

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 10

Resurrect Supremacy of Dharma-Swami Harshananda

Bangalore Dec. 28-29 : It is the duty of judiciary to protect good people and punish the wrong doers. Bhagavadgita has ordained a divine status to this obligation and therefore the concept gets a religious sanction. The man making philosophy of Swami Vivekananda is the only solution to the problems faced by the country. As the entire social system is getting sabotaged all nationalist forces must come together to restore the ancient values which would sustain the society. Lawyers should assert on the side of Dharma to re-establish its supremacy. The nation's conscience should be reawakened and the people should be inspired to regain the lost glory of our nation. This was the appeal made by Swami Harshanandji of Sri Ramakrishna Mutt, Bangalore, while delivering the valedictory address of the 2nd National Conference of Akhil Bharatiya Adhivakta Parishad which recently concluded in Bangalore.

Justice D. M. Chandrashekar, the former Chief Justice, who presided over the function made some plain speaking about the present state of affairs concerning the legal profession. While suggesting that judicial conscience instead of the pressure tactic brought on the judges should govern the discharging of their functions he lamented that the laws delays has not been appreciably reduced. He also elaborately explained the plight of the new entrants to the profession and opined

that group practice and specialisation may go a longway in ameliorating the plight of young advocates. Further, he called for sustained self regulation amongst the lawyers and called for a halt regarding charging higher fees. He also suggested that young advocates must get their due share in the appointment of panel advocates, Notaries and allotment of work by the Legal Aid Boards. Further, he suggested that lawyers must take more interest in public interest litigation and evolving a mutual benevolent fund.

The function began with the invocation by the noted singer Shimoga Subbanna. Sri H. S. Jois, Senior Advocate, welcomed the participants. The function concluded with the vote of thanks proposed by Sri B. V. Puttegowda.

The convention attended by more than 600 delegates from 14 States of the country was inaugurated on the previous day by the noted celebrity Justice H. R. Khanna, the former judge of the Supreme Court of India. In his inauguration speech Justice Khanna traced the origins of the Hindu legal system extensively quoting from the Vedas, Upanishads and the Smritis. While appreciating the concept of Bharatiyata he said that the contribution of Anglo-Saxon system of law cannot be undermined. He warned, tendencies to replace English by Hindi or other regional languages will result in

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Eradi Flays B'lore Consumer Forums

Bangalore Dec. 23 : Justice Balakrishna Eradi, President of National Commission for Consumer Grievances Redressal, severely criticised the working of Bangalore Consumer Forums with regard to their failure to execute the orders passed by them. Mr. Eradi observed that "by giving consumers mere pieces of paper (orders) and frustrating them the Forums are showing a regrettable lack of motivation". He opined that the Forums have got ample power under Section-27 of the Consumer Protection Act, 1986 to execute its orders.

Elaborating the procedure regarding the execution of the orders Mr. Eradi said that the consumers should file an application before the Forum for execution of its order and when the opposite party fails to obey it such applications must be dealt with priority basis i.e. within a period of 10 days. The Forum must direct the jurisdictional police to issue warrants under Section 27 of the Act against the erring parties and such directions are as good as that of Magistrates' Courts. He also stated that the Forum has necessary power to impose fines upto Rs. 10,000 on erring defaulters.

Munsiffs Exam

Written examination for the selection of Munsiffs is proposed to be held between 8th to 11th February 94 at Bangalore.

**Wish You
Happy New Year**

Court Vacation

Summer : 25.4.94 (Mon) to 29.5.94 (Sun) (b.d.i); Dasara : 10.10.94 (Mon) to 15.10.94 (Sat) (b.d.i); Winter : 26.12.94 to 31.12.94 (Sat) (b.d.i).

General Holidays

14.1.94 Fri Sankranti; 26.1.94 Wed Republic day; 10.3.94 Mon MahaShivarathri; 14.3.94 Mon Ramzan; 1.4.94 Fri Good Friday; 11.4.94 Mon Ugadi; 14.4.94 Thu Ambedkar Jayanthi; 23.4.94 Sat Mahavir Jayanthi; 12.5.94 Thu Basava Jayanthi; 20.8.94 Mon Muharrum; 15.8.93 Mon Independence Day; 20.8.94 Sat Id Milad; 9.9.94 Fri Vinayaka Chaturthi; 4.10.94 Tue Mahalaya Amavasya; 13.10.94 Thu Mahanavami; 14.10.94 Fri Vijayadashami; 1.11.94 Thu Kannada Rajyotsava; 2.11.94 Wed Naraka Chaturdashi; 4.11.94 Fri Deepavali.

Harassment Flayed

The Special General Body meeting of the AAB held on 22-12-93 adopted unanimous resolutions expressing its displeasure regarding harassment of lawyers of Bhatkal by the jurisdictional police and the ill treatment of lawyers by the Assistant Commissioner of Tumkur Sub-division.

Lord Mackay Honoured

In a special Convocation of NLSIU held at Bangalore on 29-12-93 Justice M. N. Venkatachalaiah, Chief Justice of India, who is also the visitor of the School, conferred the first ever honorary Doctorates-Doctor of Laws-on the Lord High Chancellor of Great Britain Lord Mackay and Lord Templeman.

*A lawyer's opinion is worth nothing unless
paid for* —English Proverb

Discipline Sans Hardship

There is a constant grouse that the Karnataka State Bar Council is in the habit of referring practically every complaint received against Advocates to Disciplinary Committees. How far this presumption is correct requires to be clarified by the Council. No doubt, there appears to be a Screening Committee in the Council which is expected to screen all complaints received against Advocates before referring them to Disciplinary Committees. Notwithstanding the existence of such a Committee it is complained that mechanically the complaints are referred to the Disciplinary Committees involving avoidable hardship to the large number of Advocates. If that be so the process of referring complaints to Disciplinary Committees require streamlining.

It is to be seen that while the Bar Council has power to refer the cases of alleged professional misconduct to a disciplinary committee prudence requires that the Council must have "reason to believe" that an advocate has been guilty of "professional or other misconduct" before it decides to refer such case to the Disciplinary Committee. Needless to state that it will be just to presume that the Council does exercise this power in its judicious discretion and not otherwise. Any deviation from this mode is not only illegal but is bound to cause undue hardship to the Advocates. Before the Council decides to refer the matter it may be just and appropriate to call upon the Advocate concerned an opportunity to show that either the complaint is frivolous or does not make out a case of

the Respondent being guilty of "professional or other misconduct." If the Council has the representation of the Respondent before deciding as to whether the case requires to be enquired by a Disciplinary Committee it would go a long way in avoidance of entertaining frivolous complaints.

While the Advocates Act do not define the "other misconduct" there is definitely a scope to interpret the same in a manner prejudicial to the Respondent. Even on this ground an opportunity must be there to the Respondent to show that the alleged acts and utterances on his part does not constitute "other misconduct".

Instances have also come to light that even when the Respondents have challenged the jurisdiction of the Council to proceed with the disciplinary enquiry, non maintainability of the complaint, pendency of parallel judicial proceedings etc, and seek an order on those aspects, the Disciplinary Committees are in the habit of proceeding with the ongoing enquiry rather than the disposal of such contentions. Since the nature of complaints are such that it goes to the root of the matter viz, exercise of jurisdiction, maintainability of the complaint etc, it may be just and appropriate to dispose off such contention at threshold rather than compelling the Respondents to subject themselves to the rigour of a disciplinary enquiry.

Even with regard to other procedural safeguards required to be followed by an authority holding a quasi

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THE SCAM (Its Genesis and causes) C.B. Srinivasan, LL.B., Advocate

(from the last issue)

a broker's consulting room and the city bourse constitute together an unseverable link to the brouhaha of safe investment, unimaginable returns and sky high rises. The bank's broker had thus silently taken up a part time employment in the Stock Exchange. It was a movement from a theoretical knowledge of the securities to a practical employment of the industrial shares. Under these circumstances, drawing of the securities and diverting them to the share market was a smooth sail, unnoticed, undreamt of and unintended. But, that is yet another story and need only be noticed in anticipation and not considered in detail. But the happening was like a simple event; a honey sucker does not but lick his honey sticking fingers.

New Horizons of Financial Activity

There grew over the past decades such a volume and wealth of industrial business that, side by side, banking system also grew by leaps and bounds. The Savings Bank Account which banks operated by charging higher interest receded to insignificance as the idea of Fixed Deposits, Recurring Deposits, Cumulative Deposits and so on took root in a larger proportion. However, in the recent past schemes for doubling, tripling and quadrupling of investment became such a craze that the banks were constrained to float them to attract larger investments. The Nationalised banks set up subsidiaries and brought into existence "Mutual Funds". The banks also set up separate trusteeships of their own and subscribers were advised to bring in their investments. The whole sums were inves-

ted in trade and profits distributed so that the idea was to provide earning of dividends in the place of payment of interest which suffered from the ceiling.

The banks mobilised public subscription, collected funds for investment, applied it in profitable trade, oversaw the working and management of the funds and an Asset Management Company devoutly applied its know how all to the advantage of the beneficiaries. The scheme became so popular that the Nadkarni Panel reported that these were the favourites of the Unit Trust of India, State Bank of India, Canbank Mutual Fund, Life Insurance Corporation, General Insurance Corporation, Indian Bank, Punjab National Bank, Bank of India and other financial institutions attracting total turnover of Rs. 37, 750 Crores.

Not being content with this the banks spearheaded the entry of public investment in industrial shares. They initiated the Portfolio Management Schemes (PMS) acting to chaperon the investor from the money market to the share market.

"That is a dream world" they appeared to say. "It is dangerous to go there without assistance. Come to us. Deposit the money with us. We will educate you on the share investment through our expertise. You choose, we will invest. We will only recover service charges. The whole profit is yours. The risk is yours too. But the risk is worth it. We will make the game worth the candle." The banks thus promised a financial El Dorado. In such a conducted tour to the land of Kubera they proclaimed to be the guides.

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Article 356 - Scope of Judicial Review

Justice (Retd.) **M. Rama Jois**

(from the last issue)

time as he thinks fit without awaiting a vote of 'no-confidence' or the expiry of the period fixed for a fresh general election according to the Constitution.

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I do not like the Communist Party but this is not the way to deal with it. It is through the Constitution and the Constitution alone that we should deal with the Communists.

The introduction of President's rule now, after all that has happened, would make it appear to be a trick or conspiracy".

Thereafter, there have been many instances of abuse of power. During the period of 41 years commencing from 26 January 1950 to 30th January 1991, the power under Article 356 has been exercised 82 times in twenty three States and thirteen times in five Union Territories. The particulars of which are:

Andhra Pradesh 2; Assam 4; Bihar 5; Goa 1; Gujarat 4; Haryana 3; Himachal Pradesh 1; Jammu & Kashmir 2; Karnataka 4; Kerala 9; Madhya Pradesh 2; Maharashtra 1; Manipur 5; Mizoram 1; Nagaland 2; Orissa 6; Punjab 9; Rajasthan 3; Sikkim 2; Tamilnadu 4; Tripura 2; Uttar Pradesh 6 and West Bengal 4.

Among these the dismissal of nine Governments in 1977 and again dismissal of nine Governments in 1980, can be regarded as having set new precedents. March 1977 elections to Lok-Sabha had thrown up an "unprecedented political situation" in that in as many as nine States-Bihar, Haryana, Himachal Pradesh, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh

and West Bengal—there was a total or near total rejection of the candidates belonging to the party which was then ruling in these States as well as at the Centre. The new Government took the view that this established a complete lack of confidence on the part of the electorate in the Governments of nine States. In these circumstances the Union Government issued proclamation under Article 356, on 30-4-1977, and dismissed the nine Governments and dissolved the Legislative Assemblies.

Thereafter, there was a split in the then ruling party at the Centre and as a result the Government fell, Parliament was dissolved and fresh election was held to the Lok Sabha. The then ruling party was defeated in the election to Lok Sabha and the party which was ruling at the Centre earlier again came to power.

Thereafter, what was done to the nine Governments earlier, was done to another nine State Governments as if it were a "tit for tat".

Soon after the mid-term elections to Lok Sabha held in January 1980 Proclamations under Article 356 were issued in respect of nine States (Viz. Bihar, Gujarat, Rajasthan, Madhya Pradesh, Maharashtra, Orissa, Punjab, Tamilnadu and Uttar Pradesh) on 17-12-1980 and the Legislative Assemblies of these States were dissolved.

These events set a bad precedent namely dismissal of State Government on the ground the ruling party in a State did not secure sufficient number of seats in the election to Lok Sabha, which having regard to the Federal structure, cannot constitute a

(to be continued)

Judicial Officer Looses Job

P. B. Naduvinamani, who was working as Munsiff and JMFC at Dandeli in Uttara Karnataka, was ordered by the Governor to be compulsorily retired from the service on the basis of proved charges against him. The compulsory retirement order was passed during November 1993 on the basis of findings of the Principal District & Sessions Judge, Dharwar, who acted as the inquiry authority. The three charges proved against the judicial officer are that a) he had extra marital affair with one Pramila Naik, a typist in the Court of Munsiff & JMFC, Khanapur, Belgaum District and they lived together as though husband and wife, b) he refused and neglected to maintain legally wedded wife resulting in her obtaining a maintenance order and c) granting bail arbitrarily and with under haste in a triple murder case while he was placed in additional charge of Court of Principal Munsiff & JMFC, Hukkeri, Belgaum District.

HC Entertains Writ Against Bar Council

It is reported that Mr. P. K. Vijay, a city lawyer, has preferred a writ petition against the Karnataka State Bar Council seeking a writ of certiorari and to quash the notice dated 15-9-92 of the Disciplinary Committee proposing to hold an enquiry against him on the basis of a complaint lodged by a client of his. It is learnt that stay of further proceedings has been ordered by the Court.

The Petitioner has questioned the action of the Screening Committee in mechanically referring to the complaint to the Disciplinary Committee without ascertaining whether the complaint disclose any prima facie case of misconduct on his part, refu-

sal of the Disciplinary Committee to decide the question of jurisdiction to entertain the complaint and its refusal to put off the enquiry pending disposal of the complainant's I A pending before City Civil Court seeking change of lawyer.

RBI Clarifies

On 15-12-93 the Reserve Bank of India issued a Notification clarifying the collection of Account Payee Cheques especially by third parties. According to the notification Account Payee Cheques can be collected only for the Account of the Payee named in the cheque and not for anyone else. However, a Crossed Cheque or an Account Payee Cheque being a negotiable instrument under Section 131 of the Negotiable Instruments Act can be negotiated by the endorsement or such other legally valid means.

If the collecting bank collects on Account Payee Cheque for a person other than the payee it does so at its own risk. Protection available to the collecting bank is entitled to protection available under Section 131 of the Negotiable Instruments Act only if it acts in good faith and without negligence. It is imperative, therefore, on the part of the collecting bank to take utmost care to enquire into the title of its customer and satisfy itself that there is no defect in the title of the customer presenting such cheque for collection.

Medical Aid

Lahari Foundation invites applications from Advocates desirous of availing financial assistance on health grounds. The applications must be addressed to Mr. P. G. C. Chengappa, Trustee, Lahari Foundation, Maruthi Plaza, Opposite Vijayalakshmi Talukies, Chickpet, Bangalore-53.

Resurrect Supremacy of Dharma-Swami Harshananda

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disintegration of the integrated judicial system in the country. He advised the zealots of language to develop Hindi before thinking of replacing English as a common language of our judicial system.

Justice Khanna traced the labyrinth of 5000 years old Hindu judicial system by further quoting from Kautilya, Manu, Yagnavalkya and Narada to emphasise the role of Dharma which is far superior to the judgments delivered by Courts established under the law. He called upon the Bar Councils and Associations to have a deep introspection about the present role played by them vis-a-vis the national movement. Describing strikes by lawyers as a blot on the profession he appealed to select the men of calibre, integrity, rectitude and probity as judges. Independence of judiciary can only be achieved if only men and women of impeccable integrity are entrusted with the task of dispensation of justice said Justice Khanna.

Justice E. S. Venkataramaiah, the former Chief Justice of India, who presided over the function called upon the people to imbibe the spirit of constitutionalism and human rights. In his short but terse speech Justice Venkataramaiah lamented about allowing the 44th amendment to the Constitution to be a dead letter. He also criticised the delay in appointment of the judges more so in the higher Courts. He expressed his annoyance about the failure to evolve a uniform civil code even after more than 4 decades after the country becoming independent. He questioned the utility of the recently concluded convention of the Chief Ministers and Chief Justices of High Courts and opined that

the convention had hardly concentrated on bringing down the arrears of undecided cases.

While indicating that the plight of Labour Courts and Industrial Tribunals is not encouraging he suggested that Appellate Tribunals must be established to deal with the Labour and Industrial cases. Further, he suggested amendments to Rent Control legislation and for the creation of Asia-Pacific Regional Court to look into the cases of the abuses of human rights and to give teeth to the Human Rights' Commission. Justice Venkataramaiah was critical of the decision to entrust the Members of Parliament to suggest works to be undertaken in their constituencies to a limit of Rs. 1 crore and opined that this will lead to disastrous consequences. He felt that by this mechanism the authority of Parliament, Public Accounts Committee and the Planning Commission are side stepped.

The inaugural function commenced with a marvellous singing of Vande Mataram by Swaralahari. Justice U. R. Lalit, former Judge and President of ABAP explained the aims and objects of the organisation. Sri Adarsh Kumar Goel, the General Secretary of ABAP, presented a brief report of the activities of the Parishad from its inception. While Sri M. Rama Jois welcomed the participants to the convention Sri K. N. Subba Reddy proposed vote of thanks.

ಲಿಟರರಿ ಯೋಜನೆಯನ್

□ ತಾ. 17-12-93 ರಂದು ಆಕಾಶವಾಣಿ ಹಾಗೂ ದೂರದರ್ಶನದ ಕಲಾವಿದರಾದ ಎ. ಎಸ್. ಮೂರ್ತಿಯವರು "ಜೀವನದಲ್ಲಿ ನಗೆ" ಕಾರ್ಯಕ್ರಮ ನಡೆಸಿಕೊಟ್ಟರು.

□ ತಾ. 7-1-94 ರಂದು ಶ್ರೀ ರಂಗಪ್ಪಯ್ಯ ರವರು "ಭಗವದ್ಗೀತೆಯಲ್ಲಿ ಭಕ್ತಿ ಯೋಗ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

News Focus

□ On 13.12.93 P. Kodandaramaiah, Commissioner of Police, Bangalore, addressed the Members of AAB on the topic "Criminal Justice System".

□ On 14.12.93 Dr. H. Narasimhaiah, former Vice-Chancellor of Bangalore University, addressed the members of AAB on the topic "Scientific attitude in life".

□ On 16.12.93 H. G. Soma Shekhar, Assistant General Manager, Canara Bank, Bangalore, addressed the members of AAB on the topic "Laugh Blues Away".

□ On 21.12.93 Justice H. G. Balakrishna addressed the members of AAB on the topic "Backlog of cases and quick justice".

□ On 28.12.93 Justice H. R. Khanna, former Judge of the Supreme Court of India, addressed the members of AAB in City and Magistrates' Court Units.

□ On 29.12.93 Justice U. R. Lalit, former Judge of the Bombay High Court and President of the ABAP, addressed the members of AAB, in City and Magistrates' Court Units.

Books Donated

Madras based Guna Pai Vasantha Pai Foundation has donated books and law reports worth Rs. 4 lakh to National Law School of India University, Bangalore.

Mr. Vasantha Pai, a lawyer in Madras has made this donation in memory of his father Rao Sahib K. J. Guna Pai, a lawyer and freedom fighter.

Mr. Vasantha Pai has also donated Rs 1 Lakh for updating the University library & Rs. 20,000 for acquiring furniture for the library.

Periodical launched

Council for Advancement of Legal Literacy, Belgaum, has launched a new Publication with the release of its monthly publication 'Kanoonu' during December 93. The monthly publication in Kannada is priced Rs. 10. Interested persons may write to the Editor, 'Kanoonu' monthly magazine, No. 164, 'Parishram-Shraddha', Mahantesh Nagar, Belgaum.

Humour in Courts

□ A newly appointed Munsiff was unhappy and remonstrating about the Counsel about the way in which he was arguing his case.

Counsel: "Your honour, you were arguing such case in a Similar way when you were at the bar".

Munsiff: "Yes, I admit that, but that was the fault of the Judge who allowed it!".

Obituary

□ On 12.12.93 B. R. L. Iyengar, Advocate, expired.

□ On 13.12.93 N. T. Raju, Advocate, passed away at Bangalore.

□ On 31.12.93 R. Kantharaju, Advocate, died in a fatal accident at Banalore.

Discipline Sans Hardship

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Judicial enquiry they must be observed in its letter and spirit. The mere fact that time limit (one year) has been prescribed to complete the enquiry cannot in itself be a justification to deny all the procedural safeguards to the parties. As otherwise the parties are bound to suffer utmost injustice in presenting their respective cases. May we hope that the Bar Council will rise upto the expectations while discharging its statutory obligations lest nobody need have a complaint with regard to the manner of exercising such power.