



COURT NEWSLETTER

HIGH COURT OF SIKKIM

Inaugural Issue

Golden Jubilee Celebration Year

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EDITORIAL BOARD

Hon'ble Mr. Justice Aftab H. Saikia, Chief Justice, High Court of Sikkim.

Hon'ble Mr. Justice A.P. Subba, Judge, High Court of Sikkim

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*Hon'ble Mr. Justice Aftab H. Saikia,
Chief Justice,
High Court of Sikkim*



*Hon'ble Mr. Justice A. P. Subba,
Judge,
High Court of Sikkim*

HISTORICAL PERSPECTIVE OF THE HIGH COURT OF SIKKIM

Prior to its merger with the Union of India in the year 1975 by the Constitution (Thirty Sixth Amendment) Act, 1975, the erstwhile Kingdom of Sikkim was under a monarchy. The King who was popularly known as the "Chogyal" was the fountainhead of justice. The King's words were the laws. Under the then administrative set up there was no place for an independent judiciary. The judicial procedure being followed then was very simple and free from legal technicalities. The Courts were dispensing substantive justice based on the principle of justice, equity and good conscience.

The available records do not throw much light into the remote past. It can, however, be gathered from these records that the administration of justice in Sikkim in the last century was being carried out by the Feudal Landlords (Adda Courts), Jongpons (District Officers), Pipons (Headmen) and Mandals with the Chogyal at the top. These records show that in 1953, a Judge of the High Court of Sikkim was appointed. However, it was only in 1955 that High Court of Judicature (Jurisdiction and Powers) Proclamation, 1955 was issued establishing a High Court in Sikkim. The High Court thus established was made the final Court in all judicial matters civil or criminal, subject to the exercise of prerogative by the Maharaja to grant mercy, pardon, remission, commutation and reduction of sentence in case of conviction. The Maharaja had also retained his prerogative to set up a Special Tribunal for the review of any case, civil or criminal.

Upon merger with the Union of India in the year 1975, Sikkim became the 22nd State of the Union. Under Clause (i) of Article 371F, the High Court functioning immediately prior to the date of merger became the High Court for the State of Sikkim under the Constitution like any other High Court in the country. Under Clause (i) of the same Article, all Courts of Civil, Criminal and Revenue Jurisdiction, all Authorities and all Officers, Judicial, Executive and Ministerial throughout Sikkim were to continue to exercise their respective powers subject to the provisions of the Constitution. Under Clause (k) all laws in force immediately before the appointed day in Sikkim were to continue to be in force until amended or repealed by a competent legislature or other competent authority.

The Government of Sikkim Act, 1974, which came to be passed in the Sikkim Assembly (which received the assent of the Chogyal on 4th July, 1974) in pursuance of the historical agreement of 8th May, 1973, between the Chogyal, the leaders of the political parties representing the people of Sikkim and Government of India, provided that all Judges in Sikkim shall be Independent in exercise of the Judicial function. In keeping with the ideal and the set goal, the process of separation of judiciary from the executive started soon after the merger and as a result we have a separate and an independent judiciary in the State of Sikkim.

THE HIGH COURT OF SIKKIM

ROLL OF HONOUR HON'BLE CHIEF JUSTICES

1.	Hon'ble Shri Justice Man Mohan Singh Gujral	07.05.1976	14.03.1983
2.	Hon'ble Shri Justice Mohan Lal Shrimal	17.12.1983	03.01.1985
3.	Hon'ble Shri Justice Jugal Kishore Mohanty	21.01.1986	04.01.1989
4.	Hon'ble Shri Justice Braja Nath Misra	20.01.1990	08.11.1992
5.	Hon'ble Shri Justice Surendra Nath Bhargava	20.01.1993	10.02.1996
6.	Hon'ble Shri Justice Krishna Murari Agarwal	15.02.1996	26.10.1996
7.	Hon'ble Shri Justice Kanniappa Arumuga Thanikkachallam	27.08.1997	26.09.1997
8.	Hon'ble Shri Justice Ripusudan Dayal	03.02.1999	17.05.2003
9.	Hon'ble Shri Justice Radha Krishna Patra	09.07.2003	23.11.2004
10.	Hon'ble Shri Justice Binod Kumar Roy	30.09.2005	26.12.2006
11.	Hon'ble Shri Justice Ajoy Nath Ray	27.01.2007	30.10.2008
12.	Hon'ble Shri Justice Aftab H. Saikia	07.03.2009	

THE HIGH COURT OF SIKKIM

ROLL OF HONOUR

HON'BLE PUISNE JUDGES

1.	Hon'ble Shri Justice Rajinder Sachar	16.5.1975	06.05.1976
2.	Hon'ble Shri Justice Anandamoy Bhattacharjee	16.6.1976	21.01.1986
3.	Hon'ble Shri Justice Ripusudan Dayal	10.5.1984	15.10.1995
4.	Hon'ble Shri Justice Anup Deb	16.12.1994	07.02.1995
5.	Hon'ble Shri Justice Malay Sengupta	16.10.1995	09.11.1998
6.	Hon'ble Shri Justice Anup Deb	27.12.1997	12.03.2002
7.	Hon'ble Shri Justice Nongthombam Surjamani Singh	7.1.2003	12.07.2007
8.	Hon'ble Shri Justice Ananda Prakash Subba	4.10.2004	03.04.2007
9.	Hon'ble Shri Justice Ananda Prakash Subba	10.11.2007	

GOLDEN JUBILEE CELEBRATION YEAR

Sikkim which is now the 22nd State of India had a High Court of its own before its merger with the Union of India in the Year 1975. The High Court of Sikkim was established in the year 1955 by virtue of the High Court of Judicature (Jurisdiction and Powers) Proclamation, 1955 issued by the then Maharaja of Sikkim.

Upon merger, the High Court so established was deemed to be the High Court for the State of Sikkim under Article 371 F(i) of the Constitution.

Since its inception, the High Court of Sikkim has maintained a glorious record of hallowed service to the people of Sikkim in general and its litigants in particular and has been discharging its responsibilities with commitment.

On successful completion of 50 years of its existence and in commemoration of commendable service rendered by the High Court it has been decided to celebrate the **Golden Jubilee Year** commencing from **17th April, 2009** and concluding on **16th April, 2010**.

APPOINTMENT IN THE HIGH COURT

(From 01.01.09 to 31.03.09)

Sl. No.	Name of the High Court	Name of the Hon'ble Judge	Date of Appointment
1.	Sikkim	Aftab H. Saikia (As Chief Justice)	07.03.09

(A) VACANCIES IN THE HIGH COURT OF SIKKIM AS ON 31.03.2009

SL.NO	NAME OF THE HIGH COURT	SANCTIONED STRENGTH	WORKING STRENGTH	VACANCIES
1.	Sikkim High Court	03	02	01
Total		03	02	01

(B) VACANCIES IN THE DISTRICT & SUBORDINATE COURTS AS ON 31.03.2009

SL.NO	NAME OF THE STATE	SANCTIONED STRENGTH	WORKING STRENGTH	VACANCIES
1.	SIKKIM	*15	09	06

*Including 2 Fast Track Courts.

INSTITUTION, DISPOSAL AND PENDENCY OF CASES:**(A) IN THE HIGH COURT OF SIKKIM FROM 01.01.2009 TO 31.03.2009**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.2009
	Opening Balance as on 1.1.2009	Institution from 01.01.2009 to 31.3.2009	Disposal from 1.1.2009 to 31.3.2009	Pendency at the end of 31.3.2009	Opening Balance as on 1.1.2009	Institution from 01.01.2009 to 31.3.2009	Disposal from 1.1.2009 to 31.3.2009	Pendency at the end of 31.3.2009	
1.	54	15	06	63	29	11	07	33	96

(B) IN THE DISTRICT & SUBORDINATE COURTS FROM 01.01.2009 TO 31.03.2009 (East & North) & (South & West)

Sl. No	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.2009
	Opening Balance as on 1.1.2009	Institution from 01.01.2009 to 31.3.2009	Disposal from 1.1.2009 to 31.3.2009	Pendency at the end of 31.3.2009	Opening Balance as on 1.1.2009	Institution from 01.1.2009 to 31.3.2009	Disposal from 1.1.2009 to 31.3.2009	Pendency at the end of 31.3.2009	
1.	220	20	24	216	800	249	199	850	1066

(C) IN THE FAMILY COURT FROM 01.01.2009 TO 31.03.2009

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.03.2009
	Opening Balance as on 1.1.2009	Institution from 1.1.2009 to 31.3.2009	Disposal from 1.1.2009 to 31.3.2009	Pendency at the end of 31.3.2009	Opening Balance as on 1.1.2009	Institution from 1.1.2009 to 31.3.2009	Disposal from 1.1.2009 to 31.3.2009	Pendency at the end of 31.3.2009	
1.	37	15	14	38	23	05	05	23	61

(D) IN LOK ADALATS FROM 01.01.2009 TO 31.03.2009

Sl. No.	Name of Lok Adalat	Opening Balance	Institution from 01.01.2009 to 31.03.2009	Disposal from 01.01.2009 to 31.03.2009	Pendency at the end of 31.03.2009
1.	High Court Lok Adalat	38	3	0	41
2.	District Lok Adalats at Gangtok and Namchi	11	25	9	27
3.	Taluk Lok Adalats at Ravangla, Gyalshing, Mangan & Soreng	12	9	16	5
	Total	61	37	25	73

SOME RECENT HIGH COURT JUDGMENTS

(1) CRL. APPEAL NO. 01 OF 2007

Dilip Kumar Roy Vs. State of Sikkim

A criminal appeal against the Judgement and order of the Ld. Sessions Judge convicting the appellant U/S 3 of the Official Secrets Act, 1923 for collecting secret defence related information pertaining to the establishment, deployment and movement of the army, and directing the appellant to undergo simple imprisonment for a period of 10 years. Accused a Bangladeshi national, evidence of all the witnesses proved beyond doubt that the accused was involved in an espionage mission for collecting and supplying important and valuable defence related information outside the country. Held, no interference in the judgement of the Ld. Trial Court required. However, appeal partly allowed, reducing the quantum of punishment from 10 years to six years.

(2) CRP NO. 06 OF 2007

Karma Doma Gyatso @ Babila Kazi Versus Mrs. Kesang Choden

A revision petition filed against the order of the Court of Civil Judge, East Sikkim at Gangtok rejecting the application for dismissal of the suit on the ground that the suit is barred by limitation. Held, the whole averments in the plaint should be considered and not a single sentence or passage should be read in isolation for the purpose of finding out the date of the cause of action. Mere entry in the record of rights or mere knowledge of adverse entry in the record of rights does not give rise to cause of action thereby starting the period of limitation, unless there is clear and unequivocal threat to the existence of such right. Suit for declaration accompanied by other reliefs such as injunction, cancellation and registration is not a suit for declaration simpliciter and therefore, the residuary Art. 113 of the limitation Act, 1963 applies and not Article 58. Petition rejected.

(3) WRIT PETITION (CIVIL) NO. 23 OF 2007

All India Private Vehicle Owners Association, Vs. Union of India & Ors

A writ petition in the form of PIL filed for quashing of NIT (Notice Inviting Tender) and the

consequent Letter of Intent issued in favour of respondent No. 3 by the State of Sikkim (Respondent No.2) for the supply of High Security Registration plates on the ground that the amount at which the plates are supplied is heavy as compared to that in the other states. No letter of intent issued in favour of respondent No.3 furnished to the Court. Held, no public interest involved in the instant writ- petition not falling under any of the guidelines prescribed by the Supreme Court for public interest litigations. Emphasis on the decision of the Supreme Court regarding the need to restrain the free flow of cases in the name of PIL lest the courts will have to take upon themselves the executive and administrative functions. Petition accordingly dismissed.

(4) WRIT PETITION (C) (PIL) NO. 08 OF 2007

Paljor Bhutia Vs. State of Sikkim & Ors.

A Writ Petition in the form of PIL filed for directing the Government to implement the various provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 such as making of 3% reservation of posts for all categories of disabled persons, making reservation for disabled persons in Group A posts also, advertisement of posts for disabled persons mentioning the necessary relaxations, exemptions and concessions, opening of a special employment cell for persons with disabilities, making of provision for ramp in public buildings etc. petition allowed, directing the state to take all necessary steps and actions for implementation of the Act in its letter and spirit at an earliest possible time.

(5) REVISION PETITION (FAMILY COURT) NO. 01 OF 2008

Shri D.P. Sewa Versus. Smt. Shanti Sewa

A revision petition against the judgment of the Family Court in a proceeding U/S 125 of the Cr.P.C.,1973 awarding a monthly maintenance allowance as well as ordering the making of provision by the petitioner for the residence of the respondent wife- quantum of maintenance amicably settled at Rs.5250 per month- The part of the impugned order directing the making of provision for residence to the respondent wife and children set aside as being outside the scope and ambit of Section 125 of the Cr.P.C.,1973.

(6) CRIMINAL APPEAL NO. 05 OF 2008

Shri Suresh Subba Vs. Shri Udai Sarkar

An appeal against the dismissal of complaint filed U/S 138 of the Negotiable Instruments Act, 1881 by the Magistrate for non appearance on one single day and also against the rejection of the application for restoration of the complaint on the ground of lack of jurisdiction. Held, presence of complainant or his lawyer was not necessary on the date of dismissal, considering the facts of the case examination of the complainant and his witnesses had also been closed, and the absence of the complainant was only a singular default - appeal allowed and the complaint ordered to be restored with the direction to the magistrate to proceed with the trial of the case.

(7) BAIL APPLN. NO. 05 OF 2009

Kunwar Onkar Singh Vs. State of Sikkim

Application filed for the grant of anticipatory bail U/S 438 Cr. P.C., 1973 subsequent to the filling of F.I.R. against the petitioner alleging mismanagement, falsification and misuse of accounts of Sikkim Distilleries Limited in the capacity of Managing Director. Held, custodial interrogation of the petitioner not indispensable taking into account the materials on record, although, the FIR cannot be said to be mala fide. Petition accordingly allowed imposing certain stringent conditions upon the petitioner such as not to make any inducement or threat to persons acquainted with the facts of the case, not to make contact with the employees of Sikkim Distilleries Ltd. , to make himself available to the I.O. at the Vigilance Police Station and not to leave the country without prior permission of the High Court.

MAJOR DEVELOPMENTS AND EVENTS

1. REPUBLIC DAY CELEBRATION:-

As the whole country celebrated the 60th Republic Day on 26th January, 2009, the High Court of Sikkim too celebrated the occasion with aplomb in its office premises.

The day was graced by Hon'ble Acting Chief Justice, Mr. Justice A.P. Subba, along with Shri Tashi Wangdi Bhutia, Registrar General, Mrs. Meenakshi M. Rai, the then District & Sessions Judge (East & North) at Gangtok, Mrs. Kesang Chukie Barphungpa, Registrar, Mrs. Lakchung Sherpa, Chief Judicial Magistrate-cum-Civil Judge (East & North) at Gangtok, Members of the Bar Association of Sikkim, Advocates, Officers and staff of the Registry.

The Republic Day celebration started with the Hon'ble Acting Chief Justice hoisting the National Flag, followed by the National Anthem and arms drill performed by the guards attached to the High Court.

2. **SWEARING IN CEREMONY OF HON'BLE MR. JUSTICE AFTAB H. SAIKIA, AS NEW CHIEF JUSTICE OF THE HIGH COURT OF SIKKIM.**



Justice Mr. Aftab Hussain Saikia being sworn in as the Chief Justice of Sikkim High Court, by the Governor, Mr. B.P. Singh, at Ashirbad Bhawan in Raj Bhawan

Hon'ble Mr. Justice Aftab. H. Saikia was sworn in as the new Chief Justice of the High Court of Sikkim on 7th March, 2009. His Excellency Shri Balmiki Prasad Singh, Governor of Sikkim administered the oath of office during a solemn function at the Ashirbad Hall of Raj Bhavan. Chief Minister Pawan Chamling, Cabinet Ministers, Judicial Officers of the State and senior Government Officials were present to witness the oath taking ceremony.



IMPORTANT VISITS AND CONFERENCES

Hon'ble Mr. Justice Aftab H. Saikia, Hon'ble Chief Justice and Patron in Chief, Sikkim State Legal Services Authority accompanied by Hon'ble Judge, Mr. Justice A. P. Subba, Hon'ble Executive Chairman, Sikkim State Legal Services Authority and Mrs. Meenakshi M. Rai, Registrar General, High Court of Sikkim and Member Secretary, Sikkim State Legal Services Authority attended the "7th All India Meet of the State Legal Services Authorities" at Bangalore on 28th and 29th March, 2009.

LIST OF SIKKIM HIGH COURT JUDGES

(As on 31.03.2009)

Sl. No.	Name of the Hon'ble Judge	Date of Appointment
1.	Hon'ble Mr. Justice Aftab H. Saikia	07.03.2009 (As Chief Justice)
2.	Hon'ble Mr. Justice A. P. Subba	04.10.2004