

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 7

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Part 10

Orientation Course

Lahari proposes to organise a orientation course for the candidates appearing for the ensuing Munsiffs' Examination. Interested candidates are required to register their names with Secretary of the Forum Mr S. N. Prashanth Chandra, Advocate, Jeevan Buildings, Kumara Park East, Bangalore-560 001, on or before the end of this month. Phone: 2258680

Memorial Lecture

Under the joint auspices of Justice G. N. Sabhahit Memorial Lecture Trust and the District Bar Association of Karwar, Justice M.N. Venkatachalaiah, the Former Chief Justice of India, delivered a lecture at Karwar on 20-12-95. Former Judge of the Supreme Court Justice N. Venkatachala presided over the function.

MISCELLANY

□ In the election held on 17-12-95 to Poorna Prajna House Building Co-operative Society Ltd., Bangalore Mr. D. H. Mokashi, Advocate, was elected as a Director.

□ KPCC [I] Legal Cell has been reconstituted with Mr. P. A. Krishna Reddy as Chairman, Mr. R. Shivachandra Naik as Convenor along with 67 Advocates as Office Bearers.

□ In the election to Bangalore University Senate held on 22-12-1995 Mr. B. L. Lakke-Gowda has been elected to represent the Law Graduates Constituency.

□ On 30-12-95 the Law Chamber of Mr. R. Narayanappa Advocate, was gutted in a fire mishap.

Call to Establish Supreme Court Bench

The Seventh State Lawyers' Conference concluded at Dharwad with a call to establish a Bench of the Supreme Court in the South and a Bench of the High Court in the Northern part of the State, with a view to provide easy access to the litigants. Unanimous resolutions were adopted to this effect by the Conference.

Noted jurist Mr. Ram Jethmalani who inaugurated the Conference on 28-12-95 pointed out that the Bench and the Bar have a joint responsibility to provide justice to the litigants. He felt that while the lawyers may be bonafide entitled to criticise the Judges or the judgments, the politicians cannot claim this right. In this regard lawyers have a definite role in upholding the social values and prevent decay of the Society.

Senior Advocate Mr. F. S. Nariman who presided over the function expressed that there is urgent need for judicial reforms and the lawyers have a greater role to play in this regard. Mr. S. R. Bommai, President of Janata Dal and Member of Parliament who released a Souvenir on the occasion also concurred with Mr. Nariman with regard to the urgent need for judicial reforms with a view to avoid deterioration in standards.

Chairman of the Reception Committee Mr. M. G. Agad; welcomed the participants. Chairman of the Karnataka Bar Council Mr. Mohan Shantana-goudar introduced the guests.

In the Subjects session the topics for discussion were (i) Judiciary, Executive and Legislature - Their role and coordination, (ii) welfare

measures for Advocates and legal aid to litigants. (iii) Lawyers role in regeneration of India and (iv) Decentralisation in Judiciary.

Mr. A. N. Jayaraman, Addl. Solicitor General of India delivered the valedictory address. Mr. Justice S. A. Hakeem presided over the function.

Eventhough a number of dignitaries could not participate in the Conference due to unforeseen circumstances, participation of about 4000 delegates was a positive note.

Clarification

Apropos to the news item "Women Lawyers protest" published in the December part of Communique, President of the Indian Federation of Women Lawyers Ms. Bharathi Nagesh has clarified that the Special Executive meeting of the Federation had infact passed a resolution not to boycott the swearing in ceremony of the recently appointed High Court Judges held on 18-12-95 and on the other hand to give protest memoranda to the Governor, the Chief Minister and the Chief Justice regarding the failure in appointing Women Judges to the Karnataka High Court. The President of the Federation has also mentioned that infact she also attended the swearing in ceremony.

Vacation Particulars

By the Notification dated 8-12-95 it is notified that the High Court will be closed for vacations during 1996 as specified therein.

Summer Vacation : 22-4-96 to 26-5-96 (BDI) ;

Dasara Vacation : 14-10-96 to 19-10-96 (BDI) &

Winter Vacation : 23-12-96 to 31-12-96 (BDI)

News Panorama

□ The law can prevent and limit the right of a mother to spell the name of her son. This ratio was advanced by a Danish Court which ordered the mother to pay a fine of \$ 91 each week till she changed the spelling of the first name of her son from "Christophher" to "Christopher" or "Christoffer". The Court held that it is impermissible to name a child which is different from the names listed by Ministry of Ecclesiastical affairs. The mother has chosen to pay the fine than resile on her stand for freedom to name her son as she liked.

□ Judicial Magistrate of Ajmer (Rajasthan) issued a bailable warrant on 5-1-96 against noted Hindi Film Star Shahrukh Khan. Five advocates of the town have filed a complaint against the Cine star alleging that he has used objectionable remarks against advocates in the movie "Ram Jane".

Wish You Happy
New Year &
Pongal

Nature gave women too much power; the law gives them too little.
—Will Henry

Gender Justice

Women Lawyers in Bangalore were up in arms even while the swearing in ceremony of the newly appointed Judges was on during the past month. The vehement protest demonstration in front of the High Court was to register their unhappiness over the non-providing of representation to any eligible Women Lawyer in the Bench of Karnataka High Court. Quite for sometime in the past Women Lawyers in Karnataka are unhappy about their non-inclusion on the Bench. However, this was their maiden public demonstration. The indications are that the Women Lawyers propose to continue their agitation till their objective is achieved. The declared boycott of the swearing in ceremony and the large scale public demonstration obviously received wide media coverage at the national level. To this extent the Women Lawyers have been able to effectively register their protest compelling the authorities to take cognisance of their resentment.

Article 14 of the Constitution guarantees Right of Equality i.e., Equality before Law and Equal protection of Law. Article 15 stipulates that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Thus the Constitution has ensured that discrimination on the ground of sex shall not be valid. If that be so, making a demand for representation in the higher judiciary based on sex may itself not stand to reasoning. However, one cannot lose sight of the fact that for historical reasons number of women who were joining the legal profession and established practice on sustained

basis was far too less. With the increase of their number that too on a sustained basis should be a sufficiently good reason for the authorities to give necessary importance to the fairer section of the society while selecting the members of the Bar to the Bench. Other things being equal, even if some preference is shown to women members of the Bar so as to strike a balance to do gender justice, no one would grudge such an action.

The procedure of selection, recommendation and appointment of Judges to the higher judiciary is now well settled. Though the Apex Court has laid down the mode of recommending the names and their ultimate acceptance by the President for appointments, the factum of selection of persons still remains a subjective factor. In the process of selection scope should be made to receive suggestions with regard to suitability of persons from various quarters. This would ensure a broad based arena from where suitable candidates could be considered for recommendation purpose. In this background role of Bar Council and Bar Associations including the Associations representing Women Lawyers is significant and their assistance could be sought.

Article 217 of the Constitution only stipulates that a person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and has for at least 10 years held a judicial office in the territory of India or has for at least 10 years been an Advocate of a High Court or two or more such Courts in succession. A reading of this provision makes it clear that

(continued on page 4)

Judiciary and Speedy Justice

Justice M. F. Saldanha

(continued from last issue)

Another aspect of the matter that requires some attention is the fact that a lot of litigation follows a similar pattern and the courts should, therefore, group all similar cases under one head so that single decision can take care of the whole lot of matters. This is being done in the Supreme Court and when the offices of the Bombay High Court were directed to work along these lines, it was possible to dispose of thousands of cases in lots rather than individually.

There is another area which requires mention and that is the unfortunate practice prevalent in most courts of permitting worthless litigation. To quote an example, it has become an accepted convention that a First Appeal must always be entertained and it is regarded as almost an impropriety to dismiss a First Appeal. A careful analysis has shown that in as high as 70% of the First Appeals there is no ground whatsoever on which the Appeal Court can interfere with or vary the order passed by trial court. Merely because an appeal is filed and a convention has been built up that one review is in order, appeals are indiscriminately entertained when there is no justification for them. The Government and Public sector organisations are chronic as far as this aspect of the matter is concerned, where they will file appeals even upto the Supreme Court against not only final but interim and inter-locutory orders. To my mind, this is a class of litigation that needs to be eliminated and if this is done it will reduce the burden on the courts by 70%. Even as far as the remaining 30% of the cases are concerned, experience has shown that it is only a partial or minor modification of the earlier judgment that is required in more than

1% of those matters which can be done on the spot and the proceeding disposed of instead of going through the lengthy process of admitting the matter and taking it up for hearing after one or two decades. Very similar is the position in criminal law where revisions and appeals are filed and the superior court is really required to carry out only a minor variation of the original order. It is essential, however, that the Judges will have to read much more and apply their minds and examine the records very carefully if matters are to be disposed of in a single hearing as this is equally necessary, however enthusiastic one may be about maintaining a high rate of disposals, that injustice should not be done in even a single case. Corrective orders by way of modification of the trial Court's order can be passed on the first day of hearing and the matter disposed of even where a variation is necessary. It has been found that the arrears in the courts have built up because the entertainment of new cases has been so high and in the process the older ones just get older. If the new litigation can be finished off effectively and speedily, there will be plenty of time available to dispose of the older cases.

There is one aspect of the matter in this regard that I need to emphasise. The superior courts very often uphold legal technicalities and direct remands. This virtually starts one more round of litigation and multiplies the problem. A superior court always has the power of examining the matter on its own and even if there is a legal flaw in the earlier order, the court can eliminate one entire round of litigation by desisting from remand orders which are a bit too common,.....

(to be continued)

"The Judicial System In U. S. A."

B. S. Narayan, Advocate

(continued from last issue)

The parties in a trial case are given the option whether they want a Jury Trial. The jurors are selected from among the registered voters of the area. The Judge and the Lawyers select the Jurors who are expected to be fair and impartial. The decision of the Jury is binding on the parties and it is enforceable. The appointment of Jury makes an important and vital contribution to the smooth functioning of the judicial system.

With regard to the appointment of Judges the Constitution has laid down certain procedure. The Judges are appointed to the Office by President of the United States with the approval of the U. S. Senate from among private attorneys, Judges of the State Courts and Law Professors. The Professional qualifications of prospective federal judges are closely evaluated by the Department of Justice and by a Committee of the American Bar Association, a national lawyers organisation. Most Federal judges retire from full time service at around 65 to 70 years. Under the Provisions of the Constitution, Federal Judges serve "during good behaviour". The Judges are removed from their jobs if Congress determines through impeachment that they are guilty of treason, bribery or other higher crimes and misdemeanors. There is constitutional protection to the Federal Judges which gives them freedom and independence to make decisions without any fear.

The United States Supreme Court is the Apex Court in the nation. Unlike the U. S. Courts of Appeals the Supreme

Court does not have to hear every case that comes to it for review. The primary task of the Supreme Court is to clarify the law when other Courts disagree about the interpretation of the Constitution or Federal Laws. The Supreme Court's power of judicial review makes its role in the Government vital and important. Although District Courts, Courts of Appeals and State Courts can exercise the power of judicial review their decisions are always subject to review by the Supreme Court on appeal.

The Supreme Court has a Chief Justice and eight Associate Justices. Like all Federal Judges, they are appointed by the President with the advise and consent of the Senate. However, unlike the Courts of Appeals, the Supreme Court never sits in panels. All the nine Justices hear every case. The Supreme Court begins each term of sitting on the first Monday of October in an year. The term lasts until the Court has announced its decision in all the cases it has agreed to hear usually until July. During the term the Court hears oral arguments during the week end and holds private conference at the end of the week to decide the cases, reach the decisions and begin preparing the opinions. The most important Supreme Court decisions are discussed in the national news.

It may be said that there are some striking point of importance which are worth mentioning in the Judicial System of U.S.A. There is the speedy disposal of cases & cases will be disposed of at the appointed time.

(to be continued)

Around The Courts

○ Sec. 123 (3) & (3A) of the Representation of the Peoples Act, 1951 is not violative of Art. 19 (1) (a) of the Constitution :

The Supreme Court has held that prohibition of making of appeals in elections in the name of religion as contemplated under Sec. 123 (3A) of the Representation of the people Act, 1951 is not violative of the freedom of Speech guaranteed under Art. 19 (1) (a) of the Constitution. In their judgment dated 11-12-95 a Division bench comprising Justices J. S. Verma, N. P. Singh and K. Veeraswamy rejected the contentions of Mr. Bal Thackrey and others, while allowing the appeals filed by Maharashtra Chief Minister Manohar Joshi and other legislators challenging the judgment of the Bombay High Court which had declared their election to the Maharashtra Assembly as void on account of established corrupt practices in the form of appealing to the voters on the basis of religion.

Use of "Hindutva" not corrupt practice :

As a part of the same judgment the Apex Court ruled that use of expressions "Hinduism" and "Hindutva" in election speeches do not automatically amount to corrupt practice of seeking votes on the ground of religion. The Court held that whether a particular speech in which reference is made to "Hindutva" or "Hinduism" falls within the prohibition under Sec. 123 (3) & (3A) of the Representation of the People Act is a question of fact in each case. In their unanimous verdict the Judges held that considering the terms "Hindutva" and "Hinduism", per se, as depicting hostility, enmity or intolerance towards other

religious faiths or professing communalism proceeds from an improper appreciation and perception of the true meaning of these expressions. They also held that it is a fallacy and an error of law to proceed on the assumption that any reference to those terms in a speech makes it automatically a speech based on Hindu religion as opposed to other religions or that the two words per se depicted an attitude hostile to all persons practising any religion other than Hindu religion. The Judges said that it was a kind of use made of these words and the meaning sought to be conveyed in the speech which had to be considered and unless consideration led one to a conclusion that those words were used to appeal for votes for a Hindu candidate on the ground that he is a Hindu or not to vote for a candidate because he is not a Hindu which would ultimately determine whether any corrupt practice has been established to hold the election as void.

○ Sec. 35 of advocates Act, 1961 - abstaining from Court constitute "Profession Misconduct"

In a significant ruling made on 11-12-95, the Division bench of Madras High Court comprising Justices M. Srinivasan and S. S. Subramanyam held that boycott of Courts by Lawyers amounted to professional misconduct. They said that no advocate has the right to abstain from Courts without returning the briefs to his clients and refunding the fee received from them.

Subscription Raised

Annual Subscription of ILR (Karnataka Series) has been increased from Rs. 200/- to Rs. 250/- for the year 1996.

NEWS FOCUS

□ On 19-12-95 Justice K. Jayachandra Reddy, Former Judge of the Supreme Court and the Chairman of Law Commission of India addressed the members of AAB, High Court Unit.

□ On 20-11-95 AAB had organised a function in the High Court Unit to felicitate the newly appointed Judges.

□ 21-12-95 Mr. Justice M. F. Saldanha addressed the members of AAB, High Court Unit on the topic "Bangaloreans" survival threatened by Vehicular Pollution."

□ On 2-1-96 Mr. Amarnath Gowda, Attorney and Counsellor from USA addressed the members of AAB, City Unit.

□ On 5-1-96 Sri D. K. Naikar, KPCC (I) President, addressed the members of AAB, High Court Unit on the topic "Constitution of India and its functioning."

□ On 10-1-96 Mr. William P. Bennet, Attorney, Educator and Administrator from California addressed the members of AAB, High Court Unit.

□ On 18-1-96 BJP MLA Sri H. N. Nanje Gowda addressed the members of AAB, City Unit on the subject "Cauvery water dispute before the Tribunal and the consequences of the Prime Minister's directive to release 6 tmc water to Tamil Nadu."

Obituary

□ On 20-12-95 M. K. Gulam Mohiudeen (60), Advocate, passed away at Bangalore.

□ On 28-12-95 K. S. Satyamurthy (59), Advocate, passed away at Bangalore.

□ On 5-1-96 P. S. Devdas (90), Advocate, passed away at Bangalore.

□ 9-1-96 S. R. Shetty, (56) Advocate, passed away at Bangalore.

Prize Winners

The following Advocates emerged victorious in the recently held Chess Championship conducted by the Advocates' Association, Bangalore:

Ladies Section : 1. Ms. Bharathi. R. Bhat, 2. Ms. Rajeshwari N. Hegde and 3. Ms. R. Ramamani.

Mens Section : 1. S. S. Mahendra 2. H. A. Ashok and 3. K. Venkatesh.

Point Blank

□ With the increase of check posts we thought that we can effectively prevent loss of sales tax revenue. However, it did not happen thereby forcing us to think of having mobile check posts. What to do, as there is no compulsion that the lorries carrying consigned goods pass through only Highways and the consignees have found out by-passes.

— Mr. Sudhir Krishna, The Chief Commissioner of Commercial Taxes, while addressing a symposium organised by KTCA.

Gender Justice

(continued from page 2)

there is no scope for any discrimination that too the gender discrimination. Correspondingly there is no obligation to appoint a person as a High Court Judge merely on the basis of gender. Notwithstanding this Constitutional position better understanding could be shown to give a balanced representation to women on the Bench.

Miscellany

□ On 9-1-96 M/s. L. S. Venkata Krishna, N. S. Krishnam, B. K. Sridhar. S. Basavaraj and Narayan, Advocates from Bangalore participated in 149th Sri Thyagaraja Aradhana Festival at Thiruvayur.

KTCA Symposium

□ On 14-1-96 Mr. Justice M. F. Saldanha inaugurated a symposium on "Sales Tax Vs. VAT" organised by the Karnataka Tax Consultants Association at Bangalore. Mr. G. Rabinathan, Addl Commissioner of Commercial Taxes was the Chief Guest. Mr. Sudhir Krishna, Chief Commissioner of Commercial Taxes in Karnataka and Mr. K. N. Subba Reddy, President, AAB were the guests of Honour. Mr. S. Narayana and Mr. Indra Kumar, Advocates, were the Speakers at the symposium. President of KTCA Mr. S. K. Nahar, welcomed the participants and explained the background in which the symposium was held.

Humour in Courts

Counsel : I am sure that your Lordship will pass an order in favour of my client to meet the ends of justice.

Judge : I am sure that if I pass an order in favour of your client it will be the end of justice!

Trekking Expedition

On 16-12-95 a team of the Adventure Wing of AAB undertook a trekking expedition to Nandi Hills. The team comprised of Mr. D. Gangadhar (Leader), Mr. S. C. Bhema Reddy, Mr. C. S. Hiremath, Mr. P. M. Siddamallappa, Mr. D. S. Hosamath, Mr. M. H. Saukar, Mr. Vishwanatha S. Shettar, Mr. Nanjundappa and Mr. J. V. Hulsoor.

ಲಿಟರರಿ ಯೂನಿಯನ್

○ ತಾ|| 17-12-95ರಂದು ವಕೀಲರಿಗಾಗಿ ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ಆಶ್ರಯದಲ್ಲಿ ಜಿಕ್ಕುತಿರುಪತಿ, ಮಾರ್ಕಂಡೇಯ ಬೆಟ್ಟ, ಕೋಟೇಗೇಶ್ವರ ಕ್ಷೇತ್ರ, ಕುರುಡು ಮಲೆ, ಬಂಗಾರ ತಿರುಪತಿ ಮತ್ತು ಮಂಟಪಗಿರಿ ಮಂಡಾಡ ಪ್ರೇಕ್ಷಣೀಯ ಸ್ಥಳಗಳಿಗೆ ಒಂದು ದಿನದ ಪ್ರವಾಸ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. ಸುಮಾರು 105 ಜನ ವಕೀಲರು ಮತ್ತು ಅವರ ಸಂಭಂಧಿಕರು ಈ ಪ್ರವಾಸದಲ್ಲಿ ಪಾಲ್ಗೊಂಡಿದ್ದರು.

○ ತಾ|| 21-12-95ರಂದು ಪ್ರೊ. ಹೆಚ್. ಎಸ್. ಲಕ್ಷ್ಮೀನಾರಾಯಣ ಭಟ್ಟರು 'ಕುವೆಂಪುರವರ ಭಾವಗೀತೆಗಳು' ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

○ 9-1-96ರಂದು ಡಾ|| ಎಚ್.ಎಸ್. ದ್ವೀನರವರು "ಸರ್ವ ಧರ್ಮ ಸಮನ್ವಯ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

“ಲಹರಿ” ಗೆ ಶುಭಾಶಯ

ಲಘುವಲ್ಲವೇ ಘನತೆವತ್ತು ವಕೀಲ ವೃತ್ತಿ
ಹರ ವಚ್ಚುಪಂತೆ ಋಜು ಮಾರ್ಗವನ್ನನುಸ
ರಿಸಿ ನಡೆದರದೆ ಚೆನ್ನ ; ಸಮಾಜದುದ್ಧಾರ.

ಲಜ್ಜೆಯಿಲ್ಲದಾ ವರ್ತನೆಯಿಂದನರ್ಥವಹುದು ;
ಹಸನಾದ ಜೀವನವು ಒದಗಿ ಬರಲಿಲ್ಲರಿಗೆ ; ಹ
ರಿವೊಲಿಮೆ ಮಂದತರಲಿ ನವವರ್ಷವೆಲ್ಲರಿಗೆ.

—ಎಸ್. ನಾರಾಯಣ ಮೂರ್ತಿ
ನಿವೃತ್ತ ಜಿಲ್ಲಾ ಮತ್ತು ಸತ್ರ ನ್ಯಾಯಾಧೀಶ

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