

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 3

FEBRUARY 1992

PART 11

Nambyar Memorial Lecture

On 9-1-92 Professor Sir William Wade, from Cambridge University who is also the author of the book on "Administrative Law", delivered M.K.Nambyar Memorial Lecture 1991-92 at the Conference Hall of Bangalore City Civil Court Complex. In the memorial lecture sponsored by the National Law School of India University the learned author has chosen the topic "Judicial Review-exploring New Territory" for his lecture. Hon'ble Mr. Justice S.P. Bharucha the Chief Justice of High Court of Karnataka presided. In the beginning Dr. N. R. Madhava Menon, the Director of the University introduced and welcomed the author. Prof. A. N. Jayaram, Advocate, proposed vote of thanks.

Law Lecture Series

On 4-1-92 Mr. Udaya Holla, Advocate, delivered the 16th law lecture under the auspices of Lahari. The topic of the lecture was, "Company winding up proceedings". Mr. S. Vijaya Shankar, Senior Advocate, presided.

On 1-2-92 17th lecture of the law lecture series sponsored by Lahari was delivered by Ravivarma Kumar, Advocate. His topic was "Interpretation of Statutes". D. V. Shylendra Kumar, Senior Standing Counsel for Central Government, presided.

Justice Vittal Rao heads State Commission of Consumers Protection

Justice Vittal Rao has been appointed as the President of the Karnataka State Commission of Consumers Protection after his retirement as a judge from the High Court. Justice Vittal Rao replaces Justice R. G. Desai who completed his term in office.

Enquiry against Justice Ramaswamy

Three member committee consisting of Justice Desai, Justice Sawant and Justice O. Chinappa Reddy, is scheduled to meet on February 10 to enquire into the charges of alleged irregularities committed by the Supreme Court Judge Justice Ramaswamy while he was functioning as the Chief Justice of Punjab and Haryana High Court during 1985 to 1989. The Committee constituted by the previous speaker of Lok Sabha Mr. Rabi Roy has decided to conduct closed door proceedings considering the sensitivity of this unprecedented situation. Justice Ramaswamy has been given time till February 7 to file his defence.

In his reply to the charge-sheet received from the Committee Justice Ramaswamy has questioned the validity of the constitution of the committee by the former speaker. While mentioning that he is not submitting to the jurisdiction of the committee Justice Ramaswamy has contended that the chairman of the committee does not possess the necessary qualification to head the committee. He has suggested that either the chairman should resign or withdraw the charges levelled against him.

K T C A Symposium

On 26-2-92 Mr. K. Narayanaswamy, Mayor, B.C.C., will inaugurate a symposium on "Entry Tax or Octroi which is preferable?" at Hotel Yathri Nivas, Bangalore-560 009. The symposium is organised by Karnataka Tax Consultants Association, Bangalore-560 002.

New Law Secretary

Mr. B. P. Jayakar has been appointed as the secretary to the Department of Law and Parliamentary Affairs, Govt. of Karnataka during second week of January 1992. Mr. Jayakar who was working as the Joint Secretary in the legislative department, Ministry of Law, Justice and Company Affairs, Govt. of India on his repatriation has been promoted and posted as the new Secretary replacing Mr. K. Eswar Bhat who has been transferred.

Amendments to Election Law

As per the recent amendment to the Representation of People Act, 1951 the election to Assembly and parliamentary constituencies will not be countermanded in the event of the death of an independent candidate. Further Section 30 of the Act has been amended, through the Presidential Ordinance dated 19-01-92 to the effect that the elections could be held after lapse of 14 days from the date prescribed for withdrawal of candidatures instead of the present gap of 20 days.

B.M.S. Law Excels

Miss. Sangeetha Nahar and Miss. Meena representing B.M.S Law College, Bangalore bagged first place for Memorials of the third All India Moot Court Competition sponsored by the Kerala Law Academy Moot Court Society. The competition was held on 30th and 31st January 1992 at Thiruvananthapur. Miss. Nahar is the daughter of S.K. Nahar, Advocate, Bangalore.

Around the Courts

□ Karnataka Debt Relief Act, 1980 - Sections 2(5), 4 and 8: The chit fund transaction in which the member - subscriber undertakes to repay the amount taken by him in instalments is not a debt advanced within the meaning of Section 4 of the Act.

"...the chit transaction is very different from the loan transaction. It is not a case of borrowing. In the chit fund auction the subscriber offering the highest bid is regarded as a purchaser of a sum of money by offering to pay highest discount and undertaking to pay future instalments regularly. These two things together constitute consideration for the purchase...."

V. Venkatamuniyappa Vs. Sudarshan Trading Co. Ltd. & Ors. 1991 (2) K.L.C. 29 DB.

□ K. R. C. Act, 1961 - Sec. 29 - Irregular payment of rent - Landlord can be compensated by payment of an appropriate sum. It is not necessary to consider the serious question of law raised by the learned counsel for landlord. No doubt the tenant has not been regular in the payment of rents and he has been paying the same once in two or three months. Even on the date of hearing of the C.R.P. the tenant seems to be in arrears of rent. The tenant has not shown any definite cause which can be considered as just for the purpose of considering the laches under Sec. 29 of the Act. Since the delay involved in the case is marginal and the landlord's objections are technical the inconvenience caused to the landlord can be compensated by directing the

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*Necessity has no law ; I know some attorneys
of the same*

—Benjamin Franklin.

SCOURGE OF TOUTISM

Perhaps toutism is as old as the legal profession. It is needless to state that both lawyers and touts have co-existed all along. Their relationship is almost taken to be complimentary to each other even though it is not known as to who gains the most. A tout is generally taken to be a person who solicits customers, though in an undesirable fashion, for the lawyer. In the process he makes personal gain at the cost of the litigant. While acting as a feeder to the lawyer in securing briefs he undercuts the remuneration which the lawyer would have got from litigant had there been a direct contact of the litigant at the first instance. By all practical considerations touts have been accepted by the lawyers as a necessary evil.

Dear Reader,

The recent visit of Professor William Wade as a guest speaker of the M.K. Nambyar Memorial Lecture Series was an epoch making event. The erudite author of "Administrative law" and the professor of Cambridge left an indelible imprint on the members of the profession. Credit should go to the National Law School of India University for securing the presence of such a high scholar and organising the memorial lecture at the Bangalore City Civil Court premises. Those who could not take advantage of this opportunity have lost a great deal and the only solace for them would be to secure a copy of the lecture proposed to be published.

Yours Sincerely,
EDITOR

Though there has been no scientific investigation into the nature and extent of reliance of the lawyers on touts it appears that such dependence was of a limited order and the considerations varied from situation to situation. However the situation has drastically altered in favour of the touts vis-a-vis the lawyers. Now it is certain that the consideration is purely business and the dependence of lawyer on touts is extensive. Needless to state that with this alteration the position and influence of the touts has increased in their favour correspondingly the lawyers playing a subservient role.

It appears that initially the touts were a definite class of professionals who used to solicit customers for the lawyers obviously for personal gain. With the progress in the society the persons who act as touts have changed and they represent various sections of the society instead of representing a small section of identifiable persons. Apart from the persons who use to exclusively solicit briefs for the lawyer in the present day context the touts can be found from amongst the police, doctors and para medical staff, administrators, engineers, employees of the judicial department and in some cases even the judicial officers. Not so surprisingly some of the lawyers also work as touts for other lawyers. Now the touts have become all pervasive and they have a wider reach.

Notwithstanding the prevalence of toutism the lawyers as such still had an upper hand over them and the lawyers' community was treated with esteem. However with the increasing dependence on touts the lawyers cannot claim to command the same amount of

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LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

(from the last issue)

Indeed, this controversy about 'bold-spirits' and 'timorous souls' has not spared the American Supreme Court. The Warren Court stood accused by a segment of the legal and academic community as leaning too much on the side of social reform. The judicial views of the Court were criticised for 'Erratic subjectivity of judgments, for analytical laxness, for what amounts to intellectual incoherence in many opinions, and for imagining too much history. The critics cautioned that the Court's rush to ensure "that the constitution was a 'living' document threatened not only to make its judgment purely a matter of policy - considerations and social advantage, but also to elevate the Court itself into a precarious state of reckless judicial supremacy". The Court was criticised for pouring new meaning into old words. While some jurists recognised the "intrinsically mutable properties" of the constitution, there were other critics who accused that "the traditional understanding of constitutional interpretation and judicial review was rooted in fidelity to the constitution (and) its original intention derived from a fair reading of the document while the modern approach was 'characterised by its tendency to seek freedom from the constitution and that intention'. The job of the Supreme Court, it was claimed, "was not to expound the meaning of the constitution but to provide it with meaning" and that the Fourteenth amendment had been "transformed by the Court from the embodiment of fundamental and clearly articulated principles of government into a collection of hopelessly vague and essentially meaningless words and phrases inviting judicial construction". Lord Devlin cautioned against the great temptation to "cast the judiciary as an elite

which will bypass the traffic-laden ways of the democratic process. But it would only apparently be a bypass. In truth it would be a road that would never rejoin the high way but would lead inevitably, however long and winding the path, to the totalitarian state".

"There was never a more sterile controversy" said Lord Radcliffe "than that upon the question whether a judge makes law. Of course he does. How can he help it?"

Dicey thought that the French Droit administratif rested upon ideas absolutely foreign to English law. Referring to the French skills in evolving new remedies in damages against the State, Dicey somehow thought that such a right against the State seemed to supply a new form of protection for the agents of Government. He commented "There can surely be little inducement to take Proceedings against a subordinate... if the person damaged can obtain compensation from the Government".

The English judicial remedies are directed to control improper or excessive administrative action or administrative inactions by quashing the decision, or by compelling the exercise of a public duty, or to declare the legal position. The common law did not contemplate award of compensation to any individual who may have suffered loss or injury through administrative action which may be shown to be unlawful.

Lord Wilberforce in his dissenting speech in Hoffmann-La Roche and Co. vs. Secretary of State for Trade and Industry said: "...In more developed legal systems this particular difficulty does not arise. Such systems give indemnity to persons injured by illegal acts of the administration. Consequently, where

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NEED FOR FRESH LOOK

by P. Manohar, Advocate

India is a country where customs and traditions play an important role. In the pre-vedic and vedic period women were highly respected and given equal treatment with men. Their opinion was considered in domestic as well as other matters of public importance. Gradually the position of women degraded due to foreign invasion and the changed opinion of natives who considered women as a companion for pro-creation and house-keeping. The degradation of the status of women raised the demand for a son in every family which echoed the sentiment that a man without a son was destined to hell. When a woman was given in marriage, money and property was gifted to the bridegroom. This practice is continued even today both by the educated and the uneducated classes. It is in this background the Dowry Prohibition Act was enacted which in fact has not attained the desired goal.

Bride burning is enormously increasing in recent years. With the increase in the incidence of death of the bride woman came to be presumed to be the result of the harassment due to dowry related matters till it was proved otherwise. As there was hue and cry from parents of brides, social workers and political parties and other enlightened sections of the society. Section 304 B was incorporated in the Indian Penal Code in the years 1986. It reads thus :

"Section 304 B : Dowry Death : "Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, in connection with, any demand for dowry shall be called dowry

death and such husband or relative shall be deemed to have caused her death".

A corresponding change was made by introducing a new provision in the Indian Evidence Act i.e., Section 113 B. It reads thus : "When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with any demand for dowry, the court shall presume that such person had caused the dowry death".

Recently while interpreting section 304B, I. P. C. and the presumption envisaged under Section 113B of the Evidence Act the High Court of Kerala dismissed a State Appeal (State of Kerala Vs. Mohana Pillai-ILR (1991)2 Ker. 430). The High Court held that only when the prosecution proves beyond reasonable doubt that "soon before her death such woman had been subjected by such person to cruelty or harassment for", the court shall presume that it was a dowry death and not otherwise. Hence the burden of proof does not shift and it is obligatory on the part of the prosecution to prove the basic element envisaged in the first part of Section 113B to give effect to the second part. In our State not even a single case has gone in favour of the prosecution from 1986 till the middle of 1990 out of about 257 cases filed. It is clear from this that even when the reason for the death of the deceased is not connected with accused are arrested and prosecuted.

In the process of interpreting Section 438 of the Criminal procedure Code where an accused is charged under Section 304B and 498A of IPC we can notice that one section of the women in the society is

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Around the Courts

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tenant to pay appropriate sum. The tenant is directed to pay upto date rents with a further sum of Rs. 500/- to the landlords the inconvenience caused to the landlord.

Indra Kumar Himmatmal Vs. B. V. Puttaveerappa C.R.P. 5347/91 D.D. 6-1-92.

□ Indian Penal Code, 1860 (Central Act, No. 45 of 1860) Sec : 503. The presence of the person criminally intimidated is not necessary at the time of uttering the words amounting to criminal intimidation. If such words are uttered in the presence of a person who, in turn, is interested in the person criminally intimidated, is amounts to an offence under sec : 503 I.P.C.

Sharadamma vs Rev. Father David ILR 1988 (2) Kar. 714.

□ Code of Civil Procedure, 1908 (Cent. Act. No.5 of 1908) Sec : 115: When an appeal or revision lies to a Court which is subordinate to the High Court, under any provision of law, a revision under section 115 of the code of Civil Procedure lies to the High Court. A Revision lies against the order of Appellate Authority (District Judge) under the Karnataka Municipal Corporations Act, 1976 and not a Writ Petition.

Dr. (Mrs.) Sita Bhateja's Nursing Home Vs. District Judge. 1988 (2) ILR 779 (DB).

□ Indian Succession Act, 1925, Parts VII & IX: Petition seeking grant of Letters of Administration on the basis of a will dated 10-12-78 -Only a copy of the will produce

with an allegation in the petition that the original of the registered will either secreted or destroyed by the adversary - Adversary setting up the defence of fraud, no evidence, examination of one of the two attestors, will held to be proved.

Indian Registration Act, 1908 Section 40 (1) - Registration of a will after death of testator, Registrar not examined - Endorsement made by the Registrar is no proof of his satisfaction about the due execution of the will by the testator - Non - examination of Registrar, fatal.

Dr. H.S. Halaswamy Vs. Kumari Asha Halaswamy. 1992 (1) Kar. L.J. 100 (DB).

Judge Appointed

At last Mr. B.C. Siddappa is appointed as the Principal Judge of Family Court, Bangalore. He took over the charge on 5-2-92. Mr. Siddappa is a retired member of Judicial service.

Scourge of Toutism

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regards and esteem from the society and the litigants. Though professional conduct requires that the lawyers should not solicit briefs there seems to be no bar that touts to do this job for and on behalf of the lawyers. Therefore it becomes essential to examine as to whether this serious loophole can be plugged by our professional bodies? Above all it is for the lawyers themselves to have some introspection as to whether they should be continued to place reliance on the touts and thereby lower their status and prestige in the society?

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NEWS FOCUS

□ Dr. Volodin of Institute of Oriental Studies, Moscow, addressed the members of A A B on 3-1-92 on the topic, "Recent Emerging Trends in Russia".

□ Recently District level Legal Aid Board of Chitradurga held 5th Lok Adalath Camp at Chitradurga. Justice B. N. Krishnan inaugurated the camp. The President of the Advocates Association Mr. M. A. Barangal presided. 62 criminal proceedings were compromised during the camp.

□ On 17-1-92 Swamy Jagadatanandji of Belur mutt, Calcutta, addressed the members of A A B. His topic was "The Relevance of Swamy Vivekananda's message".

□ On 18-1-92 Mr. C. K. Jaffer Shariff, Hon'ble Union Minister for Railways, inaugurated the symposium on the topic "Railways Contribution to Economic Development of India". The symposium was sponsored by A A B. Mr. B. Basavalingappa, Hon'ble Minister for Science and Technology, Govt. of Karnataka, presided.

□ On 23-1-92 Swamy Sathya Vedanta of Osho Paramarha Rajaneesh Meditation Centre, Poona, addressed the members of A A B on "Osho's Vision of the New Man".

□ On 25-1-92 Bangalore District Legal Aid Board had organised 23rd Lok Adalath Camp at Magistrate Court Complex, Bangalore. About 85 criminal cases were compromised during the camp.

□ On 26-1-92 43rd Republic Day celebrations was held by the A A B, BLU and BLPSC Ltd., jointly at the High Court Unit. Justice N. Venkatachala unfurled the National Flag. Swaralahari presented a cultural programme including the singing of patriotic songs.

NEWS SPECTRUM

□ During the second week of January 1992 the Israeli Supreme Court ruled that the media will be permitted to cover the Proceedings initiated by the twelve Palestinians who are ordered to be deported from the Israeli occupied territory. Overruling the objections of the State against permitting the media to cover the challenge the deportation orders the court held that as and when classified documents are produced the proceedings can be conducted in-camera only during such period.

□ During the first week of February 1992 a special court in Bangladesh sentenced the former President H.M.S. Ershad to undergo simple imprisonment for three years for possessing unaccounted sums. Previously Mr. Ershad was sentenced to 14 years rigorous imprisonment for possession of illegal arms.

An Appeal

A committee consisting of a large number of members of Bangalore Advocates Association led by Sri R. Narayanappa, spear heading the movement for the preservation and regulation of Parks, play-fields and open spaces in the metro politan area of Bangalore City has issued an appeal to all associations and individuals engaged in the promotion of sports activities to extend their active co-operation to preserve these spots to the posterity.

LITERARY UNION

A function marking the inauguration of the activities of the Bangalore Literary Union for the year 1992 was organised on 7-2-92. Dr. S. S. Marulaiah, the noted Kannada writer, inaugurated the function and addressed the gathering. Sri. N. S. Sangolli, Additional City Civil and Sessions Judge, Bangalore presided.

OBITUARY

On 8-1-92 B. L. Puttanna, Advocate, passed away at Bangalore.

MISCELLANY

□ On 11-1-92 the "Shasti Abdha Purthi Shanthi" of Sri N. S. Krishnan, Advocate, was celebrated at Bangalore.

□ 24-1-92 S. Narayana, Chartered Accountant and ex-member of the Karnataka Appellate Tribunal, enrolled as an Advocate.

□ On 23-1-92 B. N. Sree-kantaswamy, Advocate was installed as the president of Bangalore Junior chamber.

□ On 26-1-92 a delegation of lawyers from Bangalore Consisting of M. K. Thimmesh Prabhu, V. Markandagowda, B. S. Krishna murthy and V. Prasanna called on Dr. K. V. Puttappa at Mysore and presented a poem written on him by M. K. Thimmesh Prabhu.

□ On 5-2-92 Padubidri Raghavendra Rao, Advocate, hosted a dinner at his renovated residence 'Sri Gururaya Kiupa' No. 110, 11th Cross, 6th Main, Malleshwaram, Bangalore-3.

□ 6-2-92 R. K. Sridhara murthy performed Gruha pravesha of his newly constructed residence "Samatha" at No. 21, Rangana-thapura Main Road, Malleshwaram, Bangalore-560 003.

K A T gets canteen

First week of February saw the opening of a new canteen in the Administrative Tribunal's complex of Bangalore. This facility was long awaited and therefore a welcome step.

WEDDING

□ On 9-2-92 R. Omkumar, Advocate, married B. S. Kalavathi at Bangalore.

A A B ELECTIONS

The Annual General Body Meeting and the elections to the Office-bearers of the Advocates Association Bangalore is scheduled to be held on Saturday the 11-4-92.

NEED FOR FRESH LOOK

by P. Manohar, Advocate.

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discriminated against another by jeopardising the rights conferred under Articles 21 and 14 of the Constitution. Section 304B gives unguided powers to the police, when read with the concerned provisions of the Criminal procedure Code, to arrest and detain persons named in the FIR as accused in par with persons who are charged under various provisions of the IPC. This is harsh and unsatisfactory. Due to hue and cry from different sections of the people, parliament incorporated a provision of law without much discussion and without realising the outcome. Without laying down guidelines blanket powers are given to the police to arrest and detain the women accused i.e., the mother-in-law and the sister-in-law etc. This Section cannot be utilised to harass one section of women by attempting to protect another section of them. There are no guidelines in Section 304B IPC to arrest and detain the accused. When the blanket powers are delegated to the administrative authorities by the legislatures in the administrative matters, they are struck down as excessive delegation. In United States of America, this opinion was evolved when the rights of a person are affected in Panama Refining Co. Vs. Ryon (293. U.S. 388, 435 (19-35)) and Carter Coal Co. (298 US 238, (1936)). When such is the position with administrative matters, then what must be the attitude towards a penal statute or a penal provision which affects the personal liberty of a person in India which is constitutionally guaranteed. In the case the Gwalior Rayon Co. Vs, Assistant Commissioner of Sales Tax (AIR 1974 SC 1660) a question was posed as to whether a law enacted saying that henceforth criminal law enforced in the country would be such as is framed by a designated officer was valid? Here too

(to be continued)