

## Judges Appointed

On 1-1-97 Sri.Patri Basavana Gowda, Sri.B. Srinivasa Rao and Sri.S.R. Venkatesha Murthy were sworn in as the Addl. Judges of the High Court of Karnataka. All these appointments are made from the cadre of District Judges.

## Judicial Recruitment

By a notification dated 19-12-96 the Registrar General of High Court of Karnataka has notified that ten posts of District Judges are available for appointment in the pay scale of Rs.4,700-150-5,300-175-6,000-200-6,400. Minimum qualifications required for appointment are (a) Must be a holder of Law degree of any recognised University. (b) As on 31-1-97 must have practiced not less than seven years and (c) Must not have attained age of 48 years as on 31-1-97. Reservation for SCs, STs and OBCs are provided to the extent specified by the government under Article 16(4) of the Constitution. Last date for receipt of application is 31-1-97.

By another notification dated 20-12-96 applications have been called for from the qualified candidates for appointments as Munstiffs in the pay scale of Rs.2375-75- 2900-100-3,700-125-4,450. There are 65 posts out of which 27 posts are available for general merit category. The remaining posts are reserved for Ex-Servicemen-5 posts, SCs-13 posts, STs-3 posts. Category-I 2 posts, CategoryII (a)-8 posts, CategoryII(b)-2 posts, CategoryIII(a)-3 posts and CategoryIII(b)-2 posts. Last date for receipt of application will be 14-2-97.

## Judicial Creativity Helped Development of Law

*Michael Kirby.*

Bangalore, Jan.13: The Indian Courts, particularly the Supreme Court, have a reputation for creativity and ingenuity in the development and adoption of the common law to the enormous contemporary problems and opportunities of this country. By a series of landmark judgments described by some as "judicial activism" the Supreme Court has established basic principles which would require study in other parts of the world. Judicial activism is not unique to India but it is a world phenomenon. Public interest litigations have necessarily created needs and opportunities to the higher courts to be active and the courts have positively responded to such situation.

Judicial activism is often misunderstood and skeptics have criticised the scene as judicial expansionism. Such a criticism can be effectively overcome by exercising the required restraints by the courts even while discharging their legal and Constitutional obligations. A study of judicial activism shown by the higher courts of the United States of America, United Kingdom and Australia show that the courts have come to the rescue of litigants by adopting suitable mechanisms. Therefore judicial activism, perse, cannot be considered bad. Varying situations of contemporary nature require legal solutions and the courts cannot abdicate their responsibility fearing criticism.

These views were expressed by Justice Michael Kirby, a Judge of the Australian High Court, Canberra (Federal Supreme Court) and the President of International Commission of Jurists, Geneva, while delivering the Seventeenth Endowment Lecture on "Judicial Activism and Judicial Enpansionsim" at a function organised jointly by the Advocates Association, Bangalore and the Karnataka State Commission of Jurists.

Focusing on the Guideposts which may act as restraining factors against judicial

expansionism Mr.Kirby listed four aspects viz.,(a)Opportunity (b)Need (c)Inclination and (d)Methodology. In conclusion he said that the modern Judges of the common law, in India, Australia and far beyond is controlled by any temptations to activism. He further said that the community expects honesty, integrity, learning efficiency and timely attention to cases from the Judges.

The endowment lecture was attended by a large number of Judges and Advocates Sri.K.N.Subba Reddy, President of AAB, proposed welcome. Justice P.P.Bopanna, President,KSCJ, introduced the guest, Sri.K.N.Putte Gowda, General Secretary AAB, read out a report on the endowment lecture series. Mrs.Gauri Kuranga, Secretary KSCJ, proposed vote of thanks.

## Adhivakta Parishad

Fifth All India Conference of Adhivakta Parishad was held at Jabalpur (MP) on 25th and 26th December 1996, Mr. Narahari Phadke, Ms. Meera Phadke, Mr.M.B. Nargund, Ms.Sona Vakkund, Mr. Krishna S.Dixit, Mr.Basavaraj Kareddi, Mr.Sukumar, Advocates from Bangalore attended the conference.

## Around the Courts

Section 5 of the Indian Telegraph Act, 1885, Telephone tapping is violative of the Fundamental Rights :

By a judgment dated 18.12.96 a Division Bench of the Supreme Court comprising Justice Kuldeep Singh and Justice.S.Saghir Ahmed held that Telephone tapping resorted to by the government under the provisions of the Indian Telegraph Act, was violative of the fundamental rights of the citizens including the right to privacy. In their 33 pages judgment their Lordships observed that telephone tapping is a serious invasion of individuals privacy and that they have no hesitation in holding that right to privacy is part of the right to life and personal liberty enshrined under Article 21 of the Constitution.

While holding that there is necessity to lay down procedural safe guards for the exercise of government's powers relating to telephone tapping the Court ruled that the government could resort to telephone tapping under Section 5(2) of the Act only with proper authorisation by the Union Home Secretary or his counterparts in the States. The Court also ruled that special permission for telephone tapping could be obtained from the Senior Officer not below the rank of a Joint Secretary in the Union or State Home Ministries. The Court also ruled that an order providing for phone tapping shall be valid for only 2 months and if the concerned governments found it necessary it would be extended for a maximum period of 6 months.

People's Union for Civil Liberties [PUCL] had filed a writ petition challenging the governments power to tap telephones and by this judgment the Apex Court disposed of the writ petition.



*Inability suspends the law*

— Latin Phrase

## Appoint Additional Judges

Recently the Chief Justice of Karnataka High Court exhorted the sub-ordinate judiciary to treat this year as a year for clearance of pending cases in the Trial Courts. Mere exhortation may not be helped to achieve the desired goal unless it is coupled with a concerted effort to keep all the Courts functioning throughout the year. A number of Courts are non-functional for want of Judicial Officers. Most of the Courts are burdened with backlog of cases awaiting adjudication. The situation is not conducive to expect that pendency could be drastically reduced with the prevailing infrastructure.

The least the government could do is to recruit qualified persons to officiate as Judges of the various Trial Courts and Tribunals functioning in the State. The process of recruitment has remained enigmatic and tardy. Both short term and long term measures are urgently required to be adopted by the government in this regard and the High Court must insist upon the government to be sincere in filling up of the vacancies without delay. Procrastination in the appointment of Judges can only be at the peril of the system. Any delay in disposal of cases is only bound to result in dis-illusionment of the litigants about the efficacy of the judicial system and perforce they may be impelled to seek extra judicial methods of settling scores with their adversaries.

A number of vacancies in Trial Courts are allowed to be unfilled for months and years. There is no plausible explanation for such inaction. Further the recruitment process has failed to take into account the vacancies which may arise in the near future on account of retirements, resignations and additional vacancies etc.

Even while recruitment process begins at any point of time only a few posts are shown as available for appointments when actually more number of appointments could have been made. Proper assessment of the existing workload of the Trial Courts and the possibility of disposal of cases in a year may be taken note of and Additional Judges could be appointed specifically for clearing the backlog of the remainder. These Additional Judges could be absorbed as and when vacancies of sanctioned posts arise. Creation of the cadre of Additional Judges would serve the dual purpose of clearing the pending cases and also keeping the Trial Courts functioning throughout the year. As a matter of public policy there is no justification to allow the Courts to be non-functional and at the same time expect miracles in the forms of speedy disposal of cases languishing in the Trial Courts over the years. One can only hope that the authorities will consider the recruitment of Judges to Trial Courts on a priority basis before expecting the desired result of disposal of pending cases.

### Lahari Foundation An Appeal

Lahari Foundation, Bangalore, seeks donations for augmenting its financial base. This foundation is providing assistance to lawyers for health reasons. The donations you make now will be of immense help to some one who needs it.

— Trustee

## Supreme Court Bench in South India

T. P. M. Ibrahim Khan

Advocate & Senior Central Govt. standing Counsel, Cochin

(from the last issue)

Kanyakumari.

I would like to request my learned friends to consider whether there is uniform distribution of the rights and liabilities for all the citizens of India in the matter of obtaining justice from the Supreme Court. In so far as India is concerned, the seat of the Supreme Court is in Delhi. For a citizen residing in Kanyakumari, he has to travel all the way from Kanyakumari to Delhi, for any relief from the Supreme Court. He has to spend huge amounts for his travel, boarding and lodging in addition to the legal expenses. A citizen from Delhi or Haryana need not spend any amount or that much amount as spent by a citizen from Kanyakumari or Thiruvananthapuram. Supposing there is an institution or organ of a State conferring certain benefits, for the purpose of obtaining such benefits from the said institution, if one citizen is expected to spend Rs.1,000/- and another expected to spend Rs.5,000/- for the same relief under identical conditions, then any lawyer would simply say it is discriminatory and violative of Article 14 of the Constitution of India. Since there is differential treatment, there is denial of equality before the law and equal protection of the laws. It will be dubbed as arbitrary. It denies equal protection since there is no equal treatment in identical circumstances. There is difference in the economic liabilities imposed. But, so far as the Supreme Court is concerned the seat of which is at Delhi, which is established by the Constitution of India, the differential treatment of citizens placed at different parts of the country is discriminatory. There must be uniformity and equality in conferment of privileges or in the matter of imposing liabilities which does not exist in the case of two citizens, one from Delhi and another from

The preamble of our Constitution says that the people of India have solemnly resolved to secure to all its citizens justice, social, economic and political. Though this expression "JUSTICE" social, economic and political, enables far reaching interpretations by jurists and professors of political science, as stated briefly, it involves the concept of distributive justice. This means, basically the removal of economic inequalities or to put it otherwise to prevent distribution of uneven economic burdens or financial burdens in the matter of obtaining justice.

I invite the attention of my learned friends to Article 38(2) of Part IV of our Constitution namely 'Directive Principles of State Policy', inserted by the 44th Amendment Act, 1978.

The State shall in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

The above article is very clear and needs no explanation, it lays emphasis that the State shall strive to eliminate inter alia inequalities in status, facilities and opportunities amongst groups of people residing in different areas. I lay stress upon this, i.e. groups of people residing in Southern States must be given the same facilities and opportunities to approach for any remedy in the Supreme Court as are available to the group of people residing in Delhi or Haryana. This can be done only by providing a Bench at South, so that the inequality in facilities and opportunities will be minimised or eliminated.

(to be continued)



## Readers view

★ After considering the Constitutional and legal aspects the Supreme Court approved the policy of transfer of High Court Judges. The policy was given effect to by effecting transfer of Judges to various High Courts. However, this policy is not vigorously pursued at present.

This well considered transfer policy is proper and necessary to ensure people's faith in the judicial system. Since the High Court Judges are entitled to a number of privileges no hardship is caused to them when they are transferred from one High Court to another. There is no rational in criticising the transfer policy since on their elevation to Supreme Court the High Court Judges are willing to shift to Delhi. That being the case they cannot have legitimate grouse when they are transferred to another High Court.

Of late attempts are there to secure re-transfer of High Court Judges to their original place of appointment. It is not in the interest of Justice. There are number of eminent persons who are willing to serve as High Court Judges in any part of the country. As such the desire of certain Judges to get back to their original place of appointment should not be considered. I strongly feel that the present policy providing for transfer of High Court Judges should continue.

Bhaktavachala

★ Section 4 of the Notaries Act, 1952 prescribes that every State and Central Government shall maintain a register of the Notaries appointed together with their professional and residential address. Normally the Notaries are permitted to function in their chamber. This is a healthy practice. Unfortunately some of the Notaries of Bangalore are functioning from the Advocates' Association premises. A few Notaries have also opened shops near the Court Complex.

Needless to state that by this action the Notaries have contributed to bring down the dignity of their office. Besides functioning in the Association premises and near the Court Complex is in breach of the terms of the grant of license. Surprisingly the Principal City Civil Judge has remained a silent spectator over the matter.

It is time that the authorities should initiate action to set right the matter so that the Notarial practice is confined to the chamber.

H. Neelakanta Rao.

## News Panorama

Today Mr. KusumKant Jain, aged 78 years, is the youngest surviving member of the India's Constituent Assembly. When he was only 28 years old he along with other 288 members of the Constituent Assembly signed the Draft Constitution of India which was adopted by the Country. Mr. Jain became a Minister of the then Madhya Bharath government at the age of 26. Before becoming the member of the Constituent Assembly he resigned his post of Ministership.

## Call to Reduce Pendency

Justice R.P.Sethi, the Chief Justice of Karnataka High Court called upon the sub-ordinate judiciary to treat 1997 as an year of clearance of pending cases in the Trial Courts. Citing the example of Karnataka High Court which cleared about 80,000 cases during 1996 His Lordship appealed to the sub-ordinate judiciary to emulate the example and help in reducing the pending cases. He was addressing the members of the local Bar after inaugurating the second phase of the Court building on 4.1.1997 at Srirangapatna in Mandya District. The Administrative Judge Justice H.N.Tilhari and Justice A.J.Sadashiva also participated in the function.

## Reporter Appointed

Mr. J.G.Chandra Mohan, Advocate, has been appointed as the Honorary Reporter of Communique for Kolar District. All news concerning the District Advocates may be communicated to Mr.Chandra Mohan to his address at M.B.Road, Gulpet, Kolar-563 101. Phone : 24670 or No.92/2, II floor, Cubbonpet Main Road, Bangalore-560 002. Phone : 2242745.

## Office Bearers Elected

In the Annual General Body Meeting held on 25.12.1996 the Kolar Bar Association elected the following office bearers:

President: Sri.D.S.Rama Gopal, Secretary: Sri.G.N. Rajendra, Executive Committee Members: S/s M.G.Chandra Shekar, N.K.Nanjunda Gowda, R.A.Mohan, S.N.Murthy, T.M.Shivanna, K.N.Ramesh, Md.Usman, K.V.Nagaraju and P.Govindappa.

## Humour in Courts

★ A Judicial Officer walking down the stair case fell down. An Advocate noticed the same and helped the Judicial Officer to get up.

Advocate : Did it hurt your Honour ?

Judicial Officer : No, it resulted in breaking my limb !

★ A High Court Judge who was elevated from the cadre of District Judges was hearing arguments of an Advocate who normally practiced in Trial Court. The Advocate was consistently addressing the Court as "Your Honour". The Judge got annoyed.

Judge: I gave up my Honour long ago, why are you addressing me as your Honour?!

## District Conference

The adjourned District Level Conference of the Kolar Bar is scheduled to be held at Gouribidanur on Sunday the 16th February 1997

## A Prayer

*We, the people of India, belong to a Nation  
Where work is not worshipped  
Where honesty is not honoured  
Where women are dishonoured  
Where man is exploited by man  
Where patriotism is not fostered by the Nation*

*Where every soul craves to be born  
As human, animate or at least as an inanimate here,  
Thus spake the sages in Vishnupuran;  
But let no soul be born here  
As a litigant or to become litigant here  
for he goes hither and thither  
Endlessly but nowhere!*

*Thou art merciless to create  
Many a bounded labourer  
I'm no better, an intellectual bonded labourer  
Let anybody seek after pelf and power ;  
Take me to the land where Truth is supreme  
and knowledge is power  
'One step for me is enough'  
Oh, my Father, lift me up from this rough  
of India, that is Bharat!*

— B.M.Baliga, Advocate.



## News Focus

On 8-1-97 the High Court staff observed snap strike for about 3 hours demanding immediate shifting of the High Court office from the cellar floor in the Annexe Building to a suitable accommodation.

On 11-1-97 Supreme Court Judge Justice J.S.Verma formally inaugurated the new filing counters in the High Court Annexe.

On 11-1-97 Justice J.S.Verma, Judge of the Supreme Court, inaugurated the Eighth Conference of the Karnataka State Judicial Officers at Banquet Hall, Vidhana Soudha.

On 12-1-97 Justice S.Rajendra Babu delivered valedictory address at the Eight Conference of the Karnataka State Judicial Officers.

On 19-1-97 Dr.U.R.Anantha Murthy, Chairman, Central Sahitya Academy, released memoirs of Senior Advocate late V. Krishnamurthi at a function in Bangalore. A galaxy of Former Chief Justices, Former Judges, members of Judiciary, admirers of late V. Krishnamurthi were present on the occasion.

## Obituary

On 3-12-96 G.E.Kotre [74], Advocate, passed away at Bangalore.

On 17-12-96 Mylaraiah, Retired Civil Judge and Advocate, passed away at Bangalore.

**Wishing the Readers  
Happy 1997**

## Miscellany

With effect from 1-1-97 Mr.M.S.Gopal and Ms.M.G. Rukmini Devi, Advocates, have shifted their chamber to No.20, Narayanappa Block, II Block, R.T.Nagar, Bangalore-560 032, phone : 3333546.

On 11-1-97 Mr.H.R. Shankarnarayana [Ha.Ra], Advocate, celebrated his 70th birthday at Bangalore. A luncheon was also hosted in this connection. Lahari wishes him a happy and prosperous life.

On 14-1-97 Sri.C.N. Ramaswamy Shastri, Advocate, celebrated the Diamond Jubilee of his professional career in H.N.Kalakshetra, Bangalore. Former Chief Justice of India, Justice E.S.Venkataramaiah and Justice A.J.Sadashiva participated in the function as the Chief Guests. Sri C.R. Simha and Sri Srinath, noted T.V. and film artists and sons of Sri C.N.Ramaswamy Shastri entertained the guests. Lahari congratulates Sri.C.N. Ramaswamy Shastri and hopes that his services will be available for a long time to come.

## Former Judge Charge Sheeted

Former Judge of the Karnataka High Court Justice K.S.Puttaswamy has been charge sheeted by the COD as an accused in connection with the death of his daughter-in-law Sujatha in a alleged dowry death case.

## Retirement

After a distinguished service of eight years Justice Kuldip Singh retired as a Judge of the Supreme Court on 31-12-96.

On 11-1-97 Justice D.R.Vittal Rao, retired as the Chairman of the Karnataka State Consumers Forum, Bangalore.

## Point Blank

Judiciary must not be deterred or inhibited by unjust criticism. We must not reject out of hand every criticism, because no one is perfect.

Justice J.S. Verma, Judge of the Supreme Court, while inaugurating the Karnataka State Judicial officers Conference at Bangalore.

I am quite aware of the fact that I will be exposing myself to the charge that the Court has assumed the role of a "garbage supervisor" but the brunt of that cross is worth bearing, having regard to the ultimate benefit it may bring to the people.

Justice K.Narayana Kurup, Judge of the Kerala High Court in his order appointing Advocate P. Vijayabhanu as Special officer to co-ordinate operation Mosquito Eradication in Kochi.

## Campus Watch

On 6-1-97 British Education week was inaugurated by Dr.N.R.Madhava Menon, Director NLSIU at Bangalore jointly organised by the British Deputy High Commission, Chennai and the National Law School, Bangalore.

On 11-1-97 Justice G.Patri Basavana Gowd, Judge of the High Court of Karnataka, inaugurated moot court competition in SJRC Law College.

On 11-1-97 a moot Court competition was conducted in Vivekananda Law College, Bangalore.

## LAHARI

On 10-1-97 Mr.K.N.Putte Gowda, General Secretary of AAB, released Lahari pocket calendar.

On 10-1-97 Mr.D.R. Rajashekarappa, Advocate, delivered a lecture on the topic "the Bar of Fresh Suits".

## Lahari Foundation

In response to the Foundations Appeal the following donations have been received :

Mr.Madhava Raja Rao Rs.500/-, Ms. Bharathi Nagesh Rs. 500/-.

## Orientation Course

Lahari Forum of Advocates propose to organise a orientation course for candidates intending to appear for Munsiff's examination. Candidates desirous of attending the course are required to register their names with Mr. S. N. Prashanth Chandra, Advocate, Room No.4, III Floor, No-11, Jeevan Building, Kumara Park East, Bangalore- 560 001. Phone: 2258680.

## Foreign Tours

On 10-1-97 Mr.B.S. Narayana, Advocate, returned to Bangalore after visiting U.S.A for 75 days.

On 11-1-97 Mr.T.G. Ramanna, Advocate & Notary Tarikere, returned to Bangalore after visiting U.S.A for 100 days.

On 12-1-97 Mr.S.James, Advocate returned to Bangalore after visiting Abu Dhabi, Sharjah and Dubai.