

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 7

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Part II

Pre-enrolment apprenticeship Mooted

A pre-enrolment training programme for law graduates would come into force in Karnataka from April 2. Giving details of the programme Mr. Mohan Shantana Goudar, Chairman of K S B C told media persons on 31st January that after obtaining the law degree those of whom want to enrol as Advocates would have to work under a Senior Lawyer for an year as an apprentice. Thereafter the apprentice should get a certificate from the Senior Lawyer before seeking enrolment. If the Bar Council found that an apprentice had not come upto expectation of his senior the apprenticeship might be extended.

The Senior Lawyer under whom the law graduate has to undergo apprenticeship would be decided by the State Bar Council and such Senior Counsels should have themselves put in 15 years of practice at the Bar. A panel of such Senior Lawyers eligible to impart such training would be maintained by the Bar Council and they would be designated as 'Guides'. Mr. Goudar disclosed that the Bar Council of India has finalised the pre enrolment apprenticeship scheme and has already been sent to State Bar Councils to be implemented from April 2.

Tracing the history of such training programmes in the country Mr. Shantana Goudar pointed out that till early sixties such system was prevalent apart from the fact that after such apprenticeship the candidate had to pass a qualifying

examination conducted by the respective Bar Councils. This system was discontinued later. Under the present scheme the qualifying examination is not prescribed. Mr. Mohan Shantana Goudar said that the apprenticeship was important to maintain standard in the profession. Besides it would also help the litigants and the clients to secure best possible assistance from the Lawyers.

Review Petition Allowed

Justice M. F. Saldanha allowed the Review petition filed by AAB and an Advocate in RFA No. 451/95 and directed the Registrar of the High Court to withdraw the circular bearing No. HCE 754 / 95 dated 29-9-95 discontinuing the practice of returning the papers filed by Lawyers for rectification of defects. His Lordship has further directed the Registrar to issue a fresh circular notifying the members of the Bar that minor objections raised by the office may be removed in the office or within the Court premises within the prescribed period of three weeks which may be extended by another two weeks if a valid ground is made out by filing a memo. The order also provides that return of documents requiring rectification or replacement may be made if the need for the same is demonstrated to the satisfaction of the Registrar.

Read Communique for
Latest News

Criminological Congress

24th Criminological Congress was held at Bangalore between 9-11 February 1996. former Chief Justice of India Mr. Justice M. N. Venkatachalaiah, Former Judge of the Supreme Court Mr. Justice V. R. Krishna Iyer, Magasaysay award winner and Delhi Addl Commissioner of Police (Trainee) Ms. Kiran Bedi and a host of other speakers expressed their views during the Congress.

In his speech Justice V. R. Krishna Iyer said that the Vohra Committee Report on the Politician-Criminal nexus concealed more than it revealed. Ms. Kiran Bedi suggested that the President of India should freeze the accounts of all major political parties before the ensuing Lok Sabha Polls. The Congress unanimously adopted "The Bangalore declaration" demanding the implementation of the National Police Commission Report on professionalising the Police force in the country. Mr. N. R. Madhava Menon, Director of the NLSIU, read out the recommendations of the Congress.

All Bar Council Chief

Mr. Om Prakash Sharma, Advocate, representing the Bar Council of Delhi has been unanimously re-elected as the Chairman of Bar Council of India for second term. A meeting of the Council held on February 10th also unanimously elected Mr. Jagannath patnaik, Advocate, representing the Bar Council of Orissa as the Vice-Chairman of the BCI.

Acting Chairman for CAT

Justice P. K. Shyamasundar, Vice Chairman, CAT, Bangalore, has been appointed as the Acting Chairman of Central Administrative Tribunal with effect from 10-2-96.

CAMPUS WATCH

□ Police should insulate from unlawful political interference. Investigation of heinous offences should be taken up by specially recruited personnel who would not be deployed for other police duties. Those personnel should constantly interact with their training centres to update their skills and should possess a high sense of professional honour and integrity. This was the gist of the speech delivered by the former Chief Justice of India Mr. M. N. Venkatachalaiah. His Lordship was speaking to the delegates of the Three Day National Criminology Congress of the Indian Society of Criminology jointly organised by NLSIU and The Karnataka State Police and Bureau of Police Research and Development, after inaugurating the Congress on February 9, 1996 at Bangalore.

□ The memorial presented by the team comprising S. Subramanya and M. Dhyan Chinnappa of Bangalore University Law College was adjudged the best memorial in the recently concluded All India Jessup International Law Moot Court Competition held at Madras.

□ On 12-2-96 Prof. M. C. Shantha Murthy, Vice Chairman, NIPCCD and Secretary,

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Liberty is the power of doing what is allowed by law.

—Latin Phrase

Role Of Governors

The Governor is the representative not of a party, he is the representative of the people as a whole of the State. Wise Governors ensure that the limits of their office are never overstepped. If this much is done - the bare minimum expected of a Constitutional head - many problems get pre-empted. Some get solved others become less difficult to solve. The Governors ability to be of service also increases. Raj Bhavans are really glass houses, but this should be an advantage - for genuine respect for the Governor can progressively be induced when the incumbent is seen consistently doing the right thing and with grace.

This was the counselling to the Governors **not given** by a leader of the Opposition but by the holder of the highest constitutional position in the country, the President Dr. Shankar Dayal Sharma. The President while inaugurating the recently concluded two day Conference of the Governors at Delhi made an impassioned plea to the Governors not to overstep the limits of their office in best interests of the people of the State which they represent. How precious and candid this advice is could be gauged by those who are the students of the study of Centre - State relationship.

Dicey described the democratic polity of India as Quasi-federal. Being a unique model by itself the Country has to achieve progress even while keeping a steady balance of power between the Centre and the States. Need to prevent frictions between the Centre and the States on one hand and the States inter-se on the other is of utmost importance for

harmonious functioning of the constitutional authorities. It is in this background the role of Governors assume pivotal importance. Being a Presidential appointee under Article 155 of the Constitution the Governor enjoys a significant position in safeguarding the Constitutional Guarantees even while being the repository of the peoples' aspiration of the State concerned. Needless to state that there are grey areas where the action/inaction of the Governors do attract adverse reaction from various circles including the political parties. One such important area is the exercise of power by the Governors in sending a report to the President envisaged under Article 356 of the Constitution. Right from the case of dismissal of the first Marxist Government in Kerala till Mr. Bommai's case wherein the Apex Court declared the dismissal of the constitutionally elected government in Karnataka as invalid, the role of the Governors have been deprecated on the ground of partiality, impropriety, inconsistency and malafide etc. Perhaps for the first time in Bommai's case the focus of attack of the Governor's action was well articulated by the Petitioner and rightly the Apex Court intervened to declare that the dismissal of the State Government was unconstitutional even though restitution of the government was not ordered on the grounds of expediency.

Instances of the Governors not being able to maintain a working relationship though not a cordial relationship, with the State Chief Ministers have also been reported.

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Judiciary and Speedy Justice

Justice M. F. Saldanha

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by merely hearing whatever has now been being pointed out and passing a final order without remanding the matter. Statistics have shown that 20% of litigation has been going in circles due to remands at one stage or the other. Personally, I have rarely come across a case that cannot be disposed off without a remand.

It is often argued that procedures are antiquated and that conventional working systems that were conceived of in the early half of the last century act as fetters on judicial officers. This position is totally false in so far as every judicial officer must innovate in keeping with the situation and the present day needs. I have already demonstrated how the convention that appeals must be entertained or that whenever a *denovo* consideration appears necessary that the matter must be remanded, are both wrong. If the American Supreme Court can restrict the time for arguments to ten minutes per counsel, I see no reason why we cannot in this country put the brakes on long winded arguments. The laxity with which adjournments are granted is something very unfortunate. Except in the few cases where valid ground exists, every Judge should make it a policy that adjournments will not be permitted. You will not be surprised when I tell you that 95% of the adjournments are on the ground that too many briefs are concentrated with too few of the lawyers as a result of which they or their juniors are always asking for accommodation. I am wholly in favour of a healthy cordial and accommodative working

arrangement with the Bar but I have found in my own case that it is possible to adopt a firm and business-like no nonsense approach to one's work and to say no to unjustified postponements. There is no embarrassment involved in such a refusal and to my mind, the attitude of many judicial officers in indiscriminately granting adjournments or entertaining applications and appeals only in order to placate or be nice to certain members of the Bar is an unhealthy practice which must be stopped. The judicial system according to the constitutional mandate has been set up specifically to administer justice and dispense it and that objective cannot be diluted for personal considerations because every such favour results in injustice to the opposite party.

There is another aspect of the matter which I need to record and which is rather unusual. That pertains to the best utilisation of the capacity of judicial officers. There is a practice of work assignment all over the country which follows a rotational system in so far as periodically Judges are shifted from one field of work to the other. I am all in favour of such a procedure because the pressures and workloads differ from area to area and it is, therefore, good if such movement takes place. What is unfortunately happening is that very often a Judge is assigned work pertaining to a field of law with which he has very little contact and this inevitably puts heavy pressure on the Judge and brings the disposal rate almost down to zero.

(to be continued)

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

B. S. Narayan, Advocate

(continued from last issue)

And in the process of dispensation of Justice, if any allegation is made against any Judge it will be seriously taken note of and the media particularly the News Papers and the Television give wide publicity for the same. Infact the wide impact of some cases results in lively debates in the Press. Election is held for the posts of Judges in the State Courts and the eligible electorate of the particular District or City elect them. Attorneys of experience in the Bar and sitting Judges are allowed to contest for posts of Judges. The T. V. also televises the proceedings of the Courts in respect of certain crimes for certain days in a week. In criminal cases the Courts provide legal assistance free of charge to defendants who cannot afford to pay for it themselves. The punishment given for various offences is very rigorous and the offenders are sentenced to imprisonment for many long years. The mobile traffic police move around the City and book traffic violation offences. They on the spot issue them "ticket" imposing fixed fine and give the offenders some time to pay the fine amount.

The Attorneys and Lawyers do charge consultation charges to the clients who go to them based on hourly basis. All candidates who take law degrees from the Law Schools cannot be enrolled as Advocates to practise in the Courts unless they pass the Entrance Examination, conducted by the concerned State Bar Council. Even at the time of admission of the students to the Law Schools an Entrance Examination is conducted. Like this they have maintained good standard and quality. Just to help the students in Legal

matters a registered voluntary organisation is formed at the University level called "The University Legal Clinic" where assistance is given to the students to solve their legal problems. (concluded)

New Arbitration Law

The Arbitration and Conciliation Ordinance, 1996 came into force on 25-1-96. This Ordinance which was promulgated on 16th of January 96 repeals the earlier enactments on subject viz 1. The Arbitration (Protocol and Convention) Act, 1937; 2. The Arbitration Act, 1940 and 3) The Foreign Awards (Recognition and Enforcement) Act, 1961.

News Spectrum

□ Supreme Court of South Korea has banned cellular Telephones and Pagers from the country's Court Rooms to halt disturbing of the Court proceedings on account of "beeping sound" from the visitors' gallery. Visitors with such devices are not allowed to enter the Court Room and are required to deposit them outside the Court Rooms. Any violations of these restrictions are viewed seriously and fines as high as 3750 dollars or a maximum jail term of 20 days are prescribed for such violations.

□ A litigant workman who attended the Delhi High Court on 30th January 96 with mere shorts on his body was pulled up by the Judge for his indecent appearance in the Court with a direction to attend the Court on next hearing date properly dressed. The plea of the litigant workman that on account of the adamant attitude of his adversary employer he is starving and he has no enough money to buy a dress was summarily rejected by the Judge. The Judge had to adjourn this case without hearing the matter.

Around the Courts

○ The word "usage" in Secs. 24 & 31 of the Hindu Religious Institutions Act, 1950 - cannot legalise Castewise appointments of Priest :

A Full bench decision of the Kerala High Court delivered on 5-12-95 has held that discrimination in the appointment of a priest in a Hindu religious temple on the grounds of caste is impermissible. Disposing of the Writ petition filed by one Mr. Adityan of Alwaye district, the Bench comprising the Acting Chief Justice K. T. Thomas, Justice K. K. Usha and Justice P. Shanmugam held that the word "usage" in Secs. 24 & 31 of the Hindu Religious Institutions Act, 1950 cannot be meant to say that only Malayalee brahmins could be appointed as Santhikkaran in any given Hindu temple. The Court held that the word "usage" in the Sections is not capable of legalising the practice of appointment on the basis of caste in respect of any office and the position remains the same even if the office is that of Santhikkaran. It was held that no legal approval for any usage be given by which persons belonging to one particular caste alone are employed in any office, be it priesthood or even above it because of the clear language used in Article 15 (1) and 16 (2) of the Constitution.

Their Lordships observed that the petitioner has no case with regard to his claim that the practice of a Malayalee brahmin performing pooja or rituals in the Sanctum Sanctorum of a temple is an essential and integral part of Hindu religion and even otherwise the right enjoyed under Art. 25 of the Constitution is placed only subject to other fundamental rights in part III. No religious right therefore be claimed in contravention to other fundamental rights.

○ Madras Race Club Acquisition and Transfer of Undertakings Act, 1985 - Constitutional Validity :

By the judgment dated 12-1-96, the Supreme Court Bench comprising Justices Kuldip Singh, B. L. Hansaria and S. B. Majumdar held that the Madras Race Club Acquisition and Transfer of Undertakings Act, 1985 as Constitutionally invalid and directed the interim Board of Management constituted under the impugned Act under the Chairmanship of former Supreme Court judge Mr. Justice S. Natarajan to run the affairs of the Madras Race Club to hand over charge to a duly constituted Board under the Memorandum of Association before 31-3-1996.

Observing that all citizens have the right to practice any profession or carry on any occupation, trade or business as guaranteed under Art. 19 (1) (g) of the Constitution, their Lordships ruled that the Respondents were not entitled to prohibit horse racing purportedly acting under Art. 39 (b) & (c) of the Constitution claiming that it is the Directive Principle providing for securing for ownership and control of material resources of the community for distribution for common good as well as to see that operation of economic system did not result in concentration of wealth and means of production to the common detriment.

○ Horse Racing did not constitute either gambling or gaming but was a game of mere skills :

In this judgment which set aside Madras High Court judgment upholding the validity of the impugned Act their Lordships held that this sport

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Around the Courts

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could not be prohibited by the Government under the Directive Principles of State policy and such restraints were applicable only to bucket shops. The Madras Race Club and other Associations connected with horseracing in Tamil Nadu had preferred Civil Appeals before the Supreme Court challenging the State Government's decision to curb the sport on the ground that it was prohibited by the Madras City Police Act and the Madras City Gaming Act. The unanimous decision held that the provisions of these two Acts do not cover the sport of horse racing as it did not come either under the definition of "Gambling" nor "Gaming" which were games of pure chance.

○ Registration of Electors Rules, 1960-Election Commission on question "resident status of the Declarant":

In a significant judgment delivered on 3-1-96 the Guwahati High Court ruled that the Election Commission has no authority and/or jurisdiction to raise questions in the matter of declaration of status of "ordinary residence" by the holder of a declared office. In his 164 pages judgment Justice J. N. Sharma held that "such a declaration (regarding his status of residence) by a holder of a declared office cannot be subjected to any enquiry as the Statute has given that privilege/right to the holder of the declared office to make declaration regarding "ordinary residence" of a place and must be deemed as final.

The Union Finance Minister Dr. Manmohan Singh approached the High Court questioning the validity of the notice of the Electoral Officer of Dispur constituency calling upon him

to prove that he was ordinary resident of that constituency. Dr. Singh had filed a declaration to that effect on the basis of which on 11-9-91 his name was included as a voter in the Dispur constituency and subsequently he was elected to Rajya Sabha from Assam. Dr. Zoinath Sharma a leader of Asom Gana Parishad had complained before Election Commission to the effect that Dr. Manmohan Singh had filed a false declaration with regard to 'ordinary resident' status.

Role of Governors

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The case of Tamil Nadu stands out to be a testimony to this aspect. The recent case of the Governor of Manipur who created a constitutional impasse in the State, for which he had to pay the price, is an example of the Constitutional impropriety on the part of the Governor. Taking an overall picture of the matter and "the gubernatorial post" they hold it becomes imperative for the Governors to exercise their powers in an impartial manner. After all the Caesar's wife must be above suspicion. If the incumbents of these posts keep in their mind the constitutional limits under which they have to function it goes a long way in shielding their positions. As rightly pointed out by the President the Governors cannot forget the fact that they are functioning from glass houses.

How Long to Wait?

A number of Courts i.e., the City Civil Courts, Court of Small Causes and Mofussil Courts functioning in Bangalore are kept vacant for long durations. Virtually holiday mood has crept in. Needless to state that litigants are the victims of the situation. Will the Authorities take immediate measures to fill the vacancies and thereby help the litigants to get speedy justice?

News Focus

□ On 24-1-96 BJP MLA Dr. Jeevaraj Alva inaugurated the new canteen in AAB City Unit. Mr. K. N. Subba Reddy, President of AAB presided over the function.

□ On 26-1-96 47th Republic Day function was celebrated under the joint auspices of AAB, BLPCS and the Literary Union. Mr. Justice A. B. Murgod unfurled the National Flag. As a part of the celebration "Swara Lahari" gave a musical performance.

□ On 31-1-96 Ms. Pramila Muthanna and Mr. Arvind Menon, addressed the members of AAB, High Court Unit, on the subject "Stress Management."

□ On 3- Advocates of Bangalore Magistrates' Courts Unit did not attend the Court work protesting the incident of assault on the Advocate Mr. Kumare Gowda.

□ On 8-2-96 Justice M. F. Saldanha addressed the members of AAB, High Court Unit, on the topic "Police inaction Vis-a-Vis Court orders."

RETIRED

Sri A. H. Naik, Addl. City Civil and Sessions Judge (CC H10), retired on 31-1-96,

Obituary

□ Noted Constitutional expert and the former Advocate General of Maharashtra S. M. Seervai (90), passed away at Mumbai on 26-1-96.

MISCELLANY

□ Trekking, practice of yoga and Meditation (Programme No. 4 under the banner of the Adventure wing, Advocates Association, Bangalore) was conducted between 26th to 28th January 1996 in Kodachadri Hills. Six Advocates and five children of Advocates participated in the programme under the guidance of the team leader Mr. Gangadhar, Advocate.

□ On 5-2-96 Lahari Foundation released medical assistance of Rs. 1000/- to Mr. S. Ravishankar, Advocate, Bangalore.

ಲಿಟರರಿ ಯೂನಿಯನ್

○ ತಾ|| 21-1-96ರಂದು ಯೂನಿಯನ್ ವತಿಯಿಂದ ವಿಜಯ ವಿಠಲ ಮಂದಿರ, ಗೊರವನಹಳ್ಳಿ, ಮಹಾಡಿ, ಸಾವನದುರ್ಗ ಹಾಗೂ ಶಿವಗಂಗೇ ಪುಷ್ಪಕಾರ್ಯಕ್ರಮ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. 55 ಜನ ವಕೀಲರು ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಭಾಗವಹಿಸಿದ್ದರು.

○ ತಾ|| 8-2-96ರಂದು ಖ್ಯಾತ ಚಲನಚಿತ್ರ ನಟ ಶ್ರೀ ಶ್ರೀನಾಥ್‌ರವರು "ಸಾಹಿತ್ಯಕ್ಕೆ ಕನ್ನಡ ಚಲನ ಚಿತ್ರ ರಂಗದ ಕೊಡುಗೆ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

CAMPUS WATCH

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Institute of Parliamentary Affairs inaugurated the Model Parliament Session 1995-96 organised by Bangalore University Law College. Dr. V.B. Coutinho, Dean, Faculty of Law and Principal of the college presided.

Advocate Colleagues needed to work with;

Dr. Arumugham

Advocate

No. 26, 2nd Main, Azadnagar
(Near T. R. Mills), Bangalore-18

☎ 625988

Contact Immediately