

Volume 10**January 1999****Part 10****Sethi, Hegde sworn in**

The President appointed Chief Justice of High Court of Karnataka Mr. Justice R.P. Sethi and the Solicitor General of India Mr. N. Santhosh Hegde as the judges of the Supreme Court of India. On January 8, 1999 they were sworn in as the judges of the court by Chief Justice Adarsh Sein Anand. With these appointments the strength of the judges of the Apex Court has raised to 23 as against the sanctioned strength of 26. Born on July 7, 1937 at Mirpur [now in Pak Occupied Kashmir] Mr. Sethi graduated from Kashmir University in 1959. Obtained law degree from Aligarh Muslim University in 1961. He practised at the Bar before his appointment as an addl. judge of the J & K High Court on May 30, 1986. Became a permanent judge of the same court on August 5, 1987. On October 18, 1983 he was transferred to P & H High Court and later elevated as the Chief Justice of same court on March 27, 1996. On his transfer as the Chief Justice of Karnataka High Court Mr. Justice R.P. Sethi served in that capacity for about two and half years.

Being son of illustrious Mr. Justice K.S. Hegde, former judge of the Supreme Court of India Mr. N. Santhosh Hegde was born in Nitte of Karkala Taluk, Dakshina Kannada District on June 16, 1940. Passed law degree from the then Government Law College, Bangalore. Enroled as an Advocate in 1966. Several as Advocate General of Karnataka from 1984 to 88. Initially he served in the chamber of Justice K. Jagannatha Shetty. During 1988-89 he was the Addl. Solicitor General of India. In March 1997 he became the Solicitor General of India.

AAB had organised a farewell function on January 5, 1999 at the Banquet Hall, Bangalore to bid farewell to Mr. Justice R.P. Sethi. Mr. Justice. Y. Bhaskar Rao was the chief guest on the occasion which was presided over by the president of AAB Mr. K.N. Subba Reddy.

New Dimension To Judges Appointment

A new dimension is added with regard to the appointment of judges to higher judiciary with president K.R. Narayanan favouring representation to persons belonging to weaker sections of society. According to a recent publication the president has reportedly recorded his views in an official file that "it would be consonent with constitutional principles and nation's social objectives if persons belonging to weaker sections of society like SCs and STs, who comprise 25% of the population and women are given due consideration. Eligible persons from these categories are available and their under-representation or non-representation would not be justifiable.

The reported comments of the president was forwarded to the Chief Justice of India by the Union Law Minister M. Thambi Durai. According to the reported views Mr. Thambi Durai said "personally I am for reservation. The spirit of constitution should be followed in all fields including the judiciary." However, he refrained from taking an "unequivocal view" on the issue and said "my job is just to forward the president's suggestion to the CJI and the collegium of judges for their consideration. Now it is up to them to take a view on this".

According to "India Today" Justice Anand [CJI] has asserted that merit alone is the criteria for appointment of judges. "Our constitution envisages that merit alone is the criterion for all appointments to the supreme court and high courts. And we are scrupulously adhering to these provisions", Justice Anand said.

Financial Autonomy Sought

In the meanwhile Justice A.S. Anand sought financial autonomy for the judiciary in the country. Speaking on the occasion of "house warming" of the new ultra modern high court building of Gujarat high court at Ahmedabad on January 16, 1999, Justice Anand said it is time that the judiciary was vested with financial autonomy. Why can't you [the executive] trust the Chief Justices of the high courts and the supreme court?

the judiciary should be allotted adequate grants so that it would carry out its functions effectively."

Stating that "the approach of the executive towards judiciary was very callous" Justice Anand said there were vacancies in almost all the high courts and sub-ordinate courts of the country. The requests of the Chief Justices of the high courts to the executive on filling up of vacancies in the sub-ordinate courts does not receive positive response. The files seeking appointments of more stenographers at sub-ordinate courts are simply tossed by the babus who are not able to understand the amount of work put in by the lower courts."

Patil CJ of Rajasthan HC

Mr. Justice Shivaraj Patil has been appointed as the Chief Justice of Rajasthan High Court with effect from January 16, 1999. Immediately before his elevation Justice Shivaraj Patil was functioning as the Acting Chief Justice of Madras High Court. After Mr. Justice Honnaiah, Justice Shivaraj Patil is the second person from Karnataka to occupy the post of Chief Justice of Rajasthan High Court.

In a simple ceremony held on January 29, 99 at the banquet hall, Raj Bhavan, Jaipur, Governor Anshuman Singh administered oath of office to Mr. Justice Patil.

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Around the Courts**☐ Children adopted by Christian couple-entitlement for inheritance:**

In a significant ruling the Kerala High Court has held that children adopted by the Christian couples are entitled to inherit the latter's property. Justice Sridevi, in a judgment delivered on January 5, 1999, held that since the adopted child got all the rights of a natural born child it cannot be said that the adopted child is not entitled to inherit the assets of the adoptive parents.

Mr. Philips Alfred Malven of Thalassery, adopted son of Mr. George and Ms. Jane Correa, instituted a partition suit before Kannur Munsiff Court in which the natural heirs of Correa couple were defendants. The suit was decreed. Defendants filed an appeal before the Sub-Court, Thalassery. The Appellate court reversed the judgment holding that "Adoption" is not recognised either by christian personal law, custom or by canon law. The Appellate court held that since the adoption itself remains unrecognised the respondent would not have claimed any share in the estate of adoptive parents. Allowing the second appeal filed by Malven Justice Sridevi held that the appellant was entitled for a share claimed by him.

Khanna, Iyer get Padmavibhushan

On the eve of the 50th Republic Day celebration Mr. Justice H.R. Khanna and Mr. Justice V.R. Krishna Iyer, former judges of the supreme court have been awarded the civilian honour of Padmavibhushan for their outstanding contribution as jurists alongwith 12 other renowned public personalities.

How lightly do we sanction a law unjust to ourselves.

Horace

Judicial Discretion and its Scope

C. Srinivasa Iyengar, Advocate

Criteria germane in the exercise of judicial discretion is generally not properly understood. Courts of law have acted intuitively or reacted traditionally so much so that the fate of the applicants for bail in the High Courts and in the Supreme Court has largely hinged on the hunch of the bench as an expression of judicial discretion. A scientific treatment is the desideratum.

The Code is cryptic on this topic and the courts prefer to be tacit in this regard. Personal liberty is deprived when bail is refused. It is so precious in our constitutional system and therefore recognised as a fundamental right.

What then is judicial discretion is well set out in the elegant words of Benjamin Cardozo. The judge when he is free, is not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness. He has to draw his inspiration from concentrated principles. He is not to yield to spasmodic sentiments, vague and unregulated benevolence. He is to exercise discretion informed by tradition, methodised by analogy, disciplined by system and subordinated to primordial necessity of order in social life wide enough in all conscience in the field of discretion that remains.

Judicial discretion in the language of Chief Justice Marshall is a legal discretion to be exercised, not to given effect to the will of the judge, but to that of law. Lord Mansfield says, discretion when applied to a court of justice, means sound discretion laid down by law. It must be governed by rule, not by humour. It must not be arbitrary, vague and fanciful, but legal and real. Realism is a component

of humanism which is the heart of the legal system.

Judicial discretion is a curative latitude or liberty accorded by the statute or rules to a judge, as distinguished from a ministerial or administrative official, in adjudicating the matter brought before him. It limits and regulates the exercise of discretion and prevents him from being wholly absolute or capricious.

The ultimate analysis of judicial discretion is a science of understanding the abilities to discern the falsity from truth, between wrong and shadows and colourable glasses and pretence and not to do according to men's will and private or personal affection.

Office Bearers Elected

□ In the annual general body meeting of Ramanagaram Bar Association held on 19-12-98 Mr. N. Subba Shastri was re-elected as the President for the year 1999. Mr. T. Rangarame Gowda and Mr. Sidde Gowda were elected as the Secretary and Treasurer respectively.

□ In the annual general body meeting of Karnataka State Commission of jurists held on 17-1-99 the following persons were elected as the office bearers for the ensuing term:

President: Mr. Justice [Retired] P.P. Bopanna, Vice-presidents: Mr. S.S. Naganand and Mr. A.N. Jayaram. Treasurer: Mr. Sudhish Pai; Secretaries: Ms. P.G. Gouri Kuranga, Ms. Rukmini Gopal; Members: Mr. B.T. Parthasarathi, Mr. Justice K.H.N. Kuranga, Mr. Justice A.M. Farooq, Mr. M.P. Eshwarappa, Mr. K. Kasturi, Mr. K.P. Kumar, Mr. Padubidri Raghavendra Rao, Mr. P.G.C. Chengappa and Mr. S.N. Hatti.

Read Communique

Corruption in Society

R.B. Guttal, Advocate

Corruption is anti-human and it has ruined the nation. But still people say that corruption is a way of life, it has descended to us from time immemorial, it is a global phenomenon etc., and it is better to avoid bothering about its existence. If corruption is a way of life, then we don't require any legal system and courts of law. Then spending on the establishment of court and the police is a waste of time and money. If the society has recognised a way of life to get all things done only by giving bribe then the entire system of law and the enforcement machineries become useless. Of course, the public will not accept this and it expects a government which can eradicate corruption.

But, now what is happening is startling for any law abiding citizen of the country. Everybody talks that corruption is rampant and one can't move an inch without giving bribe in any of the offices. The concept of public service has gone and in place of public office a bureaucratic monster is kept to loot the public. Such inhuman acts are committed everywhere and the public has adjusted to this kind of life for a long time. Thus they have forgotten the utility of law and the concept of civilization. Now people only exist without enjoying the fruits of modern civilization.

Scientists are making research for the benefit of mankind and they have introduced so many devices for the comfort of the man. Literarymen have tried to cultivate the mind of man. There is advancement of knowledge. Technology has brought all the information to door steps of the people. Still man is not happy due to the evil forces of corruption. As already stated, corruption may be a global phenomenon, but in countries outside India corruption is punished and it has reduced the enormity of corruption to the minimum. On the other hand in our country people have not taken the menace of corruption so seriously as to suppress it. Here corruption cases are made a political

tool and the corrupt politician is interested in foisting a case of corruption against his opponents. This corruption case comes to an end as soon as the day's government is toppled and the new government is formed. This process is going on endlessly without doing much for the eradication of corruption.

Robert Payne, the author of "The Corrupt Society" says that corruption is the result of certain attitude of mind that can best be characterised as contempt for humanity. This statement is applicable to Indian society with all its force. Firstly we find corrupt attitude all over the country and naturally the result is that there is no dignity in human conduct. It is partly due to lack of education and superstitious habits of the people. Here in India god has not created the man as his own image, but man has created the god in the form of deities. So much so that some human beings are regarded as gods due to slavish mentality of the people. Because if such attitude and habits of the people it has become an uphill task to prevent corruption. A few years back of anybody spoke against corrupt bureaucrat or politician he was considered as anti-social, because the whole society was corrupt and the anti-corrupt man was considered as anti-social. Now at least intellectuals talk against corruption, only to show that he is upright.

Even today very few people have understood the monstrous effects of corruption and they give various reasons other than corruption for the miserable condition of India and other developing countries. An unofficial estimate made by the International Monetary Fund reveals that about 100 billion dollars is kept by Indians in foreign banks. This is not merely a monetary loss to the country but has a drastic effect of demoralising the entire society. In spite of this, people are not considering the menace of corruption seriously due to their indifferent attitude and habits. First of

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Tax consultants urge govt. to overhaul laws

The Karnataka Tax Consultants Association has urged the state government to rewrite and overhaul the Karnataka Tax Act 1957 in a bid to improve the tax collection and reduce reduction of corruption in the Commercial Tax Department.

According to Association president S.K. Nahar, the complete overhaul of the sales tax laws has to be done keeping in mind that many of the provisions are "clumsy and oppressive". Citing examples of other southern states that have resorted to such a revamp, Mr. Nahar said that Karnataka was lagging behind.

Mr. Nahar has attributed tax evasion to the loopholes in the law. "Businessmen are constantly on the lookout for loopholes that can be exploited to evade tax," he said. "The faulty tax structure has further led to the creation of a notorious parallel economy," he claimed.

As a solution, the Tax Consultants Association has urged the government to constitute an expert panel to rewrite state tax laws using the expertise of three groups of people including a senior tax officer who constantly deals with the present laws and will be in a position to suggest remedies; lawyers, tax practitioners and academicians and representatives of the business community.

The association has also suggested that the government should come out with a directory of sales tax related cases for the benefit of the officials dealing with such cases. The directory should be a compilation of all the court decisions on tax-matters that the tax officials can use to expedite the settlement of tax related disputes.

Literary Union

On 27-1-99 under the joint auspices of the department of Kannada and Culture, Government of Karnataka and Bangalore Literary Union Sri Mallikarjuna Nagenahalli and party provided a Sugam Sangeetha programme at the AAB Auditorium.

News Focus

Renowned British Industrialist and NRI Mr. Swaraj Paul delivered Justice E.S. Venkataramaiah memorial lecture on "Social responsibility and change: on the threshold of the millennium" on January 4, 1999 at Bharatiya Vidya Bhavan in Bangalore. Bhavan's Chairman Mr. N. Ramanuja presided.

On 10-1-99 Swami Abhiramanandaji of Ramakrishna Mutt, Coimbatore addressed the members of AAB, High Court Unit. Mr. Justice Kumar Rajarathnam was the chief guest.

Ninth Karnataka Judicial Officers Conference was held at Belgaum on Saturday the January 16, 1999 in which Mr. Justice K. Jagannatha Shetty, Chairman, First National Judicial Pay Commission, Mr. Justice Bhaskar Rao, Acting Chief Justice, high court of Karnataka participated. The theme of the conference was "the role of district judiciary in the changing society."

Prime Minister Atal Bihari Vajpayee inaugurated a seminar on electoral reforms at New Delhi on January 23, 1999. The two day seminar was jointly organised by the law commission of India and the All India Bar Council.

Karnataka high court legal and services authority had organised a lok adalat on January 23, 1999 at the high court premises. Five sitting judges of the high court sat in along with an advocate each for the first time attempting to settle disputes.

On 25-1-99 Swami Chidanandaji, President Vivekananda Mission, Chicago [USA], addressed the members of AAB, City Unit.

50th Republic Day celebration was jointly organised by the AAB, Literary Union and Advocates Co-operative Society on January 26, 99 at the high court. Mr. Justice A.J. Sadishiva unfurled the national flag and addressed the gathering. A musical programme was provided by the Advocates on the occasion.

Corruption in Society

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all it is necessary to generate the sense of nationalism and patriotism in our people so that they can fight against corruption. Corruption is not only opposed to law it is anti-human and affects the basic living itself. It is a sort of compulsive exploitation of the people. Hence it is opposed to the basic principles of democracy. Thus corruption in any form is opposed to the welfare of the people. But in a recent decision the Supreme Court [P.V. Narasimha Rao V. State] (CBI/SPE) (AIR 1998 S.C. 2120) has held that the bribe taking MPs are entitled to protection of Art 105(2) of the Constitution. At the same time the bribe givers are not entitled to such protection. This is a strange view taken by the Supreme Court and it requires review at the earliest.

Campus Watch

Chief Justice of India Mr. Justice A.S. Anand expressed the view that no society was free and no state was truly democratic unless human rights are guaranteed to every citizen. He was speaking after inaugurating the 10th Judicial Colloquium on the "Domestic application of international human rights norms" jointly organised by the Interights, London, the commonwealth Secretariat, London and the National Law School of India University at Bangalore on December 27, 98.

National Law School of India University had organised a workshop on "intellectual property rights and software contracts for Information Technology managers" at Bangalore on January 9, 1999. Dr. N.L. Mitra, Director, NLSIU and Dr. Jaygovind, Prof. of Law, participated.

University Law College had organised a lecture from Mr. Asghar Ali Engineer, Director, Society for Secularism, Mumbai, in the college premises on January 9, 1999. The subject of the lecture was "uniform civil code and the personal laws."

On January 21, 1999, Universtiy Law College, Bangalore, hosted "Akarshan-99."

Judges must speak through judgments

Judges must speak through their judgment and not through media. This would go a long way in preventing legislatures discussing about the judges conduct and reduce friction between the judiciary and legislature, said Mr. Arun Jaitly, Advocate, Supreme Court of India. Speaking at a function hosted by BJP legal cell, Bangalore city on January 2, 1999. Mr. Jaitly expressed the view that responsible judiciary, executive restraint and legislative statesmanship could ensure balanced growth of all the democratic institutions.

Tracing the role of apex court after independence, Mr. Jaitly said that during the first phase there was total judicial subservience. During the second phase the judges started asserting to ensure the fundamental rights of the citizens. Internal emergency saw the black period of judiciary, particularly the supreme court which failed to uphold the fundamental rights even while the various high courts showed exemplary courage. Advent of public interest litigation saw a marked change in the role of judiciary which brought many executive actions under the preview of judicial review. However, the excessive zeal shown by the supreme court in Vineet Narian's case, the Central Vigilance Commission's case, educational fee structure and maintenance of law and order by the states have gone beyond the imagination of the scope of PILs and such intervention by the apex court are not good, according to Mr. Jaitly.

Answering a volley of questions from the legal cell members Mr. Jaitly said that the hyper media attention and its distorted version about the recent Gujarat incidents has complicated the issue. In respect of the transfer of cases pending before the Special Courts in respect of Dr. Jayalalitha's case, he said that it is the prerogative of the centre to transfer the cases and state government cannot meddle with it. He said that the recent opinion of the supreme court on Presidential reference upholding the validity of the collegium in the appointment and transfer of judges to higher judiciary should be accepted and a fair trial should be given to it. According to him the role of National Judicial Commission in these matters can be considered only if the present system fails. Ultimately it is the vigilance of the Bar members and a strong public opinion which can ensure the quality of judges, he said. Explaining the role of legal cells he said that they should not become "seeking cells".

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Lahari Advocates Forum

□ The following are the office bearers of Lahari Advocates' Forum for the years 1998-2000:

□ Mr. N.S. Satyanarayana Gupta, President; Mr. Aravind Kumar Vice-President; Mr. T.S. Mahanthesh-Secretary; Mr. Bharath Kumar Mehta Joint-Secretary and Mr. Shanmukha Sampige Treasurer.

□ Second Moot Court Competition organised by the Forum was held at the Bangalore City Civil Court Complex on Sunday the 10th January 1999. In the competition participated by 25 persons Mr. Dhyan Chinnappa [Trainee Advocate] secured the first prize. Ms. Lakshmi Panch [S.J.R.C. Law College] secured the second prize while Ms. Kaveri Bhopanna [Universtiy Law College] secured the third prize and Mr. S. Raghavendra [Trainee Advocate] secured the fourth prize. Ms. K. Rekha [University Law College] and Mr. S. Chandan [Trainee Advocate] secured prizes for being the best dressed female and male participants.

□ On 29-1-99 Mr. K.N. Subba Reddy, President, AAB, released a Kannada book titled "Chitragarana Chitra" written by Mr. B.S. Virupakshappa, Advocate and the pocket planner published by the above Forum. Mr. C. Gopalswamy, President, BLU, graced the occasion.



Smt. K. Vijaya, Advocate from Bangalore, presenting a bouquet to the Union Minister for Law Sri Thambi Durai at an All India Seminar on Judicial Reforms organised by the Advocates on Record Association at New Delhi from 5th to 6th December 98.

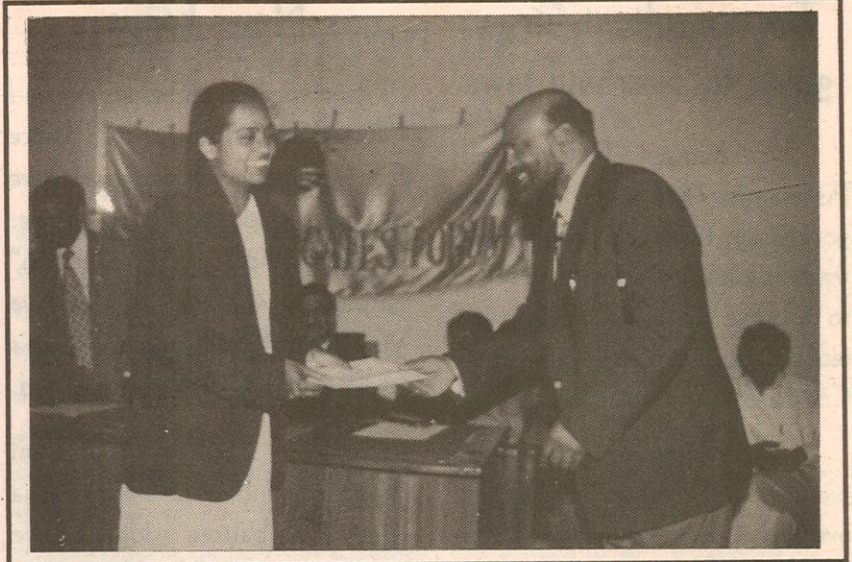
Nanaiah seeks common formula

Law and Parliamentary Affairs Minister M.C. Nanaiah has suggested that the Union Government should come up with a uniform formula providing for establishment of high court benches, outside state capital and a supreme court bench in all states. Addressing a press conference at Hubli on January 17, 1999 he said that the state government would write to the centre in this matter. On the popular demand for a high court bench in North Karnataka Mr. Nanaiah said the state government had recommended the setting up of a high court bench at Hubli/Dharwad twice in the last decade, but the centre has not taken any decision in the matter.

Spoil Sport

The cricket team of Advocates Association, Bangalore, which went to Sirsi to participate in a state level cricket tournament hosted by the local District Yound Advocates Association was sent back without allowing it to participate in the event on the ground that the team was a late entrant. However, according to Sri I.M. Devaiah, Chairman of the Sports Committee of AAB, the participation was confirmed to the organisers over phone. The President and Secretary of AAB have expressed their anguish over the unsportive attitude of the organisers of the tourney.

Read Communique



Lahari Moot Court Competition: Ms. Lakshmi Pauch of SJRC Law College collecting the Second Prize from Mr. C. Gowrishankar, Advocate.

Miscellany

□ In a function organised on December 29, 1998 "Dhwani", a city based cultural organisation felicitated renowned Sugama Sangeeta exponent Shimoga Subbanna along with other musical and literary personalities.

□ S/s. A. David slim, Ramanuj Singh, A Maggi, R. Manjunath, Ravi Shankar and Sathish Kumar, Advocates, attended the National Integration camp at New Delhi from 24-11-98 to 26-11-98 as representatives of the Human Rights Association, Bangalore.

□ Dr. T.M.A. Pai Foundation award for 1998 was recently conferred on Mr. Justice M.F. Saldanha at Manipal recognising his contribution to law and judiciary.

□ KPCC [I] President Sri Dharam Singh has nominated Sri R. Shivachandra Naik, Advocate, as a member of KPCC [I].

□ Ms. K. Vidya, Advocate from Bangalore, participated in the state level workshop on "tradition of Kannada poetry" organised by Karnataka Sahitya Academy, Bangalore, at Shimoga from 10-1-99 to 17-1-99. Representing Bangalore District Ms. Vidya received guidance from renowned Kannada litterateur Prof. K.R. Nagaraj.

□ Mr. H. Kantharaja, Advocate, has been appointed as a member of the Karnataka State Permanent Backward Classes Commission, Bangalore.

□ Bangalore Advocates Co-operative Society has donated a '28" BPL colour television to AAB' City Unit during January 1999.

□ Recently Mr. Shimoga Subbanna, Advocate and Notary, has been appointed as a member South Central Zone Cultural Centre, Nagpur.

Wedding

□ On 24-1-1999 Mr. Sriharsha, Advocate, S/o. Mr. K.S. Desai, Advocate, married Ms. Neetha at Bangalore.

Foreign Tour

Mr. L.K. Srinivasamurthy [Law Associates] and Mr. Nanjunda Reddy [Kesvy and Co.] Advocates, visited Singapore, Bangkok, Hongkong and China during the second half of December 1998.

Kolar Dairy

The following persons have been elected as the officer bearers of the Kolar Bar Association for the year 1999:

President: Mr. P.N. Krishna Reddy; Vice-President: Mr. Ramalinge Gowda; Secretary: Mr. S.N. Somanna; Treasurer: Mr. B. Sadashiva Chary; Joint Secretary: Mr. K. Narasimha Gowda; Executive Committee Members: Mr. M.V. Subba Reddy, Mr. S.N. Murthy, Mr. G.P. Muniswamy, Mr. S.R. Jagadish, Mr. M. Mylari Gowda, Mr. M. Munigangappa; Co-opted Members: Mr. K.V. Shankarappa, Mr. K.R. Srinivasaiah and Mr. B.C. Subbaraju Setty.

Obituary

□ Prof. M.K. Nawaz husband of Ms. Leela Nawaz, Advocate, passed away at Bangalore on 31-12-98. Mr. Nawaz was the former Director of Indian Society of International Law, New Delhi and a visiting professor of the National Law School of India University, Bangalore.

□ On 10-1-99 G.V. Shamanna [75], Advocate, passed away at Bangalore.

□ On 17-1-99 C.S. Krishna Murthy [61], Advocate, passed away at Bangalore.

□ On 26-1-99 ASR Murthy, Advocate, passed away at Bangalore.