

Justice Punchhi is the new CJI

Mr. Justice Madan Mohan Punchhi assumed office of the Chief Justice of India on Sunday the 18-1-98 setting at rest a bitter controversy surrounding him. Earlier a Rashtrapathi Bhavan Communique issued in this connection said that President K.R. Narayanan had made the appointment of Justice Punchhi on the recommendation of the outgoing Chief Justice J.S. Verma and on the advice of the Prime Minister. Justice Punchhi will be in the office for eight months. The Supreme Court Bar Association welcomed the appointment of Justice Punchhi.

Federation Opened

The Karnataka Advocates Federation was jointly inaugurated by Mr. K.R. Prasad Rao the Principal City Civil and Sessions Judge, Bangalore and Mr. L. Revannasiddaiah, Bangalore City Police Commissioner, on Saturday the 10th January 1998. Mr. K.N. Subba Reddy was unanimously selected as the First Chairman of the Federation. A large number of delegates from different parts of the state including the office bearers of several Bar Associations participated in the one day convention and expressed their support to the federation. The function was presided over by Mr. Kumman, Vice-president of KSBC and a practicing Advocate from Gulbarga.

It was decided to constitute a Sub-Committee to finalise the Bye-laws

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Enact law to enforce judicial accountability

- Justice J.S. Verma

There is no point in saying that there is no corruption in the judiciary. No one is going to say it much less accepted. One cannot go on sweeping it under the carpet and not expect it to show. It is showing now. The time has come to enact law to hold Judges accountable. These are the views expressed by the former Chief Justice of India Justice J.S. Verma in an exclusive interview to a national english daily. He was speaking to the journalist after demitting his office on January 18.

Justice Verma expressed concern at the perception that traditions and conventions have not ensured guarantee of judicial accountability. Therefore he felt that there is need to ensure judicial accountability through law. Citing the example of the Judge of the Allahabad High Court who resigned his post when he was told that there was allegations against him to the effect that some of his judgements were written for extraneous considerations Justice Verma said that today the position is not so. "If after making a reasonable inquiry you find that there is something wrong and you tell the Judge concerned he will say that who are you to ask me to resign. I have taken the oath of office" Justice Verma said. Social sanctions don't work and therefore legal sanctions are required he said.

Citing another example wherein himself and other Judges of the Apex Court declared their assets pursuant to a resolution dated may 7, 1997 some in the High Courts who have reservations for everything said that "we have taken an oath and that is good enough." Justice Verma also said that the "in-house procedure" is also stuck because there is no mode of enforcement of a decision. Even if one Judge says he doesn't accept it you can't do anything, he said.

As far as the impeachment being

a deterrent Justice Verma said that the general perception was that this is hardly any sanction. It depends on so many other factors he said. "The only impeachment moved so far ended up with a finding of not guilty because of political reasons."

Explaining the details of the proposed law Justice Verma said "Whatever be the recommendations, if the Chief Justice of India says to the Judge concerned and he refuses to accept... if for example, the recommendation is that of removal and he refuses to resign then this itself should be sufficient for the president to remove him as in the case of a successful impeachment." To do this, Justice Verma said, the Judges Inquiry Act and also Article 124 of the Constitution, which provides for impeachment, will have to be amended. What is needed is to make Judges accountable so that in case you find a judge who is an aberration there should be some solution to remove that aberration and at present you have none, Justice Verma said. He also said that "Judicial independence means independence from your own infirmities. Latent dangers are more lethal. Unless you have fearless and independent Judges judicial independence is a myth. If in a Court of twenty there are two Judges whose integrity for good reason is doubtful I think it is a very serious threat."

Around the Courts

❑ Specially designated Magistrate to hear CBI/Police cases-Competence to entertain private complaints and directing the CBI to investigate:

In a recent judgement Mr. Justice M.A.A. Khan of Rajasthan High Court has ruled that a Special Judge or a Special Magistrate designated to hear CBI/Police cases is competent to entertain private complaints and direct the CBI to investigate them. By his judgement dated 9-12-97 The Judge dismissed three appeals filed by CBI against the orders of designated Magistrate directing the CBI to conduct investigation in respect of private complaints. The court rejected the argument of CBI that the power to direct the CBI to investigate a cognisable offence rests only with the government, the High Court or the Supreme Court and therefore the designated Judge could not have entertained private complaints, it was held that an act of commission or omission punishable by law is not only an offence against the victim but also against society at large. It was pointed by the court that the object of penal statutes is to punish the offender in the interest of the society and the jurisdiction of the designated court to act in accordance with law cannot be whittled down unless the statute itself creating such a bar. As for as the CBI's contention that the designated court could not entertain private complaints was concerned Justice Khan ruled that the locus standi of the complainant is a concept foreign to criminal jurisprudence.

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He always had an alibi and one or two to spare; At whatever time the deed took place-Macavity wasn't there. -T.S. Eliot.

Requires Serious Handling

The reported theft of the Advocates Welfare Fund stamps from the Karnataka State Bar Council is a pointer to the fact that everything connected with Advocates welfare is not alright. Being the custodian of the Advocates Welfare Fund the State Bar Council has the exclusive responsibility of managing the funds. Welfare Fund stamps constitute an important process through which continuously the Welfare Fund is augmented through accretion. Therefore it is expected that the State Bar Council would have maximum control on the printing, distribution and collection of the amount from the sale of the welfare fund stamps. Already an attempt is afoot to find a scape goat by pointing at a clerk working in the State Bar Council being responsible for the loss of the welfare fund stamps. On the face of it this explanation appears to be ridiculous. The reported incident has however pointed out the fact that mischief, from whatever source could be practiced in the handling of the welfare fund stamps. But it is not satisfactorily explained as to how the State Bar Council is controlling the handling of welfare fund stamps and how far the elected representatives of the State Bar Council are liable concerning the loss of Welfare Fund Stamps.

If such incidents are not prevented from recurring by adopting suitable checks and balances in future it may lead to the possibility of a large scale scam taking place. Therefore it is essential for the State Bar Council to come out with an authentic statement as to how it proposes to tackle the issue. As otherwise the credibility of the persons managing the Advocates welfare fund may be seriously doubted. The State Bar Council must also publish the details of the production, distribution and accounting of the welfare fund stamps with the Auditor's report so as to dispel the lingering suspicion of the members of the fund.

Being a revenue gathering instrument welfare fund stamps should be got printed in the security press. preferably serial numbers inscribed on those stamps. These precautions would minimise the possibility of mischief. The State Bar Council must also examine the possibility of "duplicate" welfare fund stamps being circulated in the state with a view to make wrongful gain by unscrupulous elements. This would go a long way in eliminating any possible loss to the welfare fund.

There is also a serious complaint that the quality of the welfare fund stamps in circulation at present is far inferior to the one's which were supplied earlier. Quality of printing is poor besides the paper too. No good adhesive is used on the reverse of the welfare stamp. The stamps being clumsy could also prove to be a source of health hazard. Something has to be done immediately to answer these complaints.

Instead of casually treating the Advocates Welfare Fund the State Bar Council must handle the issue with utmost seriousness and prudence. This will restore the confidence of the Advocates in their own welfare fund.

Views and Vignettes

Mr. G.S. Rao, Advocate, from Hyderabad, is of the opinion that the prevailing system in the preparation of cause list of AP High Court requires to be reviewed so as to include the name of the counsel for the party along with the code no. mentioned in the Vakalathnama. He has also adverted to a Crl. R.P. which came to be dismissed as a result of wrong mentioning of the computer code no. and subsequent dismissal of the Crl. Petition seeking restoration of the Crl. R.P. on the ground of non-mentioning of the Advocates name in the cause list.

Direction on PIL irks sentiments

A direction dated August 8, 1997 issued by the Chief Justice of High Court of Karnataka to the effect that "All writ petitions filed as PILs with effect from August 11 be listed only before the division bench dealing with the particular subject" has created lot of resentment amongst some High Court Judges. At least a couple of incidents involving their reservations about the direction have appeared in newspaper columns. The matter took altogether a different turn when Justice H.N. Tilhari passed an order dated January 16 referring the issue to the full bench for its opinion. Justifying the reference justice Tilhari said that "I think this is a question of utmost constitutional importance in relation to the working of the courts and deprives petitioners the right to appeal in the High court provided under sections 4 and 9 of the Karnataka High Courts Act, 1961. The matter needed an authoritative pronouncement of law by a larger bench consisting of three Judges with respect to the power of the single Judge of a High Court as well as the power of the Chief Justice to issue the order dated August 8, 1997". Newspapers have also come out with a publication of reports about the serious reservations of justice M.F. Saldanha on this question.

Welfare Stamps Stolen

It has been reported that Advocates welfare stamps worth Rs. 50,000/- is allegedly stolen by a clerk working in the Karnataka State Bar Council. The Secretary of the KSBC Mr. S.R. Venkatesha Murthy informed the press that the investigations are on and the Executive Committee will look into the matter. However, he told the press that the KSBC had not lodged any complaint with the police.

Resolutions of the Notaries Conference

The Annual Notaries Conference held at Hubli on December 13, 1997 adopted resolutions (1) calling upon the Notaries to exercise their powers strictly in accordance with the Notaries Act, 1951 in the light of the decisions of the Karnataka High Court particularly with regard to affixing of notarial stamp of Rs. 10/- on the documents notarised, after obtaining the signatures of the deponents in the register maintained by the Notaries and mentioning the serial, page and volume no. on the notarised document (2) not to solemnise any marriages or being parties to any document purporting to evidence any marriage or divorce in the light of the judgement of the Karnataka High Court passed in W.P. No. 41098/95(GM); (3) calling upon the state government to construct a Notaries Bhavan in Bangalore City and other head quarters; (4) appealing to all the state and central government Notaries to be the members of the Notaries Association.

Profile

Born on 16.8.1917 Sri V.P. Deenadayalu Naidu achieved many laurels during his life time. An Advocate by profession Mr. Naidu is a multi faceted personality. At the age of 80 years he died recently and is survived by wife and two daughters.

During his illustrious career Mr. Naidu served as Mayor of Bangalore, MLA, MLC, Chairman of CITB, Commissioner of Bharat Scouts and Guides in Karnataka and also as its National Commissioner. He is also recipient of the prestigious Silver Elephant Award from Bharat Scouts and Guides, Rajyotsava Award from the State Government. He also participated in various International Conferences and world Jamborees of Scouts and Guides at U.K., U.S.A., Canada, Germany, Japan, Australia, China and South East Asian Countries. He was the President of the Karnataka State Freedom Fighters Association, Several dignitaries have mourned his death.

News Focus

□ Thirty five lady lawyers from Bangalore attended the conference of Indian Federation of woman lawyers held at Pune from 28th to 30th December 1997.

□ No judicial work was taken up in the High Court on 1st and 2nd January 1998 on account of declaration of holidays.

□ On 2nd and 3rd January 98 State Government NGOs went on strike. Consequently work in subordinate courts throughout the state was affected. Judicial work in High Court was also affected on 5-1-98 due to non-availability of cause lists.

□ On 7-1-98 Justice M.F. Saldanha released the book "Law of Maintenance" written by Mr. Mohd. Asif, Advocate in the city Auditorium of AAB. Mr. K.N. Subba Reddy, President of AAB presided over the function.

□ On 26-1-98 AAB, Bangalore Advocates Co-operative Society Ltd., and Literary Union jointly celebrated the 49th Republic Day in the High Court unit. Mr. Justice L. Sreenivasa Reddy unfurled the National Flag and addressed the gathering. A musical programme was also provided by the Advocates on the occasion.

□ In an impressive function at Bangalore held on 27-1-98 Chief Justice of India Mr. Justice M.M. Punchhi was felicitated.

Foreign Tour

Mr. H.B. Prabhakara Shastri, Advocate, left Bangalore on 22-1-98 for Sanfransisco. He will be in US for four months.

Suspended From Membership

The Emergent General Body Meeting of AAB held on 13-1-98 resolved to suspend the membership of Mr. S. Venkatachalapathi, Advocate, practicing before Magistrates Court in Bangalore.

Office Bearers

Mr. V.T. Raya Reddy, Convener of State Janata Dal Legal Cell has reconstituted the cell by making the following appointments.

Vice Presidents Sri H.S. Renuka Prasad, Sri Chikkavenkataiah, Sri H.G. Vasanth Kumar, Sri R. Prakesh Reddy from Bangalore, Sri M.B. Viswanath from Hassan, Sri T.M. Somashekar from Mandya and Sri Karunakara Rai from puttur.

General Secretaries Sri N. Subba Shastri, Sri H.S. Sakalesh Aradya, Sri V.N. Srinivas, Sri B.K. Janardhan, Sri Adinath Narway from Bangalore, Sri Syed Ahmed from Davanagere, Sri S. Dyave Gowda from Hassan.

Joint Secretaries Sri B. Visveswaraiiah, Sri C.M. Kempe Gowda, Sri Gode Nagaraj from Bangalore and Sri Chi. Ramanna of Raichur.

Organising Secretaries Sri Ventaramana Reddy, Sri Nageswarappa, Sri D.C. Girish, Sri H.C. Shivaramu from Bangalore and Sri P.K. Dharmappa from Hassan.

Point Blank

□ I had recently told a group of journalists that the best way to honour the BCC Corporators was by presenting them with a pair of handcuffs each.

-Justice M.F. Saldanha while addressing the citizens forum at Bangalore on 16-12-97.

□ A cow appeared in front of a Sessions Court in Delhi and sought anticipatory bail. When the Judge asked why the bail is required the cow said those "eating" fodder were being arrested and therefore it has a reasonable apprehension of being arrested.

-Mr. Atal Behari Vajpayee while addressing a public meeting at Mangalore on 9-1-98.

□ My position in today's meeting is comparable to that of a gentleman ticketless traveller in a ladies compartment.

-State Bar Council Member Mr. Kumman while addressing the delegates to the Karnataka Advocates Federation at Bangalore on 10-1-98.

Campus Watch

□ In the All India Moot Court competition held at Dharwad by Government Law College, from December 21st to 23, 1997 thirty five Law College teams from all over India participated. University Law College, Bangalore, secured fourth place. Third year LLB. student Ms. Anu Chengappa D/o. Mr. P.G.C. Chengappa, Advocate, was adjudged the best lady advocate of the Competition.

□ On 14-1-98 Mr. Justice V.S. Malimath, Member, National Human Rights Commission inaugurated the All India Moot Court Competition organised by the University Law College, Bangalore. Prof. N.R. Shetty, Vice Chancellor, Bangalore University, presided over the function. In the valedictory function held on 17-1-98 Mr. Justice Y. Bhaskara Rao, Judge, Karnataka High Court distributed prizes. NLSIU, Bangalore, secured first prize. University Law College, Bangalore secured second prize, Kerala Law Academy, Thiruvananthapuram and Government Law College, Mumbai were placed third and fourth respectively.

□ On 22-1-98 Sri K. Vasudev Murthy, Deputy Mayor, Bangalore Mahanagara Palike, inaugurated "Ullas -98" the farewell function for final year students of V.V. Puram Law College, Bangalore.

□ On 24-1-98 Mr. Justice R.V. Raveendran, delivered the First H.R. Venkataramanaiah Memorial lecture in ULC, Bangalore. The subject of the lecture was "Res-judicata".

Miscellany

□ Chitradurga District Kannada Sahitya Sammelana was held at Molakalmur on 3rd and 4th January 1998. Prof. Ravi Verma Kumar, Chairman, Karnataka State Backward Classes Commission, inaugurated the Sammelana. In the fifth session Mr. H.R. Shankaranarayana, Advocate, spoke on the topic "Literature on Humour". In the concluding function Mr. Justice N.Y. Hanumanthappa of A.P. High Court was the guest of honour.

□ With effect from 15-12-97 Mr. G.V. Jagadeesh, Advocate, has shifted his chamber to No.3, I Floor, Kilari Road Cross, Opp. Tip Top Showroom, Balepet, Bangalore-560 009.

Note the Addresses

□ Those who want to prefer Appeal against the judgment and decree of Debt Recovery Tribunal may send the memorandum of appeal to the following address:

Debt Recovery Appellate Tribunal
L.D. Ruparel Road,
Hyderabad Estate,
Malabar Hill, Mumbai-400026.
Phone: 3645878. STD : 022

□ Correspondence address of Lahari Placement Bureau has been changed to:

B.M. Shyamprasad, Advocate
No. 13, Airport Road,
Domlur, Bangalore-560 007.
Ph : 5570560

Power of BDA to collect property tax

Recently the Supreme Court granted leave to the petitioner Sri B. Krishna Bhat in SLP [Civil] no. 8386/97 which is directed against the judgement of the division bench of Karnataka High Court passed in w.p.no. 51 73/93. It may be recalled that previously a single judge of the Karnataka High Court had allowed w.p.no. 4394 to 4410/88 holding that the BDA had no authority of law to assess, levy and recover property taxes from the site owners and directed refund of the taxes so collected from the Rate Payers. The said judgment was confirmed by the division bench in W.A. nos. 223 to 239/91. Thereafter the government brought about an amendment to the BDA Act, 1976 empowering the BDA to assess, levy and recover property tax. The said amendment was challenged in wp no. 5173/93 on the ground that the amendment not only suffers from the vice of excessive delegation of legislative powers but also a brazen attempt to circumvent the previous judgements of the High Court passed in W.A. nos. 223 to 239/91. As the division bench ruling in w.p.no. 5173/93 went against the Rate Payer the petitioner had to file the SLP under refernece.

Report: Mr. N.D.R. Ramachandra Rao, Advocate.

Around the Courts

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□ **Sec. 173 of the Motor Vehicles Act, 1988-Appeal to the High Court by the insurer suo motu power of the court to enhance the compensation:**

In a recent judgement Justice M.F. Saldanha has held that the high court can suo motu enhance the compensation payable to the claimant in a appeal filed by the KSRTC notwithstanding that the Respondent/Claimant had not filed a separate appeal and or cross objection. The court enhanced the compensation awarded by the MACT, Bangalore, from Rs. 45,000/- to Rs. 1,52,500/-. The Court noticed that the mother of the deceased boy aged 13 years having died in a fatal accident required to be adequately compensated.

Revoke Revisional Powers

In the Pre-budget memorandum on Karnataka Sales Tax for the year 1998-99 submitted to the government the Karnataka Tax Consultants' Association has demanded to withdraw the revisional powers given to the Addl. Commissioners under Section 22A of the Karnataka Sales Tax Act. This change will reduce the incidence of corruption in the disposal of cases, according to the Association. Adverting to Section 28A of the KST Act the Association has demanded to introduce the system of collection of advance taxes as in the case of Tamil Nadu Sales Tax Act to avoid corruption in check posts. The Association has also demanded for setting up of independent Sales Tax Tribunal with power to grant stay on an urgent basis. It is also pointed out that the amendment to Sections 20(2) and 22(2) to the KST Act with effect from 1-4-97 has caused great hardship to the dealer apart from taking away the discretionary power of Appellate Authorities to condone the delay involved in presenting an appeal after 180 days. In this regard a demand is made by the Association to cloth the Appellate Authorities with the discretionary power of condoning the delay on the lines of Section 5 of the Limitation Act.

Federation Opened

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of the federation after taking into account the views expressed by the delegates on the draft Bye-laws. The convention also unanimously adopted resolutions calling upon the Advocates to give up the practice of addressing the High Court Judges as "Lords" and the Judges of other Courts as "Honour"; for enhancing the relief payable under the Advocates Welfare fund from Rs. 50,000/- to Rs. 2,00,000/- Effecting upward revision of the Advocates fee schedule.

It is noteworthy that the office bearers of the Karnataka State Bar Council except Mr. Kumman, and the High Court Judges, including the Chief Justice, failed to participate in the convention notwithstanding the mention of their names in the invitation card. Mr. K.N. Subba Reddy, in his speech at the convention, allayed the opinion expressed in certain circles that the Karnataka Advocates Federation is a parallel body to the KSBC. He also emphasised that similar bodies are already functioning in other southern States and on that basis justified the formation of the new Federation.

Padma Awards

On the eve of the 49th Republic Day of India renowned Constitutional expert Mr. Nani A Phalkivala has been conferred with the *Padmavibhushana* Award. Retired Justice V.M. Tarkunde has been conferred with *Padmabhushana* Award.

Office Accommodation

Accommodation available on rent in the premises situated at I Main Road, Seshadripuram.

Contact:

Sawant & Sawant, Advocates,
23/2, I Main, Seshadripuram,
Ph: 3443790

National Convention

Indian Federation of Women Lawyers has recently organised the XIV Biennial National Convention at Pune on the 28, 29 and 30 th of December 1997. The Hon'ble Justice Mrs. Sujatha Manohar, Judge of Supreme Court of India, was the chief guest. About thirty five delegates from the IFWL, Karnataka branch attended the convention and participated actively in the discussion.

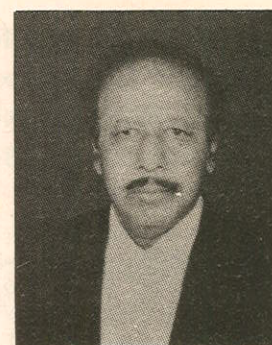
The subjects discussed in the conference were (1) reservation for women in all fields and (2) the use and abuse of section 498 A IPC. After long discussion, the delegates passed a resolution supporting 33% reservation for women in all fields like politics, judiciary, appointments in quasi-judicial bodies, etc. Regarding use and abuse of Section 498 A the resolution adopted was that the offence must be made compoundable and the law must provide for compensation for the victim of the offence under Section 498 A. It was also resolved that there must be a provision for counselling and proper investigation before filing of complaint under Section 498 A.

Mrs. Bharathi Nagesh, President of IFWL, Karnataka Branch, was nominated to the Executive Committee of IFWL.

Report: Ms. Prabha Murthy,
Advocate

Yoga, Meditation and Trekking

The following Advocates from Bangalore participated in the Yoga, Meditation and Trekking programme undertaken from 23-1-98 to 26-1-98 at Ullal-Kasargod beach. S/s. D. Gangadhara, S.C. Bheema Reddy, J.V. Hulsoor, C.S. Hiremath, M.H. Sawkar and P.M. Siddamallappa.



P.A. Krishna Reddy

Mr. P.A. Krishna Reddy Advocate has taken over as the Chairman of KPCC [I] Legal Cell. Mr. Aswatha, Advocate, is the Convener.

Kolar Diary

□ In the general body meeting of the Kolar Advocate Association held on 17-1-98 a resolution was adopted condoling the sad demise of the freedom fighter and former Prime Minister Gulzarilal Nandha.

□ The general body meeting of the Kolar Advocates Association convened on 24-1-98 resolved to abstain from Courts for one day to protest against the high handed behaviour of Sri Krishnappa, Inspector of Police, Srinivaspura PS with Advocate Sri Chandrashekara Reddy. Later the Superintendent of Police, Kolar, assured the delegation of lawyers that an enquiry will be held concerning the reported incident and suitable action will be taken in the matter.

Obituary

□ On 26-12-98 B.Venkata Rao (65), Advocate, passed away at Bangalore.

□ On 6-1-98 V.Sandhya Kumari (35), Advocate, passed away at Bangalore.

□ On 8-1-98 V.P. Deenadayalu Naidu (80), Advocate, passed away at Bangalore.

□ On 10-1-98 T. Devakumar (41), Advocate, passed away at Bangalore.

□ On 22-1-98 M.D. Sheikh, Advocate, passed away at Belgaum.