

Addl. Judges Appointed

Mr. K.Sreedhar Rao, Principal Judge, City Civil and Sessions Court, Bangalore, Mr. V.G. Sabhahit, Registrar-General, High Court of Karnataka and Ms. Manjula Chellur, Principal Dist. and Sessions Judge, Mysore have been appointed as addl. judges in High Court of Karnataka. Pursuant to their appointments the learned judges were Sworn in, in a simple ceremony on 21.2.2000.

Lahari Law Academy

□ On 10.2.2000 Mr. Justice Y.Bhaskar Rao, Chief Justice of High Court of Karnataka, inaugurated Lahari Law Academy at the High Court Unit of AAB. He also presented Cash awards to the winners of the talent search programme Viz Ms. Anuchengappa and Ms.Kaveri Bopanna. Mr. K.L. Manjunath, president, AAB was the guest of honour. Mr. S. Vijayashankar, Senior Advocate and trustee of the Academy Presided over the function.

□ On 18.2.2000 Sri. S. Vijaya Shankar, Senior Advocate and Trustee of the Academy inaugurated a Orientation Course for examinees for Civil Judge (Jr Dn) posts at a function held at Bharatiya Vidya Bhavan, Bangalore. The course lasting till 5th March 2000 is being attended by about 40 Advocates.

Lahari Advocates Forum

Lawfing - 2000, a programme of sharing humour anecdotes, was held under the auspices of the above forum on 16.2.2000 at AAB Auditorium.

Venkatachaliah heads review panel

The Union Cabinet on Feb, 1, 2000 decided to Constitute a National Commission to review the working of the constitution within the frame work of Parliamentary democracy. Revealing the terms of reference of the proposed Commission Parliamentary affairs Minister Promod Mahajan said it would examine how best the constitution can respond to the changing needs of system within the frame work of parliamentary democracy without interfering with the basic structures and features.

Pursuant to the said decision the government announced on Sunday the February 13, 2000 the names of the members to constitute the panel. Former Chief Justice of India Mr. Justice M.N. Venkatachaliah has been named as the chairman of the review panel. Other members of the panel are Mr. Justice B.P. Jeevan Reddy, Mr. Justice R.S. Sarkaria, Mr. Justice Kondapalli Ponnaiah, Mr. Soli J. Sorabjee, Mr. K. Parasaran, Mr. P.A. Sangma, Mr. Subhash C. Kashyap, Mr. C.R. Irani, Mr. Abid Hussain, Ms. Sumitra Kulkarni. One year term is given to submit the Commission's report.

Advocates Co-op Society

In the meeting of the board of directors held on 29.1.2000 it was resolved to admit 36 new members, grant 4 additional shares to each of 162 members, grant loan of Rs. 30,000/- each to 129 members, grant medical assistance of Rs. 5,000/- each to two members, grant DRF of Rs. 5,000/- each in respect of two members and grant Rs. 15,000/- each as donation to Lahari Law Academy and Advocates Kabaddi tournament.

Boycott observed

□ On the Call off the All India Bar Council and the State Bar Council Advocates in Karnataka obtained from attending Courts on 3.2.2000 in protest against the amendments to CPC brought about by the Civil Procedure Code (Amendment) Act, 1999. Members of AAB submitted a memorandum to Smt. V.S. Ramadevi, Hon'ble Governor of Karnataka, expressing reservations about the amendments. A Padayatra of lawyers in uniform was taken out from Bangalore City Civil Courts premises.

A meeting of the State Bar Council alongwith a representation of the various Bar Associations in the State held on 6.2.2000 resolved that Bar Associations should sent resolutions disapproving the proposed amendments to the code of civil procedure; requesting Bar Councils of other States to forward similar resolutions; prevail on the union government not to notify the amended act and authorise the chairman of State Bar Council alongwith a member of the council to call on the Union Law Minister and prevail on him to refrain from recommending issuance of such notification.

Reports of similar boycotts by lawyers throughout Tamilnadu and Pandicherry on 27.1.2000 and Maharashtra and Goa on 3.2.2000 have also been received.

□ Again on 24.2.2000 Advocates all over Karnataka obtained from attending to court work on the call of All India Bar Council in protest against permitting Lawyers from Abroad practicing before the Indian Courts.

Retirement

Mr. Justice B.S. Sreenivasa Rao, did retire as a Judge of the High Court of Karnataka on 9.2.2000. On the same day AAB had organised a function to extend farewell to the Judge.



Smt. T.N. Manjuladevi, who has recently been elected as the National President of Indian Federation of Women Lawyers.

Around the Courts

A bench of the Supreme Court comprising Justice K.T. Thomas and Justice M.B. Shah, has recently ruled that a complaint or a charge sheet cannot be filed straight-away before a sessions court but must be done before a magistrate who has to complete formalities on the case and refer it to the sessions court. "We think that the legislature would have thoughtfully relieved the court of sessions from the work of performing all the preliminary formalities which magistrate have to do until the case is committed to the court of sessions", the bench observed. The court also said that neither in the criminal procedure code not in the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 there was any provision which indicated the court of sessions could take cognizance of the offence without case being committed to it by a magistrate. This judgment was delivered in a case pertaining to Andhra Pradesh.

AILU Seminar

On 26.2.2000 Former Prime Minister Sri H. D. Devegowda, inaugurated a seminar on constitution review at Bangalore. The seminar was organised by the All India Lawyers Union. Other speakers included Prof. Raviverma Kumar, Prof. Chandra Shekar Patil, Sri S. Suryanarayana Rao, Dr. L. Hanumanthaiah and Sri Sajan George.

Code of Civil procedure (Amendment) Act, 1999

from the last issue

First Schedule
Order IV, rule 1
Certain words substituted in sub-rule (1) and sub-rule (3) inserted

Order IV provides for the institution of suits. Sub-rule (1) of rule 1 of Order IV states that every suit shall be instituted by presenting a plaint to the court. Since a copy of plaint is sent before court and a duplicate copy of plaint is needed for records, suitable amendments are made in this regard, which requires institution of a suit by presenting plaint in duplicate to the court. Sub-rule (2) of rule 1 of the said order requires compliance of certain formalities by the registry of court. With a view to dispel the doubts when a suit is regarded to have been instituted, sub-rule (3) is inserted to provide that the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

Order V of the Code provides for issue and service of summons. The Malimath Committee looked into the problem of arrears of cases in the courts and recommended amendments to the Code with a view to lay down a fixed time frame within which pleadings are to be completed. Subrule (1) of rule 1 of Order V is substituted to provide for filing written statements within thirty days from the day of institution of the suit except in few situations. Rules 2, 6 and 7 are amended to ensure that copy of plaint along with all documents on which plaintiff relies upon are delivered with summons to the defendant. Rule 9 is substituted to provide for delivery of summons by speed post, courier service, fax message or by electronic mail service as the High Court may prescribe by rules. It makes the Code up-to-date with the changing needs of the time.

Order VI provides for pleadings generally. Sub-rule (4) is inserted in rule 15 to provide that person verifying the pleading shall furnish an affidavit in support of his pleadings. Rules 5, 17 and 18 of Order VI are omitted to bring in consistency with new changes in the Code.

In order VII, rule 14 provides for production of documents on which plaintiff sues. Rule 14 is substituted to provide that where a plaintiff sues upon a document in his possession, he shall enter such documents in a list and shall produce it in court when plaint is presented by him and shall deliver document and a copy thereof to be filed with the plaint. The new

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Indian Democracy - Electoral Reforms

Justice Ashok Bhan

from the last issue

With the help of criminal elements the booths are captured and votes are illegally casted. The parliamentary form of democracy based on adult franchise would lose its meaning in case a section of the society is either prevented from casting the vote or their votes are cast by somebody else. The election commission of India has tried to take effective steps in this regard by deploying paramilitary or central police force in the elections. The sole authority in the matter of deployment of central police force and the paramilitary forces for the elections should be with the election commission of India. The President of India in obedience to the command under Article 324(6) of the constitution should make available to the election commission such police force as may be necessary for the discharge of the functions conferred on it. Permitting a candidate to contest from more than one constituency in the same election should be prohibited by law. It leads to wastage of lakhs of rupees spent by the election commission apart from the personal money spent by the candidate for contesting that seat. If the candidate is elected from both the seats then within 15 days of the constitution of the parliament he should select the constituency which he chooses to represent and resign from the other constituency. There is colossal wastage of human resources and money.

Ours is a federal constitution. Parliament of India consists of the Lok Sabha and the Rajya Sabha, the lower and the upper house. Representatives to the Lok Sabha are elected on a direct vote based on the adult franchise. To the Rajya Sabha representatives are sent from each State in the Union. Only residents of a State could be elected to the Rajya Sabha against the quota of the seats for the State specified in the IV Schedule to the Constitution. Section 3 of the Representation of the People Act, 1951 states that a person shall not be qualified to be chosen as a representative of any State or Union Territory in the Council of States unless

he is an elector for a parliamentary Constituency in that State or Territory. Section 4 of the Act states that a person shall not be qualified to be chosen to fill a seat in the House of the People unless he is an elector for any parliamentary constituency. According to Section 19 of the Representation of the People Act, 1950 a person who is ordinarily resident in a constituency is entitled to be registered in the electoral roll of that constituency. The question as to whether an outsider can represent a State in the Council of States has to be answered in the negative because the very name the council of States suggests that it is meant to serve among others, the needs of that State primarily. The provisions of the Representation of the People Act are being deliberately and consistently violated in the matter of elections to the Rajya Sabha. The scheme of the constitution is quite clear. Parliament consists of two Houses, the Lok Sabha or the House of the People elected as the name implies, directly by the people and the Upper House, the council of States, elected by the legislators of the various states. If the framers of the constitution had intended that the upper house should be a clone of the lower house the intention would have been plainly stated. The Rajya Sabha was intended to represent the States so that Parliament would reflect the federal character of the constitution and retain a certain balance between the centre and the states. It follows therefore that the members of that house must come from the states they represent and this is the reason why the residential qualification is laid down. Some candidates from outside the state have been in the habit of giving their addresses as "care of the Chief Minister" in flagrant disregard of the provisions of the Act. A sizeable number of members of the Rajya Sabha do not belong to the states from where they have been elected. This has been done by giving wrong addresses. The political parties should themselves take corrective steps or a stringent law should be made to stop this.

to be continued

from page 2

First Schedule
Order VII, rule 18

Certain words
omitted in sub-rule(1)

First Schedule
Order VIII, rule 1

Substituted

First Schedule
Order VIII, rule 1A

Inserted

First Schedule
Order VII, rules
8A, 9 & 10

Omitted

First Schedule
Order XII, rule 2

Substituted

First Schedule
Order XI, rule 5

Certain words
substituted

First Schedule
Order X, rule
1A, 1B and 1C

Inserted

First Schedule
Order X, rule 4

Certain words sub-
stituted in sub- rule(1)

First Schedule
Order XI, rule 2

Certain words inserted

First Schedule
Order XI, rule 15

Certain words
substituted

First Schedule
Order XII, rule 2

Certain words
substituted

First Schedule
Order XII, rule-4
second proviso

Omitted

rule further provides that in case a document or copy thereof is not filed with the plaint, it shall not be allowed to be received in evidence on behalf of plaintiff at the hearing of the suit.

Order VIII provides for written statement and set-off. Rule 1 of Order VIII is substituted to provide a fixed time frame within which pleadings are to be completed. The new provisions requires the defendant to present written statement within thirty days from the date of service of summons on the defendant. Rule 1A is inserted to provide for a duty of defendant to produce documents upon which relief is claimed or relied upon by him. Rule 1A requires the defendant to produce documents in his possession in the court and deliver the document and a copy thereof when the written statement is presented by him. Rule 1A further requires that in case a document or copy thereof is not filed with the written statement, it shall not be allowed to be received in evidence on behalf of defendant at the hearing of the suit.

Rule 2 of Order IX is being substituted so as to provide that where there is default on the part of plaintiff to deliver summons to the defendant, the suit shall be dismissed by the court. This is in addition to non-payment of cost by the plaintiff as a ground of dismissal of suit.

Rule 5 of Order IX is amended so as to reduce the period from one month to seven days within which the plaintiff is required to apply for fresh summons where summons under issued remain unserved.

Order X is amended by inserting rules 1A, 1B and 1C in the said order. This amendment is consequential to the insertion of new section 9.

Rules 2 and 15 of Order XI are amended by fixing time-limit to decide an application for leave to deliver interrogatories and to provide that an application for inspection of documents by the parties can be made only before the settlement of issues.

Rule 2 of Order XII is amended for reducing the time from fifteen days to seven days within which notice to admit a document may be given by any party to the suit.

Further, the second proviso to rule 4 of the said order is omitted so

First Schedule
Order XII, rule 1
and 2

Rule 1 substituted
for rules 1 and 2

First Schedule
Order XIV, rule 4

Certain words
substituted

First Schedule
Order XIV, rule 5

Omitted

First Schedule
Order XVI, rule 1

Certain words sub-
stituted in sub-rule(4)

First Schedule
Order XVI, rule 2

Certain words sub-
stituted in sub-rule(1)

First Schedule
Order XVII, rule 1

Sub-rule (1) sub-
stituted and certain
words substituted in
sub-rule(2)

First Schedule
Order XVIII, rule 2

Sub-rule (4)
omitted

First Schedule
Order XVIII, rule 4

Substituted

First Schedule
Order XVIII, rule 17A

Omitted

First Schedule
Order XVIII, rule 19

Inserted

First Schedule
Order XX, rule 1

Certain words
omitted in sub-rule(2)

First Schedule
Order XX, rules
6A and 6B

Substituted

as to curtail the discretion of the court in the matter of allowing any party to amend or withdraw admission made by him.

Rules 1 and 2 of Order XIII are substituted so as to provide that the original of documents of which copies have been filed with the plaint and written statement shall be submitted before the settlement of issues is made by the court.

Rule 4 of Order XIV is amended so as to restrict the discretion of court by fixing time-limit beyond which no adjournment for the examination of witnesses or of the document shall be granted by the court before framing of issues by the court.

Rule 5 is also omitted so that issues are framed within time and no application for amendments and striking out the issue is entertained by the court.

Order XVI is amended so as to fix a time-limit within which an application may be made for summoning of witness. Further it is provided that a party applying for summons shall pay fee towards calling the summons within a period not later than seven days from the date of making application.

Order XVII lays down the procedure for granting adjournments. The Committee on Subordinate Legislation (Eleventh Lok Sabha) recommended that it should be made obligatory in the judgment to record reasons for adjournment of cases as well as award of actual and not merely notional cost against the party seeking adjournment in favour of the opposite party. It is now made obligatory by amendment of Order XVII. It is also made obligatory for the judges to record the reasons in writing where the court grants adjournment and to award the actual cost to the opposite party. Further, limit up to three adjournments has also been fixed in a case.

Order XVIII provides for manner of recording the evidence. It is provided to confer the power of recording of evidence by the Commissioner to be appointed by the court.

Order XX makes it compulsory for a party filing appeal to annex the certified copy of the decree to the Memorandum of Appeal. Justice Malimath Committee has pointed out

to be continued

Readers reaction

Mr. B.V. Acharya, Senior Advocate:

The proposal that all Advocates should renew their registration once in five years that too, after securing certificate regarding their participation in refresher courses in continuing legal education is impracticable and unwarranted. The proposal appears to have been put forward in a casual manner without deep consideration of its adverse effects. The report of the Law Commission which has mooted this proposal has not assigned any valid reason justifying the proposal except stating that the proposal has been made by the Committee on subordinate Legislation of the Tenth Lok Sabha and that the Bar Council of India has welcomed the said recommendation. It is surprising that the Bar Council of India has welcomed this recommendation without due consideration of all aspects. The same was also not preceded by effective consultation with State Bar Councils and Bar Associations in the Country. The process is too burdensome, if the only object is to enable Bar Council to have up-to-date roll of Advocates. The requirement that the Advocate should secure necessary certificate before his registration is renewed is likely to cause unnecessary hardship, apart from giving scope for nepotism and corruption. Viewed from any angle, the proposal appears to be a retrograde step and deserves to be shelved forth with.

An Advocate :

Adverting to the two news items "Karnataka High Court pulled up", "Supreme Court on Disposal of RSA's" published in December - 1999 part it should be mentioned that they have been done with a lot of insinuation to the sitting Judges and also the former Chief Justice of the High Court who is presently a judge of the Supreme Court. The news media should have a constructive approach rather than treating the news with jaundiced eye. As the Hon'ble Chief Justice of India A.S. Anand once said that the judiciary an emperor and it can not be broken by anybody except people within it. In the line of expression of the Hon'ble Chief Justice of India, Communique, should henceforth add feathers to the legal fraternity and to make it wither in a storm like the publishing of the aforesaid two news items.

Mr. Bhakthavachala, Advocate

In a press release dt.6.1.2000 Mr. Bhakthavachala, president, All India Advocates Association has welcomed the State Government's resolve to reactivate the KAT. It is also been demanded that the State government to appoint a member of the bar to be a judicial member instead of appointing a retired judge.

News Focus

□ On 8.2.2000 Sri H.C. Srikantaiah, Revenue minister, Government of Karnataka addressed the members of AAB in the City Unit. Sri K.L. Manjunath, president, AAB presided over the function.

□ On 9.2.2000 prof. Peter H. Schuck, Professor of Law at Yale Law School (USA) addressed the member of AAB at High Court Unit on the topic "Limits of Law". Sri K.L. Manjunath, President, AAB, presided.

□ On 12.2.2000 her Excellency V.S. Ramadevi, Governor of Karnataka, released the book titled "Judicial Consciousness" written by Sri. B. Gopalaiah, retired district judge at the Banquet hall in Bangalore. Justice M.F. Saldanha, judge, High Court of Karnataka, and Sri. D.B. Chandre Gowda, Minister for Law and Parliamentary affairs, Government of Karnataka, addressed the gathering. Sri K.N. Subba Reddy, M.L.A. presided over the function.

□ On 18.2.2000 Ms. Elizabeth D Pessala, Acting Village judge, Westbury, USA addressed the members of AAB, High Court Unit.

Shimoga Subbanna gets award

Smt. Rani Saraladevi, Minister for Kannada and culture presented Santha Shishunala Shariff award to renowned Singer, Advocate and Notary Sri Shimoga Subbanna in a function held at Bangalore on 23.2.2000.

Judge felicitated

In a function held on 23.2.2000 at Bangalore Federation of Women Lawyers felicitated the first ever woman judge of the High Court of Karnataka Ms. Justice Manjula Chellur. The function was presided over by Ms. Bharathi Nagesh, president FWL Bangalore.

Thought for the day

No laws, however stringent can make the idle industrious the thriftless provident or the drunken sober.

— Samuel Smiles

Compus Watch

□ On 3rd and 4th February 2000. Akarshan 2000, a cultural fete, was celebrated by the Students of University Law College, Bangalore.

□ On 7th February 2000 Digantha 2000 was celebrated by the Students V.V. Puram Law College, Bangalore in the Town hall.

□ On 29th January 2000 All India Moot Court Competition was inaugurated at the Bangalore Institute of Legal Studies.

□ On 12th February 2000 Mr. Justice S. Rajendra Babu, Judge, Supreme Court of India inaugurated the new building of Siddhartha Law College of the Karnataka people's Education Society in a grand function held at Gulbarga. On the same occasion the Chief Justice of Karnataka High Court Mr. Justice Y. Bhaskar Rao inaugurated the moot court hall.

News Panorama

The 'Other Woman' named in Italian divorce courts is usually the Mother-in-law, not the mistress.

Miscellany

□ Vigil India movement, 61 Charles Campbell Road, Cox Town, Bangalore-560 005 has called for nominations for receiving M.A. Thomas National Human Rights Award for making significant contribution for the protection and promotion of human rights in India in the immediate preceding years and continues to be working on issues directly relating to human rights. Nominations in sealed envelopes must reach Vigil India Movement latest by April 28, 2000.

□ During February 2000 the Ramon Magsaysay award winner and joint commissioner of police (Training) Delhi Ms. Kiran Bedi delivered her keynote address at the National Dissemination Conference on Domestic Violence Organised by the International Centre for Research on Women in association with the National Law School of India University at Bangalore. During her short visit Ms Bedi also visited Karnataka Judicial Academy, Bangalore Central Jail and Vidya Vardhaka Sangha College for Woman.

Kolar Diary

□ On 4.2.2000 indefinite boycott programme observed by the lawyers of Kolar District was called off. Before that the lawyers from the district called on Mr. Justice V. Gopala Gowda and Mr. Justice Chandrashekaraiah on 3.2.2000 at the High Court and pleaded for discounting the poilet project.

Literary Union

□ On 1.2.2000 a benefit show favouring Literary Union was held in Raveendra Kala Kshetra. Kannada Play "Lanchavatara" was presented by Master Hirannaiya and his troupe.

Weddings

□ On 11.2.2000 Mr. H.N. Rajesh, Advocate from Bangalore married Ms.K.S.Latha at Shivmoga

□ On 23.2.2000 Mr. H.G. Narasimha Murthy, Advocate married Ms.T.N. Parimala at Bangalore.

□ On 27.2.2000 Mr. Rajesh, Advocate, S/O Sri Suresh S. Joshi, Advocate married Ms. Nayana at Bangalore.

Fake not Racket

On Saturday the 26.2.2000 the Delhi Police claims to have busted a racket involving fake currency notes of Rupees One lakh. The police have also seized a high resolution printing machine used for printing the fake currency. Among the six arrested persons two Delhi lawyers practising before tishazari Courts are also their. They are named as Mr. Sunil Kumar Yadav and Mr. Sudhir Kumar Singh.

Obituary

On 25.2.2000 Mr. Justice M. Srinivasan (63) Judge Supreme Court of India, passed away at New Delhi.

Opportunity Available

Mr. S.P. Shankar, Advocate, No.53, Vanivilas Road, Basavanagudi, Bangalore-560 004 is in need of an advocate colleague. Interested Advocates may contact him through Ph:6612060 or personally.