



# MEGHALAYA STATE JUDICIAL ACADEMY

## *Newsletter*

Volume 1 Issue 1



2016 - 2017





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*Hon'ble Justice Dinesh Maheshwari*  
*Chief Justice, High Court of Meghalaya*  
*&*  
*Patron-in-Chief*  
*Meghalaya State Judicial Academy*

Dinesh Maheshwari  
Chief Justice



High Court of Meghalaya  
Shillong

### MESSAGE

*".....Knowledge is power and it can only be acquired by facilities for training. It is conceded that training can significantly upgrade the capability of everyone called upon to perform a duty. ...." (Law Commission of India in its 117th Report)*

I am glad to know that the Meghalaya State Judicial Academy is coming out with the first issue of its Newsletter.

The Meghalaya State Judicial Academy, established on 4<sup>th</sup> May 2016, has, right from inception, marched ahead to fulfill the objectives of continuous judicial education and training of Judicial Officers as also of other role-players in the unique justice delivery system of the State of Meghalaya. The learned members of the Governing Council of Academy have made incessant efforts to ensure that all the functions of the Academy are carried out with optimum efficacy. The commitment of staff headed by the Director and the Deputy Director has equally contributed in making the Academy a vibrant wing of the High Court of Meghalaya.

The Meghalaya State Judicial Academy though is yet to have its own permanent infrastructure and faculty members but nothing has impeded its functioning and since inception, the Academy has embarked on the vital task of imparting first foundational course training to the newly appointed 12 Grade-III Judicial Officers of 2016 batch. The Academy has also set out its priorities in arranging wide-ranging seminars/ workshops with various stake holders in the realm of administration of justice. It goes without saying that meaningful exchange of knowledge and experience in such events would go a long way in proper and effective dispensation of justice in the State.

The glimpses in this newsletter of the seminars and training programmes conducted by the Meghalaya State Judicial Academy, I am sure, would propel everyone related with judicial fraternity to contribute in the mission of the Academy, *to build and grow together*, whether by sharpening their own skills with participation in the forthcoming events or by disseminating the knowledge for the benefit of others.

I wish the Meghalaya State Judicial Academy all the very best in its endeavours.

Shillong 21<sup>st</sup> November 2017

  
(Dinesh Maheshwari)



*Hon'ble Justice Sudip Ranjan Sen*  
*Judge, High Court of Meghalaya*  
*&*  
*Judge-in-Charge*  
*Meghalaya State Judicial Academy*

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**Dated 21<sup>st</sup> November, 2017**

**MESSAGE**

It gives me immense pleasure to know that the Meghalaya State Judicial Academy is bringing out a newsletter, a first of its kind, to provide a platform for expressions and highlights to the various activities of the Academy and to the subjects of interest as brought forward by the contributors in the form of write ups and articles. The effort to bring out this newsletter is commendable.

I am also happy to know that the Academy has maintained a calendar covering seminars, workshops and courses catering to the different sections of the legal fraternity of which this newsletter is projecting.

Though infant in age, the Meghalaya State Judicial Academy has made a promising start and shown signs of growth. I take this opportunity to wish the Academy more success as it ventures into more activities covering milestones of greater height.

  
(Justice Sudip Ranjan Sen)



*Hon'ble Justice Ved Prakash Vaish*  
*Judge, High Court of Meghalaya*





**MESSAGE**

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Dated: 20<sup>th</sup> Nov. 2017

It gives me immense pleasure to have been asked to pen a few of my thoughts and reflections to be published in the Meghalaya State Judicial Academy's first issue of the Newsletter.

Established only on 4<sup>th</sup> May 2016 under orders of Hon'ble the Chief Justice Mr. Justice Dinesh Maheshwari, I am deeply happy to note that the Academy has achieved outstanding feats in this short span – with the completion of the one-year foundational course training for the Grade III Judicial Officers in June-July 2017, 12 (twelve) Judicial Officers have been posted in the respective Judgeships as Judicial Magistrates. Besides, regular in-course training is being imparted to members of subordinate Judiciary as well as members of the Bar.

On being requested to share my thoughts and reflections for the Newsletter, I was spontaneously drawn to a topic which I deeply cherish and I feel it is extremely relevant in our setting i.e. qualities of a Judge. Presently, there are only 39 (thirty-nine) officers in subordinate Judiciary in the entire State which may appear smaller as compared to other States; however, I am confident to assert that our Judicial Officers are possessed with all the requisite skills and are destined to only mature as professionals and remarkable human beings.

The former late President of this country Shri. A.P.J Abdul Kalam while interacting with Judges of the Hon'ble Supreme Court remarked thus, "You are 26 Judges of the Supreme Court. You are 26 role models of judiciary for this nation of more than one billion people. People look up at you for vindicating their grievances and for removal of injustice. You must come up to their expectations. You must have a vision and do your best to give shape to your vision." Equally true is that every judge is a role model to the society to which he belongs.

Ved Prakash Vaish  
Judge



High Court of Meghalaya  
Shillong

In this context, I may say that every Judicial Officer of this State is living up to the changing needs of society and the clarion call for justice. Whilst it may be true that our Judicial Officers are placed a notch less than that of other States in terms of infrastructural amenities but, they have never ceased to display the same kind of commitment to service and sense of duty.

Socrates, a Greek philosopher, said that the four qualities required in a Judge are – “to hear courteously, to answer wisely, to consider soberly and to decide impartially.” The task of dispensing justice is an onerous one and is met with myriad challenges – pressure of managing time both in Court and at home, meeting deadlines and most importantly to decide on which side truth lies.

To hear courteously implies that a Judge ought not to make up his mind before arguments are led on both sides. Every warring side has a story to tell and the Judge’s primary duty is to impatiently hear each side. The next course, which will be enhanced with time, is to separate grain from the chaff in ascertaining truth from falsehood. To be able to answer wisely, a Judge must marshal facts and the law. He must develop a logical and an analytical mind. Equally important is for a Judge to be sympathetic to the cause of justice but not frustrate it by being biased. Thus, to consider soberly, he must be in the right frame of mind, to not be swayed by emotions and misplaced benevolence. Lastly, a Judge must not only be impartial but also seen to be impartial. It is the capacity to decide impartially which must be a benchmark in a Judge’s day-to-day functioning.

I can only hope for better times ahead for each of our Judicial Officers and fervently wish them successful careers in Judiciary.

Lastly, I wish all the readers a happy reading, and officers of the Academy best wishes in compiling this Newsletter.

(JUSTICE V.P. VAISH)





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## **GOVERNING COUNCIL**

The Governing Council of the Meghalaya State Judicial Academy comprises the following:

1. Chief Justice of the High Court of Meghalaya as the Patron-in-Chief;
2. Judge-in-Charge of Judicial Training, High Court of Meghalaya;
3. Secretary to the Government of Meghalaya, Law Department;
4. Registrar General of the High Court of Meghalaya;
5. Vice Chancellor, North Eastern Hill University;
6. Director of the Judicial Academy (Member Secretary);
7. Two Members nominated by the Chief Justice of High Court of Meghalaya - Special invitees.

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## ABOUT AND ITS DEVELOPMENT

The Law Commission in its 116<sup>th</sup> and 117<sup>th</sup> Report greatly emphasized on the need to establish a Judicial Academy for intensive training for Judicial Officers. The Joint Conference of the Chief Justices-Chief Ministers of the States, as early as in the year 1985, also resolved to have an academy set up by the Central Government. The Hon'ble Supreme Court in the ***ALL INDIA JUDGES ASSOCIATION vs. UNION OF INDIA (AIR 1992 SC 165)*** directed the setting up of a Central/State Level Judicial institutes for Judicial Officers.

Realizing the need to have a separate Judicial Institute to cater to the needs of an expanding judicial cadre, the Meghalaya State Judicial Academy was established on 4<sup>th</sup> May 2016 by the present Chief Justice of the High Court of Meghalaya, Hon'ble Mr. Justice Dinesh Maheshwari to function as a wing of the High Court. Accordingly, by Notification No HCM.II/28/2015-Estt/ 1388-A, the Meghalaya State Judicial Academy was notified and constituted with Hon'ble the Chief Justice as Patron-in-Chief and Hon'ble Mr. Justice Sudip Ranjan Sen as Judge-in-Charge of the Academy.

The aims and objectives of the Meghalaya State Judicial Academy are delineated, inter-alia, as under: -

- A. To provide induction training to the newly selected Judicial Officers as mandated by the Shetty Commission;
- B. To provide continuing judicial education to Judicial Officers throughout their career in the State of Meghalaya;
- C. To conduct in-service training/refresher courses for the Judicial Officers;
- D. To provide continuous education to other professionals like members of the Bar, Police Officers, Public Prosecutors, Government Pleaders, Medical Officers, Ministerial Officers working in the Courts;
- E. To undertake research projects for improving court performance, judicial capacity, litigant satisfaction with the court system;
- F. To publish and disseminate information relating to results of research and other training courses/programmes;
- G. To conduct study, analysis and research relating to legal education and practical problems in the working of District Courts;
- H. To organize seminars / workshops on current legal issues;
- I. To design curriculum to enhance judicial skills required for writing judgment, communicating with litigants, bar and staff of the court, appreciation of law and evidence;
- J. To perform as a center of excellence;
- K. To create adherence to the constitutional principles amongst the members of



subordinate judiciary by encouraging judicial decisions founded on the principles of freedom, equality, dignity, equity and fairness;

- L. To do all such other lawful acts and things as are conducive or incidental to the attainment of the objectives of the Academy.

In the administrative setup, there is a Governing Council designated as the highest authority where decisions with respect to the education policy to be followed, performance/ measurement of work, financial and human resource management, budget, partnerships, infrastructure updation, evaluation of training needs of Judicial Officers, etc. are undertaken. Further, the Governing Council is responsible for the management and administration of the affairs of the Academy in accordance with its rules and the byelaws made thereunder. The Governing Council will meet at such intervals as maybe required for smooth functioning of the Academy.

At present, the affairs of the Judicial Academy are handled by a Director who is its principal executive Officer and is aided by a Deputy Director.

With the initial infrastructure for the Academy still being at the nascent stage, the requisite peripherals are steadily being kept in place for smooth functioning of the Academy.

By sanction order dated 30th March 2017, the Department of Justice on recommendation of the eCommittee of the Supreme Court has released funds of Rs. 18.4 lakhs for procurement of Information and Communication Technology infrastructure for the Academy. As regards human resource management, upon the Registry of the High Court moving the State Government, the following posts were created and sanctioned by the orders dated 15<sup>th</sup> March 2017 and 24th July 2017 viz. Director, Deputy Director, Superintendent, Officer-on-special duty (Accounts), Librarian, two posts of Senior Administrative Assistant, two posts of Junior Administrative Assistants, Driver and eight contingent staff.

On the appointment of twelve Grade-III Judicial Officers, the Academy embarked on the task of imparting the foundational course training to the newly appointed Judicial Officers which was spread over a year. Presently, the Academy has no permanent faculty members. However, as part of the curriculum formulated by the Academy, serving Judicial Officers also imparted training to the newly appointed Judicial Officers. Besides, guest faculties were also invited from the Shillong Law College; Department of Law, North Eastern Hill University; North Eastern Police Academy; Indian Institute of Management and practicing Advocates of the Bar as also other experts from

other institutions of repute.

During the course of the training, the Judicial Officers, as part of the Dais training, were sent for Court attachment in all the Judgeships to observe court procedure, both in civil and criminal, and to also learn on functioning of various branches of the Courts. Besides, the Judicial Officers were also sent for training to the State Forensic Laboratory and Civil hospital to learn and observe about the nuances of forensic studies, etc. Moreover, the trainee Judicial Officers were also sent to the District Jail as also various Police Stations. On completion of the one-year foundational course training, the twelve Judicial Officers were administered the oath of office by his Lordship, the Chief Justice prior to being posted in the different District Judgeships as also the Registry of the High Court.

During the academic year 2016-2017, the Academy, apart from imparting training to the newly appointed Grade III Judicial Officers, also organized and conducted different workshops and seminars, as part of the Annual Calendar formulated for the in-service Judicial Officers, learned members of the Bar and staff of the District Courts.

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## **THE ACADEMIC YEAR FROM JULY 2016 TO JUNE 2017**

Sl. No.	Name of Course / Seminar / Workshop / Programme	Target groups	Date
1	Seminar on the Sixth Schedule to the Constitution of India	Judicial Officers of MHJS, MJS and District Council Courts	06.08.2016
2	Workshop on "Time and Stress Management"	Judicial Officers of MHJS and MJS	20.08.2016
3	Special Training Programme on "Fundamental Rules and Subsidiary Rules including Financial Rules".	Selected Staff of High and Subordinate Courts	27.08.2016
4	Conference on "Customary Law relating to Family Matters in different Tribes in the State of Meghalaya".	Judicial Officers of MHJS, MJS and District Council Courts	03.09.2016
5	Video Conference on "Tele Evidence - Prospects and Challenges"	Judicial Officers of MHJS and MJS in Collaboration with NEIGRIHMS, Shillong	17.09.2016
6	Workshop on "Domestic Violence matters with special reference to Matrilineal Society of Meghalaya.	Judicial Officers of MHJS and MJS	01.10.2016
7	Seminar on "State Municipal Laws - Normal Shillong and Shillong Administered Area".	Judicial Officers of MHJS and MJS	04.02.2017
8	Seminar on Land Laws in the State of Meghalaya	Judicial Officers of MHJS, MJS and District Council Courts	25.02.2017
9	Discourse on "Role of Equity in Justice Delivery".	Judicial Officers, Advocates with 3 years standing at the Bar.	23.03.2017
10	Panel Discussion on "Alternative Dispute Resolution Mechanism	Judicial Officers of MHJS, MJS and District Council Courts	06.05.2017
11	Special Training Programme on "Libre Office in Ubuntu Linux".	Selected Staff of High Court and Subordinate Courts	27.05.2017
12	Conference on "Customary Laws relating to Inheritance in different Tribes in the State of Meghalaya".	Judicial Officers of MHJS, MJS and District Council Courts	17.06.2017

## **THE ACADEMIC YEAR FROM JULY 2017 TILL DATE**

Sl. No.	Name of Course / Seminar / Workshop / Training Programme	Target groups	Date
1	Refresher Course on Adoption	Judicial Officers of MHJS and MJS	05.08.2017
2	Joint Session on Ubuntu, CIS and NJDG	Judicial Officers of MHJS and MJS	12.08.2017
3	First Phase: Training on Ubuntu, CIS and NJDG	Judicial Officers of MHJS and MJS	16.09.2017 & 17.09.2017
4	Second Phase: Training on Ubuntu, CIS and NJDG	Judicial Officers of MHJS and MJS	07.10.2017 & 08.10.2017
5	Third Phase: Training on Ubuntu, CIS and NJDG	Judicial Officers of MHJS and MJS	14.10.2017 & 15.10.2017
6	Mediation of Family Dispute and the Role of Maternal Uncle in settling family dispute within the Khasi, Jaintia & Garo Household	Judicial Officers of MHJS and MJS	28.10.2017
7	Equality, Social Change & Social Justice: Contribution of Courts	Judicial Officers of MHJS and MJS & Practicing Lawyers	18.11.2017

## INAUGURATION DAY





# SEMINAR ON THE SIXTH SCHEDULE OF THE CONSTITUTION OF INDIA

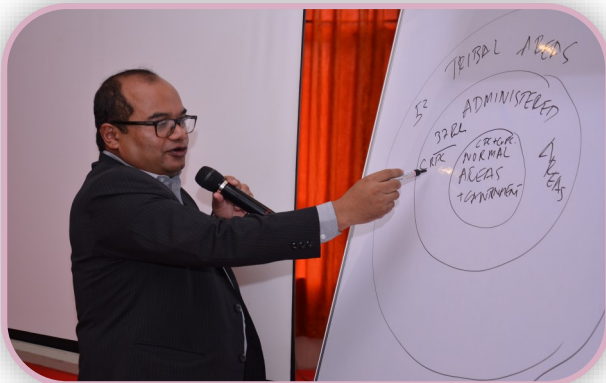
- Desiree Sangma Shadap, JMFC, West Garo Hills District

The seminar was taken up by two resource person namely Shri H.S Thangkiew Senior Advocate, High Court of Meghalaya and Miss Angel Syiem, Assistant Professor, Law Department, Assam University.

Shri H.S. Thangkiew who spoke from a practical aspect pointed that the *North- East Frontier (Assam) Tribal and Excluded Areas Committee* under the Chairmanship of first Assam Chief Minister, Gopinath Bardoloi recommended the setting up of Autonomous District Councils to provide representation at the local level to the tribal population. The recommendation was later incorporated into Sixth Schedule (Article 244 (2) & Article 275(1)) of the Constitution of India. It was pointed that the Sixth schedule gave *legislative and executive powers* to the Autonomous Councils. It was also pointed that for proper adjudication, Shillong is divided into:

- Normal areas of Shillong where CPC and CrPC are applied to the letter of the law as applied to the rest of India.
- Administered Area of Shillong which are found under para 20 and by Notification CPC and CrPC is applied to the letter and the Rules of 1937 are applied.
- Tribal Areas are those areas to which only the Rules of 1953 apply and disputes in these areas are put before the District Council for adjudication.

The second session was taken up by Miss Angel Syiem from a theoretical aspect. She had made an analysis of the working of the District Council, looked at the background of its establishment and on considering the various drawbacks she found that the relevance of the District Council in the State today is questionable given the fact that it has seldom been able to fulfil its objective and has rather led to a lot of confusion due to overlapping of jurisdiction. However there is a need to protect the tribal rights and that can possibly be done by strengthening its village administration.



## **CAN THE DEFENDANT EXAMINE WITNESS IN ABSENCE OF A WRITTEN STATEMENT?**

- Dshalene Kharbteng, Judge, MACT, East Khasi Hills District

Often courts come across situations where in the absence of any written statement the defendant proposes to lead evidence. What I attempt to do in this article is to analyze the position of law on the subject.

Order 8 Rule 5 of the Code of Civil Procedure lays down the procedure to be followed when the defendant fails specifically to deny every fact in the plaint or fails to file his written statement. Order 8 rule 5 is reproduced below:

*"Order 8 Rule 5 - Specific denial 1 Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :*

*Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.*

*2 Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.*

*3 In exercising its discretion under the proviso to sub- rule 1 or under sub -rule 2, the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.*

*4 Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."*

Sub-Rule 1 of Rule 5 provides that any fact stated in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be treated as admitted. Under Rule 3 of Order 8, it is provided that the denial by the defendant in his written statement must be specific with reference to each allegation of fact made in the plaint. A general denial or an evasive denial is not treated as sufficient denial and, therefore, the denial, if it is not definite, positive and unambiguous, the allegations of facts made in the plaint shall be treated as admitted under this Rule. The proviso appended to this Rule further provides that though a fact stated in the plaint may be treated as admitted, the Court may, in its discretion, still require such "admitted fact" to be proved otherwise than by such admission. Sub-Rule 2 provides that if the defendant has not filed his written statement, it would be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint. The rule further proceeds to say that notwithstanding that the facts stated in the plaint are treated as admitted, the Court, though it can lawfully pass the judgment, may before passing the judgment require such fact to be proved. Thus, the Proviso and Sub- Rule 2 read together indicate that where

- i) an allegation of fact made in the plaint is not denied specifically, or
- ii) by necessary implication, or
- iii) stated to be "not admitted" in the pleading of the defendant, or
- iv) the defendant has not filed the written statement, such allegations of facts shall be treated as admitted. The Court in this situation can either proceed to pronounce judgment on such admitted facts or may require the plaintiff, in spite of such admission, to prove such facts.

In **Modula India Vs. Kamakshya Singh Deo reported in 1988 4 SCC 619**, the Hon'ble Supreme Court has exhaustively dealt with nature of rights that are available to a defendant whose defence has been struck off. The relevant observation in the said judgment are reproduced herein below :-  
"24. For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under Section 174 of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:



- a. to cross-examine the plaintiff's witnesses; and
- b. to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

The Hon'ble Supreme court in **BALRAJ TANEJA Vs SUNIL MADAN, 1999 8 SCC 396** referred to the decision of the **J&K High Court in Chuni Lal Chowdhry vs. Bank of Baroda and Others, AIR 1982 J&K 93** wherein it was laid down as under:

"On the authority of these observations, Rule 10 can be taken to relate to Rule 1 of Order 8 and on the defendant's failure to file written statement of his defence, when so required, the court has the power, either to pronounce the judgment against him or make such order in relation to the suit as it thinks fit depending upon whether the suit was for the final disposal or for the settlement of the issues only. In the latter case, the court has ample discretion to grant more time for filing the written statement or to proceed to hearing of the suit without such written statement. The discretion cannot, however, be exercised arbitrarily. In determining which course to adopt, the court will always be guided by the facts and circumstances of each case. Where the court decides to proceed to hearing of the suit without the written statement, that would not debar the defendant from taking part in further proceedings of the case. His participation would, however, be hedged in by several limitations. He will not be able either to cross-examine the plaintiff's witnesses or to produce his own evidence with regard to any questions of fact which he could have pleaded in the written statement. He will, however, be competent to cross-examine the plaintiff's witnesses in order to demolish their version of the plaintiff's case."

9. The Gauhati High Court in **Anu Das vs Padumi Das reported in 2007 1 GLR 538** has observed thus: "The law is settled that the defendant who fails to present written statement or has already been debarred from filing written statement, cannot examine himself as a witness. This is exactly what has happened in this case."

10. Sub-Rule 2 of Order 8 Rule 5 CPC provides that if the defendant has not filed his written statement, it would be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint. The rule further proceeds to say that notwithstanding that the facts stated in the plaint are treated as admitted, the Court, though it can lawfully pass the judgment, may before passing the judgment require such fact to be proved. There is nothing in the language of Order 8 Rule 5 which enables the defendant to lead evidence in absence of a written statement. Thus what transpires from Order 8 Rule 5 and the decisions aforementioned is that the defendant is debarred from leading evidence in the instant case in the absence of a written statement.

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## **SEMINAR ON STATE MUNICIPAL LAWS – SHILLONG NORMAL AND ADMINISTERED AREAS**

-Jeremy Marak, JMFC, Mairang Sub-Division

The situation of the town of Shillong is quite unique in that within the town itself, there are areas with which the jurisdiction over them differs in regards to the administration of justice.

The resource person on this topic are Smti Kerpa M.L.Nongbri, Joint Registrar High Court of Meghalaya/Deputy Director Meghalaya State Judicial Academy and Miss Angel Syiem, Assistant Professor, Law Department, Assam University.

During the seminar, it was pointed that in the town of Shillong there are two distinct areas. They are: (i) The British area of the town, popularly known as the 'Normal Shillong' and (ii) The Shillong Administered area which formed part of the Khasi State of Myliem but was comprised in the Shillong Municipality or Cantonment.

Under Normal Shillong, the District Council of East Khasi Hills District does not exercise any power by virtue of Clause (2) paragraph 20 of the Sixth Schedule which excluded any areas for the time being comprised within the Cantonment and Municipality of Shillong from the tribal areas.

The Shillong Administered area comprised of that part of Shillong Municipality which belongs to the Syiem of Myliem who handed over these areas to be included in Shillong Municipality for the purpose of Municipal Administration. These areas though comprised in the Municipality of Shillong, still for the purposes other than those which are mentioned in proviso of clause (2) of paragraph 20, were governed by the laws and the rules made by the District Council as per the provisions of Sixth Schedule.

During the seminar, the resource person also spoke on Shillong Municipal Board and its role in environment protection, the jurisdiction of Municipal laws over the Normal areas and the Administered areas to an extent, and how there have been a number of times where their exercise of jurisdiction has clashed with the Autonomous District Councils.



## **RIGHT TO SPEEDY TRIAL**

-Bandarisha Kharlukhi, JMFC, Sohra Sub-Division

“Justice should not only be done, but should manifestly and undoubtedly be seen to be done.”

-Lord Hewart

The inordinate delays in the administration of justice and the high cost of litigation have today undermined peoples faith in the Judiciary and threatened the very survival of the system hence, there is a necessity for speedy trial. The need for speedy justice, has been realized in all the societies and during all the phases of their growth and development, the delayed justice has been considered in all civilized system as most “bitting evil” of human society, the problem of delays in law is not a new one- it is as old as the law itself. It had “plagued” every judicial system be it Roman, Greek, English or American. The philosophy of “Right to Speedy Justice” has its roots in the natural rights and which was further recognized and developed by: Magna Carta in 1215 AD, which provides “To no man will we deny, to no man will we sell, or delay, Justice or Rights.” There from this concept was incorporated in various National Constitutions and “Bill of Rights” like the Petition of Rights (1627), Bill of Rights (1689), Massachusetts (1780), and of France (1789) etc. though , there are no specific provisions for speedy trial, by judicial interpretation, the Supreme Court has held Article 21 of the Constitution of India confers the right on the accused. Article 21 declares “that no person shall be deprived of his life or personal liberty except according to the procedure established by law”. It is in the interest of all the concerned that the case is disposed off quickly and justice is seem to occur.

In general “Speedy Trial” means the disposal of a case within a “Reasonable Time” but it cannot be taken to mean where proceedings are held in a camera and trial is over within no time, followed by an immediate execution without any right of Appeal. “If JUSTICE DELAYED IS JUSTICE DENIED then JUSTICE HURRIED IS JUSTICE BURRIED”, slow justice is bad but speedy injustice is no substitute. Therefore, while stressing on the need of Speedy Trial in the Disposal of Cases, we must also be cautious against undue speed or haste because this would be substituting one evil from another.

The concept to Speedy Trial means a reasonable expeditiously trial which comply with all essentials of a trial. It is a trial where the prosecution with reasonable diligence begins promptly and conducts expeditiously. The Right to Speedy Justice includes all the stages of criminal justice system, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. In short, everything commencing with an accusation and expiring with a final verdict of the journey which an accused must necessarily undertake once faced with an implication.

The Criminal Justice System includes several agencies of the State like the police the courts, the prosecution, the defence lawyers, etc., which are created to achieve the common goal of Speedy Justice and Crime Control. Hence, speedy trial becomes a challenge as various agencies are involved before arriving at the conclusion of the trial. Speedy Justice has always been considered the “sine qua non” of an effective and efficient Criminal Justice System as basic premise of a Criminal Justice System is that the punishment must follow the judgment of guilty and should not precede it. The right to speedy justice is not only the very essence of an effective criminal Justice system but is also consistent with the concept of fair and impartial trial. A criminal trial which does not ensure the “Right to Speedy Justice” cannot be regarded as a fair trial. The concept of fair trial is a broad concept and includes the Accused Right to seek speedy trial. The basic precepts of Code of Criminal Procedure, 1973 are:-

- 1) An accused person should get a Fair Trial in accordance with the accepted principles of natural justice.
- 2) Every effort should be made to avoid delay in investigating and trial which is harmful not only to the individual’s interest but also to the interest of entire society.
- 3) The procedure should not be complicated and to the outmost extent possible, ensure fair deal to the Poorer Sections of the Community.

Thus the main object of CrPC, 1973 is to simplify and shorten the proceedings as to ensure the speedy and fair trial. The just and fair trial embraces in its scope the Right to Speedy Trial. Fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a Right in the accused to be tried speedily, the concern for the, right of speedy trial from the point of view of the accused are :-

- 1) The period of remand and pre conviction and detention should be as short as possible.
- 2) The worry, anxiety, expenses and disturbances to this vocation and peace resulting from and unduly prolonged investigation, enquiry and trial should be minimal.
- 3) Undue delay results may well results in Impairment of the ability of the Accused to defend himself.

At present, the problem of speedy trial of undertrial prisoner is one of great magnitude. The Indian legal system embraces the principle that a person is innocent unless proven guilty. Thus, unless a person has been convicted by a court, no punishment must be meted out to him. Incarceration, even if the person has not been convicted, is damaging physically and mentally and may irreversibly change the life of the individual socially, financially and emotionally. This detention of under- trials for long periods thus in effect imposes heavy costs on the individual, and in effect is no different from being jailed as a punishment for a crime.

The Supreme Court importantly held that the core of the right to speedy trial was the protection against incarceration and thus, in the prolongation of a trial, the maximum prejudice was suffered by an individual who had been unjustly incarcerated. Unjustifiable, long periods of detention amount to an abuse of the process of the court and would thus invite judicial action under Sec 482 of the Code of Criminal Procedure.

Section 482 of the Cr.PC is titled "Saving of the inherent powers of the Court". It states that nothing in the code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In *Ratilal*, it was held that the inherent powers of the High Court preserved under Sec 482 of the Cr.PC were vested in the High Court by law within the meaning of Article 21 of the Constitution. Therefore, it follows logically from this proposition that the exercise of the power of the Court under Sec 482 can be done if the Court believes that there has been an infringement of the right of an individual under Art 21 of the Constitution, namely the right to life.

In *Hussainara Khatoon & ORS –Versus- Home Secretary State of Bihar, 1979 AIR 1369*, it had been held that the right to a Speedy Trial was part of the right to life enshrined in Article 21. Relying on the case of *Hussainara Khatoon* case it was observed that the denial of this "fundamental right to a speedy trial" would constitute a violation of Article 21, and the Court, thus, using its inherent power under Sec 482, could quash the trial pending against the accused. Additionally, relying on *Khadra Paharia v. State of Bihar ,AIR 1981 SC 939*, it was contended that a court, when it encountered a case where the right to a speedy trial had been denied to a person, could use its inherent powers in discharge of its constitutional obligations to give necessary directions to State and Central Governments for the enforcement of these obligations.

Therefore, in order to ensure that all accused are represented and that their rights are not deprived due to poverty, Legal Aid Counsel are appointed for them to protect them from languishing in Jail due to poverty. However, there are situations where even when a legal aid counsel is appointed for the accused they failed to appear, however, in order that the Court would not be helpless under such situations, Section 304 has been incorporated in the Code of Criminal Procedure, 1973. Article 39A of the Constitution of India also emphasizes that free legal service is an inalienable element of ' a reasonable fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal service is therefore, clearly an essential ingredient of 'reasonable fair and just' procedure for a person accused of, an offence and it must be held implicit in the guarantee of Article 21. This is a Constitutional right of every accused person who is unable to

engage a lawyer and secure legal services, on account of reasons such as poverty, indigence, the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of Justice so require, provided of course the accused person does not object to the provision of such lawyer.

The need for 'Speedy Justice' is reflected by the claim of an individual with respect to his Right to life and his Right to Dignity. The concept 'Right to Speedy Justice' is deep rooted and grounded in one of the fundamental instincts of humanity i.e., "Personal Liberty". Personal liberty is one of the most cherished goals of every civilized society because 'liberty' is one of the greatest heritage of a man, without liberty, life is lifeless and worthless to live, to renounce liberty is to renounce being a human to surrender right of humanity, life bereft of liberty would be without honour and dignity and it would lose all significance and meaning, that is why liberty is called the very quintessence of a civilized and decent existence. Hence, a good legal system should yield proper, just and speedy solutions. Further, other options for settlement of disputes can be availed to such as, mediation, conciliation or settlement through Lok Adalat which would help in disposing of the cases expeditiously. However, to ensure speedy trial it is not advisable to fix a period of trial because it would confined and restrict the Judiciary and there would be a burden of swift disposal of cases which may deteriorate the quality of justice as Justice should not only be done but must be seen to be done.

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# **CUSTOMARY LAWS RELATING TO INHERITANCE IN DIFFERENT TRIBES IN THE STATE OF MEGHALAYA**

**-Basukshisha Kharbithai, JMFC, West Jaintia Hills District**

The state of Meghalaya is generally divided into three major tribes: the Khasi, Jaintia and Garo. Each tribe follows a distinct customary law in relating to inheritance.

The first session was conducted by Smti Singje K Marak, Lecturer, Directorate of Educational Research and Training who spoke on the customary law relating to inheritance of the Garo. She pointed that the Garo society is organised into matrilineal groups called the Ma Chongs (motherhood) and amongst the Garos, inheritance is through the mother and restricted to the female line. The daughter inherits the property and after her, her daughter will inherit the property. She briefly pointed that there are two types of property (a) the ancestral or inherited property which is family property and handed down from one generation to another through the laws of inheritance and (b) self acquired property which is the property earned jointly by the husband and wife gathered during their lifetime and they have the liberty to distribute the property amongst their children.

The second session was conducted by Shri J. Wahlang, Assistant Professor, Sociology Department, St Edmunds College who spoke on the Customary Law relating to inheritance of the Khasi and Jaintia. He pointed that among the Khasi and Jaintia tribe, descent is trace from a common ancestress (lawbei Tynrai) and inheritance is through the female line i.e from mother to daughter. He also pointed that that among the Khasi and Jaintia, property is of two types (a) ancestral property which is that part of the property of a clan or family which has been handed down from first mother of the clan or family and then it passes on to her youngest daughter - then to the youngest granddaughter and so on. However, the youngest daughter is not the sole heiress, but she is a mere custodian of the ancestral property and cannot disposed off the ancestral property without the consent of the members of the clan or family (b) self-acquired property which is the property acquired jointly by the husband and wife and they can bequeath their property to any of their children or distribute it equally among their children or dispose off the said property in whatever manner they like.



## **ECO-TOURISM**

- Anjeline M Pariat, Secretary, DLSA,  
East Khasi Hills District

Tourism is the travel for recreation, leisure, religious, family business purposes, usually of a limited duration. Tourism is commonly associated with trans-national travel, but may also refer to travel to another location within the same country. Tourists are defined as people "travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes".

Tourism is an important, even vital, source of income for many countries. Tourism brings in large amounts of income into a local economy in the form of payment for goods and services needed by tourists, accounting for 30% of the world's trade of services, and 6% of overall exports of goods and services. It also creates opportunities for employment in the service sector of the economy associated with tourism.

There are different types of Tourism:-

Leisure Tourism; Business Tourism; Medical Tourism; Cultural Tourism; Adventure Tourism; Wellness Tourism; Eco Tourism; Sports Tourism; Religious Tourism; and Wildlife Tourism.

Amongst the above mentioned types of tourism, Eco-Tourism in association with Rural Tourism is being focussed.

**PURPOSE:-** The purpose of this concept is to target Rural Tourism which focuses on actively participating in a rural lifestyle. It is a variant of ecotourism. Many rural villages can facilitate tourism because many villagers are hospitable and eager to welcome (and sometime even host) visitors. Agriculture is becoming highly mechanized and therefore, requires less manual labour. This trend is causing economic pressure on some villages, which in turn causes young people to move to urban areas. There is however, a segment of the urban population that is interested in visiting the rural areas and understanding the lifestyle. This segment in the tourism industry has been rapidly growing in the past decade, leading to rural tourism becoming not just a good business prospect, but a genuine vacation trend.

Ecotourism is "Responsible travel to natural (unspoilt) areas that conserves the environment and improves the well-being of local people." The purpose of ecotourism is to educate the traveller about natural destinations, to provide ecological conservation and awareness, to benefit economic development, the political empowerment of local communities and respect for the local culture. Here the traveller can experience the natural way of life surrounded by natural circumstances.

**FISH SANCTUARY** is a coastal area where no **fishing** is allowed so that **fish** (and other sea life) have a sea haven to breed and grow to increase the **fish** stock and keep it healthy. Fish Sanctuaries are anticipated to gradually increase fish population affected by overfishing and habitat degradation. Sanctuary establishment has been scientifically proven to improve fish stock by 3 to 21 times its original biomass. Furthermore, due to the 'spill over' effect, adjacent marine areas benefit as excess fish from the reserve will migrate into these areas where fishing is allowed.

**WILDLIFE SANCTUARY** is a place of refuge where abused, injured and abandoned captive wildlife may live in peace and dignity for the remainder of their lives. True wildlife sanctuaries do not breed or exploit for commercial activities (including, but not limited to: use of animals for entertainment or sport, sale or trade of animals, their offspring or animal parts and by-products.) A true sanctuary respects the integrity of individual animals, providing safe, healthy and secure refuge in enclosures specifically designed for the unique animal which it supports.

### **FLORA AND FAUNA**

Fauna is all of the animal life of any particular region or time and Flora is the plant life occurring in a particular region or time, generally the naturally occurring or indigenous—native plant life.

## **WILDLIFE TOURISM**

Wildlife tourism is the observation of wild (non-domestic) animals in their natural environment or in captivity. It includes activities such as photography, viewing and feeding of animals. This form of tourism offer tourists customized tour packages and safaris and is closely associated with eco-tourism and sustainable-tourism.

Wildlife tourism can be an eco and animal friendly tourism, usually showing animals in their natural habitat. Wildlife tourism, in its simplest sense, is watching wild animals in their natural habitat. Wildlife tourism is an important part of the tourism industries in many countries including many African and South American countries, Australia, India, Canada, Indonesia, Bangladesh, Malaysia and Maldives among many. It has experienced a dramatic and rapid growth in recent year's worldwide and is closely aligned to eco-tourism and sustainable-tourism.

### **NEGATIVE IMPACTS**

Wildlife tourism can cause significant disturbances to animals in their natural habitats. The growing interest in travelling to developing countries has created a boom in resort and hotel construction, particularly on rain forest and mangrove forest lands. Wildlife viewing can scare away animals, disrupt their feeding and nesting sites, or acclimate them to the presence of people. In Kenya, for example, wildlife-observer disruption drives cheetahs off their reserves, increasing the risk of inbreeding and further endangering the species.

#### **Direct impacts**

The effect that wildlife tourism will have on wildlife depends on the scale of tourist development and the behaviour and resilience of wildlife to the presence of humans. When tourists activities occur during sensitive times of the life cycle (for example, during nesting season), and when they involve close approaches to wildlife for the purpose of identification or photography, the potential for disturbance is high. Not all species appear to be disturbed by tourists even within heavily visited areas.

#### **Disturbing breeding patterns**

The pressures of tourists searching out wildlife to photograph or hunt can adversely affect hunting and feeding patterns, and the breeding success of some species. Some may even have long-term implications for behavioral and ecological relationships. For example, an increase in boat traffic has disturbed the feeding of giant otters in Manú National Park, Peru. Further disturbance to wildlife occurs when tourist guides dig up turtle nests and chase swimming jaguars, tapirs, and otters to give clients better viewing opportunities. On the shores of Lake Kariba in Zimbabwe, the number of tourist boats and the noise generated as disrupted the feeding and drinking patterns of elephants and the black rhinoceros - it is feared that further increases in boat traffic will affect their reproductive success.

#### **Disturbing feeding patterns**

Artificial feeding of wildlife by tourists can have severe consequences for social behaviour patterns. Artificial feeding by tourists caused a breakdown of the territorial breeding system of land iguanas on the South Plaza in the Galápagos Islands. Territories were abandoned in favour of sites where food could be begged from tourists, and this has had a negative effect on the breeding success of iguanas. Artificial feeding can also result in a complete loss of normal feeding behaviours. In the Galápagos Islands, overfeeding by tourists was so extreme that, when stopped, some animals were unable to locate their natural food sources. Similarly, until the early 1970s, the diet of some grizzly bears in Yellowstone National Park consisted, to a large extent, of food wastes left by visitors at park refuse sites. When these sites were closed, the bears showed significant decreases in body size, reproductive rate, and litter size.

#### **Disruption of parent-offspring bonds**

Wildlife tourism also causes disruption to intra-specific relationships. Attendance by female harp seals to their pups declined when tourists were present and those females remaining with their pups spent significantly less time nursing and more time watching the



tourists. There is also a risk of the young not being recognized, and being more exposed to predator attacks. A similar concern has been expressed over whale watching, whale calves normally maintain constant body contact with their mothers but, when separated, can transfer their attachment to the side of the boat.

#### **Increased vulnerability to predators and competitors**

The viewing of certain species by wildlife tourists makes the species more vulnerable to predators. Evidence of this phenomenon has been recorded in birds, reptiles and mammals. Problems have occurred in breeding colonies of pelicans.

### **POSITIVE IMPACTS**

#### **Habitat restoration by eco-lodges and other tourism operations**

Many owners of eco-accommodation or wildlife attractions preserve and restore native habitats on their properties.

#### **Conservation breeding**

Many wildlife parks (e.g. David Fleay Wildlife Park, Gold Coast, Australia) and zoos breed rare and endangered species as a major part of their activities, and release the progeny when possible into suitable habitat.

#### **Financial donations**

Some wildlife tourism contributes monetary donations to conservation efforts e.g. Dreamworld, Gold Coast, has a display of Sumatran tigers, and money from visitor donations and from their 'tiger walk' goes to Sumatra to assist in-situ conservation of wild tigers.

#### **Quality interpretation**

A good wildlife guide will impart a deeper understanding of the local wildlife and its ecological needs, which may give visitors a more informed base on which to subsequently modify their behaviour (e.g. not throw out plastic bags that may be eaten by turtles) and decide what political moves to support.

#### **Research and monitoring**

Some wildlife tourism operations contribute to monitoring of wildlife numbers or general research relevant to conservation.

#### **Anti-poaching**

Bringing tourists regularly into some areas may make it more difficult for poachers of large animals or those who collect smaller species for the black market

### **CONCLUSION:-**

Generally, ecotourism deals with living parts of the natural environments. Ecotourism focuses on socially responsible travel, personal growth, and environmental sustainability. Ecotourism typically involves travel to destinations where flora, fauna and cultural heritage are the primary attractions. Ecotourism is intended to offer tourists insight into the impact of human beings on the environment, and to foster a greater appreciation of our natural habitats.

Responsible ecotourism programs include those that minimize the negative aspects of conventional tourism on the environment and enhance the cultural integrity of local people. Therefore, in addition to evaluating environmental and cultural factors, an integral part of ecotourism is the promotion of recycling, energy efficiency, water conservation, and creation of economic opportunities for local communities. For these reasons, ecotourism often appeals to advocates of environmental and social responsibility.

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## **LIGHT AS A SYMBOL OF SECURITY AND OPTIMISM**

**-Anindita Y Sarki, Deputy Registrar, High Court of Meghalaya**

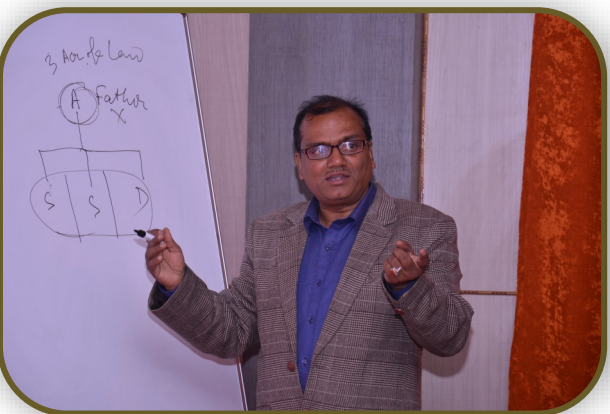
Light is a symbol of positivity. It is a symbol of optimism and in today's world when safety has become a great concern it brings in us a sense of security. Needless to say that we all avoid a path which is dark, since darkness can mean uncertainty and brings in us, fear. We all feel safe and secure to walk on a path which is well lighted. There is no guarantee that a well lighted place is free from crime and other illegal activities, however it deters crime to a great extent and makes us feel safer. In darkness often dwells illegal activities and under its shelter, the criminals and offenders gets more encouragement to carry on with their malafide intentions. My friends and acquaintances born and brought up in this place can very well relate to the advices we received from our parents and well wishers to return home before it got dark during our childhood days, when our place was affected with disturbances earlier. Arrival of dusk signalled departure to home, where we were safe to retire and works were usually restricted to broad day light. Times have changed now and places are better lighted, giving us more confidence to remain out inspite of approach of night.

Hence talking from safety angle, outdoor lighting plays a vital role to enhance safety and security when it turns dark. It is primarily important that our roads, lanes and all public places should be well lighted. This will certainly boost up the confidence of many, especially the women and children, who of late are becoming victims of various crimes.

Responsible steps should be taken in this direction to ensure that all public places like parking lots, toilets etc., roads and lanes are well equipped with street lights and are also maintained and rectified for any problems if any, at any point of time. This step though may not wipe off the crime from the face of our society but will undoubtedly be a major step towards achieving a society of minimum crime. So let us light up to create a better world, modern world and above all a safe world.

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**Photos of the different seminars, training, conference organised by the Academy during the Academic year 2016-2017**



**Refresher Course on Adoption held on 05.08.2017 for Judicial Officers**



**Joint Session on Ubuntu, CIS and NJDG on 12.08.2017**



**First Phase: Training on Ubuntu, CIS and NJDG for Judicial Officers on 16.09.2017 and 17.09.2017**



**Second Phase: Training on Ubuntu, CIS and NJDG for Judicial Officers on 07.10.2017 and 08.10.2017**



**Third Phase: Training on Ubuntu, CIS and NJDG for Judicial Officers  
on 14.10.2017 and 15.10.2017**



**Seminar on Mediation of Family Dispute and the Role of  
Maternal Uncle in settling family dispute within the Khasi, Jaintia  
and Garo Household held on 28.10.2017**



**Seminar on Equality, Social Change & Social Justice: Contribution of Courts on 18.11.2017**



**Valedictory function of Judicial Officers - Grade - III (2016 batch) on 30.06.2017**



## **FROM THE DESK OF THE EDITOR**

### **Be the change that you want to see in the World – Mahatma Gandhi**

The Law Commission in its 117th Report observed that “Rendering justice is an art in itself and acquiring rudiments of arts needs training. The minimum equipment to render justice requires a keen intellect to shift grain from the chaff, to perceive falsehood, to appraise relative claims, to evaluate evidence, a fair and balanced approach, needs of the society, the constitutional goals and above all keen desire to do justice. In order therefore to equip a fresh law graduate to be a good judge a pre-service training is indispensable. Similarly those who enter state judicial service at grass roots level will equally need training in the art of rendering justice.”

Initially before establishment of the Meghalaya State Judicial Academy, the Judicial officers of Meghalaya received training at the North Eastern Judicial Officers Training Institute, Guwahati. Within a period of three years from establishment of the High Court, the Academy was established and has since completed a year and few months and in this short period the Academy has evolved from a sapling in to a tall tree. The Academy have made strides in imparting the foundation course training programme to the newly appointed Grade III Judicial Officers, to organising various training programme, seminars, conference through out the year 2016-2017 and till date.

The Academy owes its very existence to the determined effort of Hon'ble the Chief Justice of the High Court of Meghalaya, Mr Justice Dinesh Maheshwari who is also the Patron-in-chief of the Academy and it is under the aegis of Hon'ble the Chief Justice that the Academy came into existence. The Academy is highly indebted to Hon'ble the Chief Justice for his zealous support and motivation to push the Academy to what it is today. In fact the proposition for the first issue of the Academy newsletter came from Hon'ble the Chief Justice and which is now a reality.

It is my pleasure to bring forth the first issue of the newsletter of the Academy. In this issue, the Academy has aimed at highlighting its activities right from the very day it started till date. This newsletter would not have seen the light of the day without the contribution of the various stakeholders and the Academy is deeply obliged to all.

This is just the first humble attempt of the Academy and the goal is to publish many more in the years to come.

Until then I wish you well and happy reading!!!!

**Smti. Rithelda Rymbai**  
**Deputy Director**  
**Meghalaya State Judicial Academy**





**Smt. M. B. Challam, Director,  
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**Smt. Rithelda Rymbai, Deputy Director,  
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