

# HIGH COURT OF SIKKIM



## NEWSLETTER

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January to March, 2017



### **EDITORIAL BOARD**

Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice,  
High Court of Sikkim

Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim

### **COMPILED BY**

Mr. N.G. Sherpa, Registrar General

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# HIGH COURT OF SIKKIM

## EDITORIAL BOARD



**Hon'ble Mr. Justice Satish K. Agnihotri,**  
**Chief Justice,**  
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**Hon'ble Mrs. Justice Meenakshi Madan Rai,**  
**Judge,**  
**High Court of Sikkim**

**VACANCIES IN COURTS**

(i) Vacancies in the High Court of Sikkim as on 31.03.2017

Sl.No.	Sanctioned Strength	Working Strength	Vacancies
1.	03	02	01

(ii) Vacancies in the District & Subordinate Courts as on 31.03.2017

Sl.No.	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim Superior Judicial Service  (SSJS) - 13	07	06 <ul style="list-style-type: none"><li>• 01 post of District &amp; Sessions Judge (Spl. Div.-1)</li><li>• 01 post of District &amp; Sessions Judge (Spl. Div.-II)</li><li>• Member Secretary, Sikkim State Legal Services Authority</li><li>• Director, Sikkim Judicial Academy</li><li>• Central Project Coordinator, e-Courts</li><li>• 01 post in the cadre of SSJS created (in compliance to the direction passed by the Hon'ble Supreme Court in Brij Mohan Lal Vs. Union of India)</li></ul>
2.	Sikkim Judicial Service  (SJS) – 10	06	04 <ul style="list-style-type: none"><li>• Chief Judicial Magistrate-cum-Civil Judge (East) at Gangtok</li><li>• Civil Judge-cum-Judicial Magistrate (South) at Namchi</li><li>• Civil Judge-cum-Judicial Magistrate (West) at Gyalshing</li><li>• Civil Judge-cum-Judicial Magistrate (North) at Mangan</li></ul>
<b>Total</b>	<b>23</b>	<b>13</b>	<b>10</b>

INSTITUTION, DISPOSAL & PENDENCY OF CASES

(1) Statement of Main & Misc. Cases in the High Court of Sikkim from 01.01.2017 to 31.03.2017.

Sl. No.	Pending as on 31.12.2016	Institution	Disposal	Pending as on 31.03.2017
	Main Cases	Main Cases	Main Cases	Main Cases
1.	170	40	24	186

(2) Total Institution, Disposal & Pendency of cases in the Subordinate Courts of Sikkim from 01.01.2017 to 31.03.2017.

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017	Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
East District at Gangtok	Main cases	259	42	58	243	723	176	172	727
	Misc. cases	87	47	35	99	18	158	159	17
West District at Gyalshing	Main cases	27	08	11	24	46	24	26	44
	Misc. cases	14	06	10	10	00	91	69	22
North District at Mangan	Main cases	08	01	08	01	08	08	03	13
	Misc. cases	09	04	05	08	02	13	12	03
South District at Namchi	Main cases	48	25	31	42	133	76	71	138
	Misc. cases	29	119	83	65	01	114	109	06
Family Courts	Main cases	132	34	43	123	28	15	12	31
	Misc. cases	00	01	00	01	03	03	01	05
Fast Track Courts	Main cases	-	-	-	-	12	04	01	15
	Misc. cases	-	-	-	-	00	01	01	00
Juvenile Justice Boards	Main cases	-	-	-	-	10	11	09	12
	Misc. cases	-	-	-	-	00	08	08	00
Total Main Cases		474	110	151	433	960	314	294	980
Total Misc. Cases		139	177	133	183	24	388	359	53

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.01.2017 to 31.03.2017

(i) East District at Gangtok.

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017	Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
District & Sessions Judge (East)	Main cases	111	24	33	102	150	49	22	177
	Misc. cases	67	43	34	76	02	71	71	02
District & Sessions Judge (Spl. Div.-I)	Main cases	14	01	03	12	05	01	02	04
	Misc. cases	03	00	00	03	00	00	00	00
District & Sessions Judge (Spl. Div.-II)	Main cases	07	00	00	07	01	00	01	00
	Misc. cases	01	00	00	01	00	00	00	00
Chief Judicial Magistrate-cum-Civil Judge (East)	Main cases	05	04	02	07	313	105	108	310
	Misc. cases	05	00	00	05	11	32	31	12
Civil Judge-cum-Judicial Magistrate (East)	Main cases	83	12	16	79	192	21	27	186
	Misc. cases	09	04	01	12	03	55	55	03
Civil Judge-cum-Judicial Magistrate Chungthang Subdivision stationed at Gangtok (East)	Main cases	39	01	04	36	62	00	12	50
	Misc. cases	02	00	00	02	02	00	02	00
Total Main Cases		259	42	58	243	723	176	172	727
Total Misc. Cases		87	47	35	99	18	158	159	17

(ii) West District at Gyalshing

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017	Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
District & Sessions Judge (West)	Main cases	19	07	09	17	27	07	04	30
	Misc. cases	11	06	08	09	00	09	09	00
Chief Judicial Magistrate-cum-Civil Judge (West)	Main cases	01	00	00	01	04	08	08	04
	Misc. cases	01	00	01	00	00	08	08	00
Civil Judge-cum-Judicial Magistrate (West)	Main cases	06	00	01	05	04	04	06	02
	Misc. cases	00	00	00	00	00	37	36	01
Civil Judge-cum-Judicial Magistrate, Soreng Subdivision, West Sikkim	Main cases	01	01	01	01	11	05	08	08
	Misc. cases	02	00	01	01	00	37	16	21
Total Main Cases		27	08	11	24	46	24	26	44
Total Misc. Cases		14	06	10	10	00	91	69	22

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### (iii) North District at Mangan

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017	Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
District & Sessions Judge (North)	Main cases	00	00	00	00	06	05	00	11
	Misc. cases	05	03	01	07	01	04	04	01
Chief Judicial Magistrate-cum-Civil Judge (North)	Main cases	01	00	01	00	01	03	02	02
	Misc. cases	00	00	00	00	01	07	06	02
Civil Judge-cum-Judicial Magistrate (North)	Main cases	07	01	07	01	01	00	01	00
	Misc. cases	00	01	00	01	00	01	01	00
Civil Judge-cum-Judicial Magistrate, Chungthang Sub Division, North Sikkim	Main cases	00	00	00	00	00	00	00	00
	Misc. cases	04	00	04	00	00	01	01	00
Total Main Cases		08	01	08	01	08	08	03	13
Total Misc. Cases		09	04	05	08	02	13	12	03

### (iv) South District at Namchi

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017	Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
District & Sessions Judge (South)	Main cases	22	02	03	21	104	23	13	114
	Misc. cases	21	79	74	26	00	46	45	01
Chief Judicial Magistrate-cum- Civil Judge (South)	Main cases	00	01	01	00	16	43	45	14
	Misc. cases	00	00	00	00	00	28	28	00
Civil Judge-cum- Judicial Magistrate (South)	Main cases	26	22	27	21	13	10	13	10
	Misc. cases	08	40	09	39	01	40	36	05
Total Main Cases		48	25	31	42	133	76	71	138
Total Misc. Cases		29	119	83	65	01	114	109	06

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(v) Family Courts

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017	Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
Family Court, East at Gangtok	Main cases	91	22	34	79	19	09	11	17
	Misc. cases	00	00	00	00	01	01	01	01
Family Court West at Gyalshing	Main cases	06	06	02	10	00	02	00	02
	Misc. cases	00	00	00	00	00	00	00	00
Family Court North at Mangan	Main cases	02	00	00	02	00	00	00	00
	Misc. cases	00	000	00	00	00	00	00	00
Family Court South at Namchi	Main cases	33	06	07	32	09	04	01	12
	Misc. cases	00	01	00	01	02	02	00	04
Total Main Cases		132	34	43	123	28	15	12	31
Total Misc. Cases		00	01	00	01	03	03	01	05

(vi) Fast Track Court

NAME OF THE COURT		CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
Fast Track Court (East & North) at Gangtok	Main cases	04	03	00	07
	Misc. cases	00	01	01	00
Fast Track Court (South & West) at Gyalshing	Main cases	08	01	01	08
	Misc. cases	00	00	00	00
Total Main Cases		12	04	01	15
Total Misc. Cases		00	01	01	00



(vii)      **Juvenile Justice Boards**

NAME OF THE COURTS		CRIMINAL CASES			
		Opening balance as on 01.01.2017	Institution from 01.01.2017 to 31.03.2017	Disposal from 01.01.2017 to 31.03.2017	Pendency at the end of 31.03.2017
Juvenile Justice Board East, at Gangtok	Main cases	05	03	04	04
	Misc. cases	00	04	04	00
Juvenile Justice Board West, at Gyalshing	Main cases	00	00	00	00
	Misc. cases	00	00	00	00
Juvenile Justice Board North, at Mangan	Main cases	01	00	00	01
	Misc. cases	00	00	00	00
Juvenile Justice Board South, at Namchi	Main cases	04	08	05	07
	Misc. cases	00	04	04	00
Total Main Cases		10	11	09	12
Total Misc. Cases		00	08	08	00

**SOME RECENT JUDGMENTS OF HIGH COURT OF SIKKIM**

**FROM (01.01.2017 to 31.03.2017)**

**1. While computing loss of dependency of the deceased housewife, services rendered by her to the family has to be taken into account:** In [MAC Appeal No. 24 of 2015, The Branch Manager, National Insurance Co. Ltd. Vs. Pankaj Kumar Balabhai Kapadia & Ors., decoded on 14/03/2017]

In this case, referring to the judgment of the Hon'ble Supreme Court in Arun Kumar Agarwal & Ano. Vs. National Insurance Co. Ltd. & Ors. [(2010) 9 SCC 218] wherein the Hon'ble Apex Court has held that while calculating loss of dependency of the deceased housewife, the services rendered by the housewife to the family has to be taken into account, it was held that the said decision would hold good in the instant matter and therefore, in view of clause 6 of the Second Schedule of the Motor Vehicles Act, 1988, the income of the deceased wife can be assessed at one third of her spouse's income. However, it was also held that no future prospects can be calculated when the deceased was a non-earning member.

**2. Although parliament is competent to impose service tax on lottery, in the absence of mechanism to ascertain the service rendered, tax is not imposable:** [WP(C)] No. 34 of 2016, M/s. Future Gaming & Hotel Services Pvt. Ltd. Vs. Union of India & Ors.: Decided on 23/3/2017]

In this case, the challenge was to the constitutional validity of clause (zzzzn) of sub-section 105 of Section 65 of the Finance Act, 1994, as inserted by the Finance Act, 2010, whereby, *inter-alia*, transaction in buying and selling lottery tickets was placed under the ambit of "taxable service". It was held that the Union Parliament is competent to impose service tax for the services rendered for consideration by a person. Thus, clause (zzzzn) of sub-section 105 of Section 65 of the Finance Act, 1994 was held to be valid. However, referring to its earlier judgment in **Future Gaming Solutions Pvt. Ltd. Vs. Union of India & Ors. [2014(13)STR 733 (Sikkim)]**, it was observed that there was absence of mechanism to ascertain and compute the services rendered by the petitioner for promoting, marketing, selling or facilitating in organizing lottery of any kind, in any manner, organized by the state in accordance with the provisions of the charging Act being the Lotteries (Regulation) Act, 1998. As such, when consideration was unascertainable for the services rendered by a distributor or agent, the service tax is not imposable and liable to be set aside. Accordingly, the amendments carried out by the Finance Act, 2016 and the consequent impugned letters have been quashed.

**3. Although daughter governed by Mitakshara law is also a coparcener, she has no right to claim partition in respect of the self-acquired property of the father:** In RFA No. 6/2016, Smt. Naina Kala Sharma & Ors. Vs. Deepak Kumar Rai (Decided on: 13/4/2017), it was held that although daughter governed by Mitakshara law has been made coparcener by virtue of the Hindu Succession (Amendment) Act, 2005, yet no rights are conferred on the appellant Nos. 2 & 3 being the daughters of the respondent for partition, in view of the property being the self acquired property of the respondent, and not the 'Daijo' property as claimed by her. In any case, the Hindu Succession Act, 1956 has not been extended or enforced in Sikkim and the Sikkim Succession Act promulgated in 2008, rules the roost. Further, rejecting the contention that the suit cannot be said to be barred by limitation, as it is for partition and correction of record of rights, for which no limitation has been prescribed, it was held that undoubtedly, the suit is said to be one for declaration, partition and correction of documents, and as per Article 58 of the Limitation Act, 1963, the period of limitation for seeking relief of declaration is three years. Similarly, limitation for setting aside of the record of rights is three years. In view of the fact that the suit property was purchased by the respondent in the year 1998, while the suit was filed in the year 2013, it is clear that the suit is barred by limitation. Appeal accordingly dismissed.

## **SOME RECENT MAJOR EVENTS**

### **CELEBRATION OF 68<sup>th</sup> REPUBLIC DAY :**

The High Court of Sikkim celebrated the 68<sup>th</sup> Republic Day on 26<sup>th</sup> January, 2017. The National Flag was unfurled by Hon'ble Shri Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim, followed by a Guard of Honour to His Lordship.

On the auspicious occasion, also present were Judicial Officers, Senior Advocates, Members of the Bar, Officers & Staff of the Registry and Media persons.



**The National Flag was unfurled by Hon'ble Shri Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim**

**IMPORTANT VISITS & CONFERENCES**

1. Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim & Hon'ble Chairperson, Steering Committee, Information and Communication Technology Projects, High Court of Sikkim attended the Meeting of the Chairpersons of the Computer Committee of all the High Courts held on 18<sup>th</sup> & 19<sup>th</sup> February, 2017 at New Delhi.
2. Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim attended the "National Seminar" held on 4<sup>th</sup> & 5<sup>th</sup> March, 2017 at Orissa Judicial Academy, Cuttack.
3. Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim & Hon'ble Executive Chairperson, Sikkim State Legal Services Authority attended the 15<sup>th</sup> All India Meet of the State Legal Services Authorities hosted by the Delhi State Legal services Authority held on 18<sup>th</sup> & 19<sup>th</sup> March, 2017 at New Delhi.
4. Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim attended "World Conference on Environment - 2017" held on 25<sup>th</sup> March & 26<sup>th</sup> March, 2017 at Vigyan Bhawan, New Delhi

**PROGRESS MADE IN THE HIGH COURT AND SUBORDINATE  
COURTS OF SIKKIM UNDER E-COURTS MISSION MODE PROJECT**

**JANUARY to MARCH, 2017:**

1. Execution of work of Scanning, Digitization and Digital Preservation of Cases/Judicial Records of High Court of Sikkim and Subordinate Courts of Sikkim started with effect from 1<sup>st</sup> October, 2016. In the first phase, scanning of case records started in High Court and two District Courts of Sikkim, namely: District & Sessions Court, East at Gangtok and District & Sessions Court, South at Namchi. In the second phase, the District & Sessions Courts of West and North Districts will be covered where execution of works have commenced from mid April, 2017.
2. One CCTV camera each has been installed in the High Court and one each in the four District & Sessions Courts of Sikkim, for monitoring the work of Scanning and Digitization of case records.

