State of M. P. Vs. Bhooraji & Ors.: (2001) 7 SCC 679; 3. State Vs. Nalini & Ors.: (1999) 5 SCC 253; 4. Kolla Veera Raghav Rao Vs. Gorantla Venkateswera Rao & Ano.: (2011) 2 SCC 703; 5. State of W. B. & Ors Vs. Swapan Kumar Guha & Ors.: (1982) 1 SCC 561; 6. Ravinder Singh Vs. State of Haryana: (1975) 3 SCC 742; 7. V. K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhanwanji Bhatia & Ors.: (1988) 3 SCC 467; 8. Amar Singh Vs. Balwinder Singh & Ors.: (2003) 2 SCC 518; 9. Balbir Singh Vs. State of Delhi: (2007) 6 SCC 226; 10. Manipur Administration, Manipur Vs. Thokchom Bira Singh: AIR 1965 SC 87; 11. Queen Vs. Ollis: (1900) 2 QB 758 at pp 768-69]*

**5. Court can exercise power of judicial review to examine the validity of the decision making process and not the decision itself:**

On 15.03.2012, a Single Bench of the Court in WP(C) No. 19 of 2011 (Sital Enterprises & Ors. Vs. State of Sikkim & Ano.) has held that the power of judicial review in commercial field is to be exercised to examine the validity of decision making process of public authorities and not the decision itself. The judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. The court has to examine whether the decision making process has been fair, transparent, non-arbitrary and is not influenced by any extraneous or irrelevant considerations. In absence of any such infirmity on examination, even if it is found that decision, per se, may not be sound,

no interference is warranted provided the decision is in public interest.

*[Some of the cases referred are: 1. Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors.: (1991) 3 SCC 273; 2. United India Periodicals Pvt. Ltd. Vs. M/s. M & N Publications Ltd. & Ors.: (1993) 1 SCC 445; 3. TATA Cellular Vs. Union of India : (1994) 6 SCC 651; 4. Jagdish Mandal Vs. State of Orissa & Ors.: (2007) 14 SCC 517]*

6. **Date of substantive appointment alone is the determinative factor for fixation of seniority:**

On 16/03/2012, a Single Bench of the Court in WP (C) No. 09 of 2012 (Jagat Prasad Thapa & Ors. Vs. State of Sikkim & Ors.) has held that where the rule of Seniority, being the Sikkim State Services (Regulation of Seniority) Rules, 1980 provides that the date of substantive appointment to a cadre of service is the determinative factor for fixation of seniority and thereafter, the rotation of vacancies is applicable for the purpose of preparing seniority roster, as such, contention that the date of interview for the Assistant Engineers or when the vacancies in the said posts were available should be taken as the date of substantive appointment cannot be accepted. It was also held that it is a settled principle of law that the settled seniority cannot be tempered with beyond a reasonable time, even if it is found that the seniority was wrongly fixed at any given date.

*[No cases referred]*

7. **Appellate court can reverse the decision of acquittal of the trial court by reviewing the entire evidence and recording reasons:**

On 20/04/2012, the Division Bench of the Court in CrI. Appeal No. 8 of 2011 (State of Sikkim Vs. Rakesh Rai @ Vishal Rai @ Purna Rai & Ano.) has held that in an appeal against acquittal, the appellate court's power brings within its sweep the power to review the entire evidence and come to its own conclusion, but in doing so, it is required to consider every matter on record germane to the question of fact, and further, if it is to be held that the acquittal by the trial court was not justified, reasons ought to be given rendering the judgment as to why the acquittal has not been justified, the paramount consideration of the court being to ensure that miscarriage of justice is prevented. The Court further held that in a case based on circumstantial evidence, where the trial court has arrived at the conclusion that the circumstances have not been proved and thereby acquitted the respondents without setting out the circumstances, the appellate court can interfere such decision and reverse the finding of the trial court by meticulously observing the evidence and recording its reasons in order to ensure that there is no failure of justice.

*[Some of the cases referred are: Joseph Vs. State of Kerala: (2000) 5 SCC 197, Subramania Goundon vs. The state of Madras: AIR 1958 SC 66, State of Madhya Pradesh vs. Digvijay Singh; AIR 1981 SC 1740].*

8. **Court can exercise power of judicial review to compel performance of duty if the authorities passing the order ignore relevant considerations :**

On 27/04/2012, a Single Bench of the Court in WP (C) No. 37 of 2011 (Sikkim Manipal University & Ano. Vs. Union of India & Ors.) has held that in exercise of the power of judicial review under Article 226 of the constitution of India, the court is entitled to only examine the justiciability and manner of exercise of administrative power by the statutory/administrative authority on the touch stone of Wednesbury principle, want of jurisdiction with the statutory authority, bias/ mala fide, arbitrariness, irrationality, perversity and other factors. The court is entitled to compel the performance of a particular duty or act if the authorities passing the order ignore relevant considerations and materials or exercise discretion in such a manner so as to frustrate the objective conferring such discretion.

*[No cases referred]*

9. **Judgment passed without recording findings on all issues is in gross violation of Order XX, Rule 5 of the CPC:**

On 01/05/2012, the Division Bench of the Court in RFA No. 7 of 2011 (Furden Tshering Bhutia & Ors. Vs. Smt. Payzee Bhutia & Ors.) has held that, Order XX Rule 5 of the CPC enjoins a duty upon the trial court to record its findings upon each separate issue. As such, where the judgment of the trial court has not recorded the findings on all the issues, and especially the issue that was of vital importance to effectively and conclusively decide the rights of the parties, the judgment is in gross violation of Order XX Rule 5 of the CPC, and is not sustainable in law and the same is set aside.

*[Some of the cases referred are: P. Purushottam Reddy and Another vs. Pratap Steels Ltd. (2002) 2 SCC 686, Lanka Venkateshwarlu vs. State of A.P. & Ors. AIR 2011 SC 1199, Collector, Land Acquisition Anantnag & another vs. Mst. Katiji and Ors. AIR 1987 SC 1353.]*

10. **To constitute offence under Section 409 IPC, proof of entrustment of property by public servant must be coupled with the proof of commission of criminal breach of trust by him:**

On 03/05/2012, the Division Bench of the Court in CrI. Appeal No. 10 of 2010 (State of Sikkim Vs. Sonam Wangdi Lepcha), rejecting the proposition of the Ld. Public Prosecutor that the offence under Section 409 IPC would be established if the factum of entrustment of property with the public servant is proved, has held that apart from the entrustment or dominion over property in the person in his capacity of a public servant, it also requires proof of commission of breach of trust in respect of that property. Therefore, the essential ingredient for the offence under Section 409 IPC is entrustment and dominion over property coupled with the commission of criminal breach of trust in respect of that property.



[ Some of the cases referred are:

(1) *Jiwan Dass vs. State of Haryana*: (1999) 2 SCC 530 (2) *Som Nath Puri vs. State of Rajasthan*: (1972) 1 SCC 630 (3) *Anwar Chand Sab Nanadikar vs. State of Karnataka* (2003) 10 SCC 521 (4) *Janeshwar Das Aggrawal vs. State of U.P.* : AIR (1981) SC 1646 (5) *State represented by Inspector of Police vs. Saravanan and another*: (2008) 17 SCC 587 (6) *Prithi vs. State of Himachal Pradesh*: (2009) II SCC 588 (6) *State of Rajasthan vs. Talevar and another*: AIR (2011) SC 2271]

**11. Examination of the person against whom the offence is alleged to have been committed is mandatory under the proviso to Section 237(1), Cr. P. C.:**

On 04/05/2012, a Single Bench of the Court in Crl. Revision Petition No. 13/2011 (State of Sikkim Vs. Santosh Kumar Bardewa & Ors.) has held that under the proviso to Sub-section (1) of Section 237 Cr. P. C., the evidence of the person against whom the offence is alleged to have been committed is mandatorily required to be taken unless directed otherwise for the reasons to be recorded, and the "person against whom the offence is alleged to have been committed" as contained in the proviso to Sub-section (1) of Section 237 Cr. P. C., 1973 would fall within the meaning of "any remaining witness for the prosecution" as provided under Sub-section (6) of Section 246 of the said Code. As such, it was erroneous on the part of the trial court to have rejected the application for examination of the complainant as a witness under Section 246 (6) of the said Code without issuing any direction under the proviso to Sub-section (1) of Section 237 of the Cr. P. C., 1973. exempting him from being examined as a witness.

[Some of the cases referred are: *Sayeeda Farhana Shamin vs. State of Bihar and anr*: (2008) 8 SCC 218, 2001 Crl. LJ 871 in *Kolangarakath Kammuthy vs. Kodakkattakath Puthenvettil Muhammad & Ors.*]

**12. In the absence of proof of possession of counterfeit currency notes, offence under Sections 489C and 489D IPC is not made out:**

On 08/05/2012, a Single Bench of the Court in Crl. Appeal No. 02 of 2012 (Youhna Hang Subba Vs. State of Sikkim) has held that the ingredient of the offences under Sections 489C and 489D IPC is the possession of forged and counterfeit currency notes. In other words, "possession" is the primary ingredient in both these offences. Since the prosecution has failed to satisfy the said ingredient of the offences charged against the appellant beyond reasonable doubt, the conviction and sentence passed against the appellant are set aside.

[Some of the cases referred are: *Basi Reddy and others*: 1972 CRI. L.J. 1141 (Mysore), *Brathi alias Sukhdev Singh vs. State of Punjab*: AIR 1991 SC 318, *K. Hashim vs. State of T.N.* : (2005) 1 SCC 237.

**13. Where there is non observance of the principles of natural justice in the arbitral proceedings, the award of the arbitral tribunal are liable to be set aside:**

On 10/05/2012, a Single Bench of the Court in Arb. Appeal No. 01 of 2011 (Shiv Shankar

Dhakal Vs. Mukti Nath Adhikari) has held that it is true that the arbitrators are not obliged to record the proceedings like a civil court, but it is bound to observe the principles of natural justice which is the foundation of every adjudicatory process including the domestic tribunal like arbitration. As such, where no opportunity was allowed by the tribunal to the parties to lead evidence, the award of the tribunal are liable to be set aside for non-observance of principles of natural justice.

*[No cases referred]*

14. **Withdrawal of benefits of exemption extended earlier to industrial units is not justifiable in the absence of supervening public interest or public policy or the exercise of sovereign authority:**

On 11/05/2012, a Single Bench of the Court in WP (C) No. 22 of 2007 (M/s. Unicorn Industries Vs. Union of India & Ors.), striking down the impugned Notification No. 21/2007-CE dated 25/04/2007, whereby the petitioner's unit has been excluded from the benefit of exemption from central excise extended vide earlier Notification issued by the Government of Sikkim pursuant to the issue of Notification by the Central Government in exercise of its power under Sub-section (1) of Section 5A of the Central Excise Act, 1944, has held that once such benefit is conferred upon any individual or juristical person for a specified period, and acting upon which such person has altered its position to its detriment by investing huge amount, it's premature withdrawal has to be justifiable for valid reasons and purposes. The law of promissory estoppel operates in such cases, and the state is not entitled to recall the benefits in the absence of valid, justifiable public policy and supervening public interest or the exercise of its sovereign authority.

*[Some of the cases referred are:*

*(1) Motilal Padampad Sugar Mills Co. Ltd. vs. State of U.P. : (1979) 2 SCR 641 : (1979) 2 SCC 409  
(2) Mahavir Vegetable Oil (P) Ltd. and ano vs. State of Haryana and ors: (2006) 3SCC 620 (3) State of Punjab vs. Nestle India Ltd. and ano: (2004) 6 SCC 465 (4) MRF Ltd. vs. Asst. Commissioner (Assessment) Sales Tax : (2006) 8 SCC 702 : 2006 (206) E.L.T. 6 (S.C.)]*

15. **Exemption from excise duty to the new industrial units does not include exemption from education cess and National Calamity Contingent Duty (NCCD):**

On 11/05/2012, a Single Bench of the Court in WP (C) No. 24 of 2007 (Unicorn Industries Vs. Union of India & Ors.) has held that taxes levied as National Calamity Contingent Duty (NCCD), Secondary and Higher Education Cess imposed vide Finance Acts 2001, 2004 and 2007 respectively are the indirect taxes levied for particular purposes, and are in the nature of surcharge. The education cess is a part of the Central Government's proposal to discharge its constitutional obligation of providing free education. Similarly, the NCCD was meant for the creation of fund to meet the expenditure for the natural disaster by way of surcharge. Thus, both the levies being not the excise duties in the real sense of the



definition, the petitioners are not entitled to exemption from payment of the said duties in terms of the Industrial Policy Resolution, 1997, Memorandum dated 23.12.2002 issued by the Central Government and the exemption Notification dated 09.09.2003.

[Some of the cases referred are: AIR 1962 SC 1006: *M/s Chhotabhai Jethabhai Patel and Co. vs Union of India, Har Shankar and others vs. They Dy. Excise & Taxation Commr. And Ors.*: (1975) 1 SCC 737, *Commissioner of Sales Tax, U.P. V. Modi Sugar Mills Ltd.*: AIR 1961 SC 1047, *Union of India Vs. Modi Rubber Ltd.*: (1986)4 SCC 66.]

16. **While permitting production of additional evidence, the appellate court has the duty to determine the existence of situation prescribed under Order XLI, Rule 27 of the CPC:**

On 17/05/2012, the Division Bench of the Court in RFA No. 02 of 2011 (Lhakila Tongden Lepcha & Ors. Vs. Passang Tongden Lepcha) has held that the appellate Court has the jurisdiction to permit production of additional evidence under the conditions provided under Rule 27 of Order XLI. It is the duty of the court to determine whether the situation contemplated under clauses (a) and (aa) of Rule 27(1) exists whereunder the parties acquire the right to seek production of additional evidence or else the court itself is unable to decide the appeal on the basis of evidence on record and requires additional evidence, whether oral or documentary to enable itself to pronounce the judgment or for any other substantial cause to permit additional evidence by the parties. Further, the court, while dealing with the scope of clause (aa) of Rule 27(1) Order XLI CPC, has, relying on the decision of the Hon'ble Supreme Court in Jaipur Development Authority Vs. Kailashwati Devi [(1997) SCC 297] held that the condition prescribed under the said provision is not applicable only where the party produced some evidence in the trial court, but is equally applicable where the party has led no evidence.

[Some of the cases referred are:

(1) (1997) 7 SCC 297: *Jaipur Development Authority vs. Kailashwati Devi* (2) (2001) 1 SCC 309 *Mahavir Singh and ors. vs. Naresh Chandra and another* ]

17. **Non- registration of the agreement of sale does not debar the transferee from his right over the property, if all the requirements of Section 53A of the Transfer of Property Act, 1882 are fulfilled:**

On 21/05/2012, a Single Bench of the Court in RFA No. 05 of 2011 (Udai Sapkota Vs. Laxmi Prasad Sapkota & Ano.) has held that Section 53A of the Transfer of Property Act, 1882 has been inserted on the principle of estoppel against the wrongdoer and of equity in favour of the wronged. If the requisite conditions as prescribed under the said Section are satisfied, it is immaterial if the instrument though required to be registered, is not registered, or where there is an instrument of transfer, it has not been completed in the manner prescribed by law. The court further held that as an agreement of sale need not necessarily be registered, its non- registration does not in any manner diminish its value as a valid document subject, of course, to the proof of its contents as required under the Evidence Act, 1872.

[ Some of the cases referred are:

(1) *Dharma Naika vs. Rama Naika & anr* : AIR (2008) SC 1276 (2) *Bank of Baroda, Bombay vs. Shree Moti Industry, Bombay and others*: AIR (2008) Bombay 201 (3) *Ramkrishna Girishchandra Dode and ors vs. Anand Govind Kelkar and others etc.* : AIR (1999) Bombay 89 (4) *Seshamma vs. N.M. Haneef and others*: AIR (2010) (NOC) 653 (Madras) (5) *Girija Nandan Singh and others vs. Girdhari Singh and ors*: AIR (1951) Patna 277.

18. **In order to establish offence under Section 420 IPC, the ingredients of Section 415 IPC have also to be satisfied:**

On 22/05/2012, a Single Bench of the Court in CrI. M. C. No. 7 of 2011 (Mintu Singha Roy Vs. Tenzing Dolkar & Ano.) has held that Section 415 of the IPC, as is evident, is the genus and whereas Section 420 IPC as alleged in the present case is its species and therefore, in establishing the offence under the latter provision, the ingredients of the former would necessarily have to be satisfied. The Court further held that where no element of deceit could be inferred from the action of the respondent, the ingredient of offence under Section 420 IPC cannot be said to have been satisfied.

[ Some of the cases referred are: *R. Kalyani vs. Janak C. Mehta and Others*; (2009) 1 SC 516, *State of Haryana and others vs. Bhajan Lal and Ors*: 1992 Supp(1) SCC 335, *Indian Oil Corporation Vs. NEPC India Ltd. and others*: (2006) 6 SCC 736.]

19. Sanction for prosecution of public servant is not necessitated in every offence: On 13/06/2012, a Single Bench of the Court in CrI. Rev. P. No. 7 of 2011 (Kul Chandra Baral Vs. State of Sikkim) has held that it is a settled law that it is not every offence committed by a public servant which falls within the purview of Section 197 of the Code of Criminal Procedure, 1973 and sanction is necessitated. Sanction for prosecution under Section 409 IPC is not the mandate of law. It was further held that any error or irregularity in the grant of sanction or framing of the charge cannot be a ground for setting aside the conviction unless failure or miscarriage of justice has been shown. The Court further held that it is a settled legal position that once the entrustment of property under Section 409 IPC is proved, it is not necessary for the prosecution to establish the mode and manner of misappropriation by the accused and where accused fails to account for the entrusted property, misappropriation is to be inferred and is deemed to be proved.

[ Some of the cases referred are:

(1) *Sukvinder Singh and ors vs. State of Punjab* : (1994) 5 SCC 152 (2) *Ajit Savant Majagvai vs. State of Karnataka* (1997) 7 SCC 110 (3) *State of Maharashtra vs. Sukhdev and anr* : (1992) 3 SCC 700 (4) *Krishan Kumar vs. Union of India* : AIR (1959) SC 1390 (5) *Jai Krishnadas Manohardas Desai and anr vs. State of Bombay* : AIR (1960) SC 889 (6) *Chittranjan Das vs. State of West Bengal* : AIR (1963) SC 1696]

20. **Court convicting the accused based on dying declaration should consider the declaration and the evidence with extreme care and caution:**

On 28/06/2012, the Division Bench of the Court in CrI. Appeal No. 13 of 2011 (Ashok Pokhrel Vs. State of Sikkim) has held that it is no doubt trite that a dying declaration if found reliable can form the basis of conviction. However, it is also a settled law that where conviction is solely based on dying declaration, there is an obligation on the part of the court to consider with extreme care and caution both the dying declaration and the evidence of the witnesses supporting it. Further, the court, while referring to the judgment of the Supreme Court in the case of Nallam Veera Satyasanandam & Ors. Vs. Public Prosecutor, High Court of A. P. (AIR 2004 SC 1708) has held that where there are multiple dying declarations, each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other.

*[Some of the cases referred are: Panchdeo Singh vs. State of Bihar: (2002) 1 SCC 577, K. Ramachandra Reddy and Another vs. The Public Prosecutor: AIR 1976 SC 1994, Ranjit Singh and Others vs. State of Punjab: (2006) 13 SCC 130.]*

# **MAJOR DEVELOPMENTS & EVENTS**





### 1) Republic Day Celebration

On 26<sup>th</sup> January, 2012 the High Court of Sikkim celebrated Republic Day in its premises. The National Flag was unfurled by Hon'ble Mr. Justice S.P. Wangdi. Thereafter, Guard of Honour was given to His Lordship by the guards attached to the High Court, followed by National Anthem sung by all present.

Also present on the occasion were Mrs. T.T. Wangdi (spouse of Hon'ble Mr. Justice S.P. Wangdi), Judicial Officers of East District, Members of the Bar, Officers & staff of the Registry, Press and Media.



*GLIMPSES OF THE REPUBLIC DAY*



2) **Laying of foundation stone of Alternative Dispute Redressal Centre (ADR Centre) at Gangtok for East District by Hon'ble Mr. Justice D.K. Jain, Judge, Supreme Court of India**



*Hon'ble Mr. Justice D.K. Jain laying the Foundation Stone for the ADR Centre, East at Gangtok*

Centre for East District at District Court complex, Sichey, Gangtok in the august presence of Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim and Patron-in-Chief, Sikkim State Legal Services Authority (Sikkim SLSA) and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Executive Chairman, Sikkim SLSA.

Establishment of District Alternative Dispute Resolution (ADR) Centers and promoting the ADR mechanism is one of the components under which the 13<sup>th</sup> Finance Commission has allocated Rs.2.72 crores for the State of Sikkim for setting up ADR Centers in the State.

Accordingly, on 6<sup>th</sup> March, 2012 Hon'ble Mr. Justice D.K. Jain, Judge, Supreme Court of India laid the foundation stone for the ADR



Present on the occasion were Registrar General, High Court of Sikkim, Member Secretary (Sikkim SLSA), Judicial Officers of the East District, Ex-Officio Members of Sikkim SLSA, High Court Legal Services Committee/District Legal Services Authority, Para-Legal Volunteers, Mediators, Members of the Bar, Officers of the Buildings & Housing Department, Officers/staff of High Court/Sikkim SLSA and District Court, Press and Media Persons.



*From L - R : Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim, Hon'ble Mr. Justice D.K. Jain, Judge, Supreme Court of India and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim.*

### 3) Laying of foundation stone of Alternative Dispute Redressal Centre (ADR Centre) at Namchi for South District



*Hon'ble Mr. Justice Permod Kohli lighting the inaugural Lamp*

In her welcome address, Mrs. Meenakshi M. Rai, District & Sessions Judge (South & West) at Namchi highlighted the importance of Alternative Dispute Resolution Centre and the role of the various forms of ADR.



*Mrs. Meenakshi M. Rai, District & Sessions Judge (S/W) & Chairman, District Legal Services Authority addressing the gathering*

Hon'ble Judges, Member Secretary (Sikkim SLSA), District Collector (South), Superintendent of Police, Joint Secretary (Sikkim SLSA), Chairman and Vice Chairman of Namchi Municipal Council along with its members, Members of Bar Association of Namchi, Para Legal Volunteers and Members from different Gram Panchayat Unit, Secretary (PHE/Building), Additional Chief Engineer (PHE), Officials from High Court of Sikkim, Press and Media Persons.

Similarly, on 28th April, 2012 Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim and Patron in-Chief, Sikkim State Legal Services Authority (Sikkim SLSA) laid the Foundation Stone for the ADR Center for South District at District Court premises, Namchi in the August of presence Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Executive Chairman, Sikkim SLSA.



*From L - R : Hon'ble Mr. Justice Permod Kohli, and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim, laying the foundation stone for ADR centre, South at Namchi*

Mr. K.W. Bhutia, Chief Judicial Magistrate-cum-Civil Judge (South & West) proposed the vote of thanks.

The function was attended by the spouses of



*Government Officials and others at the function*





*Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India  
laying the Foundation Stone of the Judicial Academy*



**4) Laying of foundation stone of Sikkim Judicial Academy (Nyaya Dwar) by Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India and Executive Chairman, National Legal Services Authority**



*From L - R : Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim, Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim.*

Recognizing the importance and necessity of a State Judicial Academy for training of Judges, the 13<sup>th</sup> Finance Commission noted that while some States had well equipped Judicial Academies others such as Sikkim lacked such infrastructure. Thus, with a view to ensure proper and complete training of judges in all states with well equipped Judicial Academies, Rs.15 crores has been allocated per High Court. As Sikkim does not have a Judicial Academy, accordingly 2.92

acres of land has been acquired for the purpose at Sokeythang, East Sikkim.

The D.P.R. and Blue Print Plan for the Academy has been prepared by the Officers and Architects of the Buildings & Housing Department for construction of a state-of-the-art Judicial Academy in the State.

On 14<sup>th</sup> May, 2012 Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India and Executive Chairman, National Legal Services Authority laid the Foundation Stone of State Judicial Academy at Sokeythang, Gangtok in the august presence of Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim and Patron -in-Chief, Sikkim State Legal Services Authority (Sikkim SLSA) and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Executive Chairman, Sikkim SLSA.



*Officers and Architects of Buildings & Housing Department briefing their Lordships.*

At the function, Hon'ble Justice Altamas Kabir said that the Judicial Academy would prove to be





*From L-R: Chief Secretary, DGP, Registrar & Judicial Officers at the function*

Justice Permod Kohli, Chief Justice, High Court of Sikkim said the new complex would cater to the academic, administrative and residential needs of the Judicial Academy in imparting training and judicial education to newly inducted civil judges, judicial magistrates and district judges as well as in arranging continuous judicial education programmes for in-service judicial officers and prosecutors. It will also conduct training courses for new prosecutors. He also said the new Judicial Academy would be named 'Nyaya Dwar' (the temple of justice).

a milestone in the administration of justice in the State and would also be a place to deliberate on and exchange ideas. He said that the powers of judiciary should be exercised for strengthening the common people's faith in the administration of justice and the judicial officers ought to be conversant with the latest legislations and maintain poise and steadiness in their functioning.

While addressing the gathering, Hon'ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim said the new complex would cater to



*Government Officers & Bar Members at the function*

In his Welcome Address, Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim said that the proposal for setting up of the academy was taken up on August 2009 and the 13<sup>th</sup> Finance Commission has earmarked the fund of Rs.15 crores for the establishment of Judicial Academy in every Indian state.



*Bar Members, Officers of the Registry, Media Persons at the function*

Mr. Chewang Zangpo, Chief Engineer of Buildings and Housing Department also addressed the gathering. While Mrs. Nina Kunwar, Joint Registrar-cum-Reader, High Court of Sikkim conducted the day's programme.

Also present on the function were Shri Karma

Gyatso, Chief Secretary, Government of Sikkim, Shri Jasbir Singh, Director General of Police, Mr. Justice A.P. Subba, former Judge of this High Court, Mr. A. Mariarputham, Advocate General,, Mr. U. Sarathchandran, Member Secretary, National Legal Services Authority, Judicial Officers, Senior Advocates, Members of the Bar, Secretary and Officers of Buildings & Housing Department, Government of Sikkim, Officers and staff of the High Court of Sikkim and Sikkim SLSA, Press and Media Persons.



# **IMPORTANT VISITS & CONFERENCES**



1. Hon`ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim was the Guest of Honour on the occasion of Legal Training Programme for young lawyers under the theme of "How to be a Good Lawyer" organised by the Bar Council of Punjab and Haryana, Chandigarh on 24th March, 2012.

His Lordship also attended the NJA Regional Conference (East Zone) from 30th March, 2012 to 1st April, 2012 in Odisha on "Role of Courts in Protection of Human Rights."

2. Hon'ble Mr. Justice S.P. Wangdi, Judge and Executive Chariman, Sikkim State Legal Services Authority attended the 3rd Regional Conference of Eastern States on mediation on 18th February 2012 at Guwahati. The Conference was organised by the Gauhati High Court Mediation Centre and was also attended by Mrs. K.C. Barphungpa, District & Sessions Judge (Special Division - I) and Member Secretary, Sikkim State Legal Services Authority.

His Lordship attended the 10th All India Meet of the State Legal Services Authorities at Patna, Bihar accompanied by the Member Secretary, Sikkim State Legal Services Authority on 3rd and 4th March 2012.

His Lordship also participated in the Annual Calendar Meeting to develop National Judicial Academic`s Calendar and the Integrated National Judicial Calendar for the academic year 2012-13 on 24th March 2012 at NJA Campus, Bhopal, Madhya Pradesh.



## **ALTERNATIVE DISPUTES RESOLUTION AND ITS ROLE IN DISPENSATION OF JUSTICE**

Mr. Justice Permod Kohli  
Chief Justice, High Court of Sikkim &  
Patron-in-Chief, Sikkim State Legal Services Authority

Judiciary is an important and integral limb of the governance in any democratic set up. It has a special place in the Indian Constitution. India is a developing country. Pace of development has been faster in last two decades. With the emergence of new socio-economic conditions of society, new social rights have also emerged. It has brought with it the new social dangers. To encounter the new emerging social dangers various new laws have been enacted by the Parliament and State Legislatures. Every new law has its impact on the justice delivery system. Already overburdened Courts have to shoulder the new responsibilities created by the new laws.

The impact of new laws on the justice delivery system is not appropriately and systematically assessed in our country. Resultantly the burden on the Courts keep increasing with every passing day. Efforts have been made to put the justice delivery system on a new path to meet the new challenges. These new dimensions added to the justice delivery system are collectively termed as Alternative Disputes Resolution. The moot question what is its role in dispensation of justice in our country. The Alternative Disputes Resolution mechanism consists of various methods and adaptations. The object and purport of these new methods is to provide speedy and affordable justice to the consumers of the justice. It goes without saying that our Courts are flooded with cases. In some Courts it is within the manageable limit, whereas in other Courts it has achieved unmanageable proportion, resulting in delay in disposal of the cases. Inability of judicial institutions to overcome the growing problem of arrears in some Courts has invited criticism from other wings. No society or system can remain static. It must come out of its difficulties and problems for its survival. It is to achieve this very object that Alternative Disputes Resolution mechanism is being promoted and encouraged in present days. The intention to promote Alternative Disputes Resolution mechanism is not to render regular Courts irrelevant but to strengthen the justice delivery system.

The foundation of Alternative Disputes Resolution mechanism in post Constitution period was conceptualized in early eighties when Lok Adalats were introduced to settle certain categories of disputes through negotiations between the parties by the Judges without resorting to adjudicatory mode. Since such negotiated settlements had no statutory backing, settlements could only be legalized by passing judicial orders by the Courts on the basis of negotiation arrived

at between the parties. Encouraged with the success of Lok Adalats the Parliament enacted the Legal Services Authorities Act, 1987 to provide legal umbrella to settlements made in Lok Adalats. Exploding boards of Law Courts further prompted the law makers to adopt other Alternative Disputes Resolution methods. Section 89 earlier repealed from the Code of Civil Procedure was reintroduced by Amendment Act No. 46 of 1999 with effect from 01.07.2002. This section recognized following modes of Alternative Disputes Resolution: -

- (a) Arbitration,
- (b) Conciliation,
- (c) Judicial settlement including settlement through Lok Adalats and
- (d) Mediation.

Even though, apparently this mode seems to have been introduced in the Indian Legal System by virtue of Section 89, however, these Alternative Disputes Resolution modes have been in place in our country from centuries.

A settlement of dispute through village elders, village headmen and even family elders is not unknown to the Indian society. Panchayats are one of the most significant examples in this regard.

In the State of Sikkim, disputes were being settled by the authorities like Jongpons (District Officer), Feudal Landlords, Pipons (Headmen) and Mandals, etc. In Lachen and Lachung areas in North Sikkim authorities like Gyen-me (a body of the elders elected by the Pipons) used to decide civil and criminal matters except the murder cases. In 1909, vide State Council resolution, Kazis, Thikadars and Lamas were vested with the judicial powers to decide civil suits with limited monitory jurisdiction and also the criminal matters for awarding prescribed punishments. Even prior to that, Lessee-Landlords were vested with some judicial powers. These Landlord Courts were called as "Adda Courts". Lawyers were not permitted to appear before these Courts. Though all these authorities had also adjudicatory powers, but by and large the settlement was made after hearing the parties to the disputes.

The Alternative Disputes Resolution mechanism has proved to be effective not only because it has taken out the burden from the regular Courts but also because the settlement made by these methods are more or less final in nature and take out the bitterness amongst the parties which otherwise subsists in adjudicatory decisions. Alternative Disputes Resolution also provides cheap, speedy, simple and everlasting solution.

The data available from various Courts and particularly in Sikkim do suggest that

Alternative Disputes Resolution (ADR) has a very significant and effective role in dispensation of justice. This mechanism has come to stay in our legal system.

I remember when the Mediation was first introduced in Delhi, the members of the legal profession angrily reacted to its introduction and there were strikes and suspension of works. Similar reactions were found in other parts of the country. The lawyers had the apprehension that they are being made irrelevant in the justice delivery system, however, their apprehensions proved wrong as the system progressed. Presently a large number of lawyers including Senior Advocates are not only performing the function as Mediators but are keen to do so. In Sikkim also Senior Lawyers have undergone training and are actively engaged in mediation programme. Experience has revealed that settlements made under the Alternative Disputes Resolution mechanism are not only final and everlasting, but also create a healthy atmosphere in the society, which ultimately brings peace in the society. The purpose of Law Courts is to maintain an orderly society. So is under the Alternative Disputes Resolution mechanism. Under adjudicatory mechanism there is always a scope for appeal and further dispute, which is eliminated in the Alternative Disputes Resolution mechanism.

I am happy that situation in the State of Sikkim is different. Sikkim being a small and peaceful State the workload in Courts here is within the manageable limits. I congratulate the people of Sikkim for their orderly behavior.

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## **Welcome Address on the occasion of Foundation Stone laying ceremony of the Sikkim Judicial Academy (Nyaya Dwar) at Sokeythang, Gangtok on May 14, 2012**

Mr. Justice S.P. Wangdi,  
Judge, High Court of Sikkim &  
Executive Chairman, Sikkim State Legal Services Authority

I am deeply honoured and privileged to welcome Hon`ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India and the Executive Chairman, National Legal Services Authority to Sikkim having spared his valuable time to be amongst us. I may mention here that his trip to Sikkim has been his cherished desire for a long time but, due to other commitments it has materialised only this time. It is said "better late than never". On this occasion, I take the opportunity to thank your Lordship in reaching out to States like ours lying in the hinterland of the country and making them feel as its part and instilling in them a sense of dignity and honour. I have heard and read of your Lordship`s tireless efforts in this direction by undertaking arduous journeys all over the country and, this visit is only an indication of that. I must inform the dignitaries here that His Lordship travelled to North Sikkim yesterday to express his solidarity with the earthquake stricken people of that region to share the trauma and pains suffered by them. We are overjoyed on your Lordship`s visit and for honouring us in agreeing to lay the foundation stone of the Judicial Academy aptly christened as "Nyaya Dwar" by our Chief Justice, Hon`ble Mr. Justice Permod Kohli. Thank you very much and we hope that your Lordship has had a comfortable and enjoyable stay.

2. It is with equal measure of pleasure that I welcome Hon`ble Mr. Justice Permod Kohli, Chief Justice, High Court of Sikkim, to this auspicious occasion. This occasion would not have fructified had it not been for his able guidance and skillful handling of the issue as also his positive approach. In just about four months of his assuming the office of the Chief Justice, the state judiciary has achieved much. Due to his affable approach, the State Government responded with spontaneity in establishing District Courts in all the Districts in the State as well as creation of two Sub-Divisional Courts. These are historical achievements for which the people of the State shall be deeply indebted to him and the State Government.
3. It is also my pleasure to welcome Shri Karma Gyatso, Chief Secretary, Government of Sikkim, for having unhesitatingly accepted our invitation to be present in our midst. He has been instrumental in getting over some of the hurdles that existed earlier by placing the problems of the High Court in its proper perspective to the Government. We have the confidence that he will continue to do so, particularly in the successful completion of the project.

4. I welcome Shri Jasbir Singh, the Director General of Police who has always been supportive of the State Judiciary in furthering the cause of development of the judiciary. Under him we have noticed marked improvement in the prosecution of criminal cases and the performance of the law enforcing agency.
5. It is also my pleasure to welcome Mr. Justice A.P. Subba, former Judge of this High Court. His Lordship has been a keen participant in the deliberations on the concept of the institution at the inception and had been and continues to be a source of inspiration for us in the activities of the state judiciary.
6. A hearty welcome to Mr. A. Mariarputham, Learned Advocate General, Government of Sikkim, for having come all the way from Delhi to attend this programme in response to our invitation. We have the confidence that he will play a crucial role in the successful completion of the project and its activities thereafter.
7. It is with a sense of great pleasure that I welcome Mr. U. Sarathchandran, Member Secretary, National Legal Services Authority, to this function. I take this opportunity also to mention that he has been a source of constant guidance and encouragement to the Sikkim State Legal Services Authority and has played a yeomen`s role in projecting the peculiarities, compulsion and necessities of the State of Sikkim and the Sikkim State Legal Service Authority to the National Legal Services Authority.
8. I also welcome Mr. D.R. Thapa, President and Mr. B.R. Pradhan, General Secretary of the Bar Association of Sikkim, Senior Advocates, Learned Members of the Bar and Panel Advocates of the Sikkim State Legal Services Authority.
9. Equally I welcome the Registrar General, High Court of Sikkim, Member Secretary, Sikkim State Legal Services Authority, the Judicial Officers of the State, Secretary, Buildings and Housing Department, Government of Sikkim and his entire team, officers and staff of the High Court of Sikkim and Sikkim State Legal Services Authority and other esteemed invitees.
10. Today, is a day that I consider to be a historic one as it symbolizes the birth of a very

important institution in the State of Sikkim. It is a culmination of a journey filled with tribulation and misconception. Travelling down memory lane, the proposal to set up a Judicial Academy in the State of Sikkim was first taken up by the High Court of Sikkim on 1st of August, 2009, when a High Level Meeting was held between the High Court of Sikkim and the Government of Sikkim which was attended by Hon`ble Dr. Justice Aftab Hussain Saikia, the then Chief Justice of the High Court of Sikkim, Hon`ble Mr. Justice A.P. Subba, then in Office as a Judge and I along with a team of officer representing the High Court of Sikkim and, the Hon`ble Chief Minister of Sikkim, the Legal Advisor to the Hon`ble Chief Minister, Chief Secretary, Additional Chief Secretary, Home Secretary, Secretary, Law Secretary, Buildings & Housing department and others representing the Government of Sikkim. One of the principal agenda of the meeting was to consider the establishment of the State Judicial Academy in Sikkim. After due deliberations, the State Government most graciously welcomed the proposal and accepted it in principle and a decision was taken to carry out a comprehensive feasibility study.

11. This was followed by a letter from the Hon`ble Union Law Minister Dr. M. Veerappa Moily on 31st March, 2010, wherein it was for the first time that we were informed of the Union Government providing Rs. 5000 crores to the States for meeting and enhancing the capacity of the Justice Delivery System. Out of the nine specified activities, a major chunk amounting to Rs. 15 crores was earmarked for construction of the State Judicial Academy. A Full Court meeting of the High Court was then held on 10th June, 2010, in which a firm decision to establish a State Judicial Academy was conveyed to the State Government. The agenda note makes a very interesting reading which I may quote :

“Considering the dynamics of the justice delivery system, its ever-increasing demands and the impact of the laws on various spheres of activities of the state, the need to keep the judges, lawyers, public prosecutors, the police force and the civil servants constantly abreast with the laws relevant to them respectively and updated with the constantly evolving demands of those laws and its implementation, the need to set up an institution under the administrative control of High Court has been acutely felt. Many of the States in the Country have already established such Judicial Academy in view of its relevance and utility. The states have immensely benefitted from those institutions in keeping the justice delivery system and the function of the State administration efficient and in tune with contemporary requirements. The State of Sikkim being situated far way in the fringes of



the Nation, it would be essential to have such an academy. This shall facilitate the State Government to get their civil servants, police force and public prosecutors trained conveniently with the least expenditure, to ensure their efficient functioning. Their training in the Academy would be essential as every activity of the State is based on law. Needless to state that we are governed by the constitution which contains the fundamental principles of governance of the country. The members of the Bar and the judicial officers will also be immensely benefitted.”

12. This was then followed by a Regional Meeting held at Guwahati, Assam on 26th June 2010, to have detailed discussions on the perspective action plan for effective utilization of the grants given by the 13th Finance Commission. Considering the peaceful ambience prevailing in the State of Sikkim, an idea was mooted in the meeting of the Registrar Generals and other officials held in Shillong, Meghalaya on 30th June, 2011, to make the proposed State Judicial Academy in Sikkim as a Training Hub for the surrounding States and other States for which assurance for providing additional budget was made by the Ministry of Law, Government of India.
13. Things would have moved faster but for various reasons it got delayed until the arrival of Hon`ble the Chief Justice, Mr. Justice Permod Kohli under whose helmsman ship we were able to see the materialization of the allotment of this reasonably good size of land for the proposed Academy and, of course the birth of this auspicious day flavored by the august presence of His Lordship Hon`ble Mr. Justice Altamas Kabir and the other Hon`ble dignitaries. With a State ever so co-operative, we are confident of an early completion of the project. I would not like to dwell further on this, as the Hon`ble Chief Justice will enlighten the August gathering as regards the concept of the State Judicial Academy and its future activities.
14. Thank you, and welcome once again.

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