

Justice Vallinayagam Sworn In



Justice T.N. Vallinayagam was sworn in as a Judge of the Karnataka High Court on February 20, 1997. On his elevation to the High Court of Madras on December 19, 1996 Justice Vallinayagam served as a Judge of the said High Court till his transfer to Karnataka.

Born on May 17, 1939 at Ambalamudram in Tirunelveli District Mr. Vallinayagam obtained B.A. Degree in 1958 from Hindu College Tirunelveli. In 1960 he obtained Law Degree from the Madras Law College. Latter he passed Diploma in Labour and Administrative Law. In 1979 Mr. Vallinayagam obtained M.A. [English] and in 1982 M.A. [Tamil]. He also passed Rashtrabhasha Hindi Examination conducted by Dakshin Bharat Hindi Prachar Sabha.

Mr. Vallinayagam enrolled himself as an Advocate on September 7, 1961. Apart from having private legal practice Mr. Vallinayagam also served as Government Advocate before he was designated as Senior Advocate in September 1995. As a part of his literary activities Mr. Vallinayagam has composed poems in Tamil and English apart from being the author of books in Tamil as well as English. Considering his contribution to literature the renowned English Daily "The Hindu" hailed Mr. Vallinayagam as a poet Laureate of High Court of Tamilnadu. Justice Vallinayagam is married to Ms. Kalyani and has two married daughters.

Love Marriage Not Un-Islamic

By a landmark judgment dated March 10, 1997 the Lahore High Court in Pakistan has held that a marriage based on love and not arranged by the parents of the spouses is valid and in keeping with the teachings of Islam. By this judgment the High Court upheld the marriage of one Saima Waheed with her husband Arshad Ahmed who had married on their own volition. Enraged by this marriage Saima's parents approached the Court and sought for a declaration of the marriage being invalid. The main thrust of Saima's parents was that according to tenets of Islam parental permission was required before a women can marry. This view was supported by the fundamentalists in Pakistan and therefore the case assumed national significance.

Opposing the contention of Saima's parents noted Human Rights Activist and Lawyer Ms. Asma jehangir contended that even though in Islamic Pakistan arranged marriages are the norm rather than exception Saima Waheed being an educated women was free to choose her life partner and there is nothing Un-Islamic in so doing. Commenting on the judgment Saima's Lawyer said that "This verdict proves that one can still get justice in Pakistan and that the rights granted to women in Islam and our Constitution are genuine".

Lahari Foundation

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

Mr. J. Rangarajan Rs. 10,000/-,
Mr. H. S. Dwarakanath Rs. 2,000/-,
Mr. V. Narayana Swamy Rs. 1101/-,
Mr. P. R. Mohan Rao Rs. 1,000/-,
Mr. C. S. Krishna Murthy Rs. 500/-

Financial assistance of Rs. 5,000/- was provided to Mr. B. L. Chidambara Reddy, Advocate, Bangalore.

Mr. Kasim elected Chairman of Bar Council

In the meeting of the Karnataka State Bar Council held on 23-2-97, Mr. K. Sheik Kasim is elected as the Chairman, Mr. Anand A. Magadum from Dharwad is elected as the Vice-Chairman.

Justice Eswara Prasad made the Chairman

On 5-3-97 Justice J. Eswara Prasad [retired] was sworn in as the Chairman of the Appellate Tribunal for Forfeited Property, under Smugglers and Foreign Exchange Manipulators [Forfeiture of Property] Act.

Advocate Absolved

The Karnataka State Consumer Disputes Redressal Commission, Bangalore, by its order of November 18, 1996 passed is Complaint No. 88/1994 has absolved Mr. P. K. Vijay, Advocate, Respondent of the charge of deficiency in service and liability to pay compensation of Rs. 8,10,000/- to the Complainant. Mr. V. V. Chachappan. The Commission held that on facts and circumstances of the case it does not disclose any deficiency in Service on the part of the Respondent and constrained to hold that the Complainant failed to substantiate his grievances and infact there is no substance in the Complaint.

It may be recalled that this case had created lot of interest in as much as in its earlier order the Commission had held that the Advocates are covered by the provisions of the Consumer Protection Act, 1986 Refer to June 96 part of Communique.

Around the Courts

☐ Abolition of State Minority Commission, legally permissible :

☐ The Supreme Court by its judgment dated February 18, 1997 dismissed the appeal filed by Misbah Alam Shaikh challenging a Bombay High Court order dismissing his writ petition questioning the legality of the Maharashtra State Government order abolishing the State Minority Commission. The Court held that "May be the preception is not correct in the view of another political party. The decision may not be right, but it cannot be characterised as malafide decision" The Judges held that under the circumstances we cannot hold that the decision to abolish the Minority Commission by the State Government, in the absence of any statutory compulsion, was not in accordance with law".

The judgment also stated that under the circumstances apprehension expressed by the Appellant that rights and safe guards given to the minorities would not be monitored "is not correct".

Elaborating on the law the judgment said that under the statute it is the duty of the Central Government to constitute a National Commission for Minorities and it shall be the duty and responsibility of such a Commission to ensure compliance of the principles and programmes stipulated in the National Commission of Minority Act. The judgment also noted that the object of the Act is to integrate the Minorities in the National mainstream providing facilities and opportunities to improve their social and economic status and empowerment. The Court held that the State Government cannot be directed by a writ of Mandamus to constitute a Commission or to reconstitute the Commission which was abolished by it due to want of statutory compulsion.

☐ Public Interest Litigation, not a Fundamental Right :

The Supreme Court by its judgement dated February 17,

Continued on page 3

Read
Communique

If any whimsical notions are put into you by some enthusiastic counsel, the court is not to take notice of their crotchets.....George Tebbreys.

Welcome Advice

Apex Court has rightly cautioned the High Courts from unnecessarily castigating the Courts below and passing strictures against the Sub-ordinate Judges. In a recent judgment [Last week of February 1997] concerning the judgment of Patna High Court in which scathing remarks were passed against a District and Sessions Judge the Apex Court observed that judicial decorum requires that the High Courts should refrain from the practice of criticising the Trial Court so that people may not have occasion to suspect the bonafides of the Trial Courts. It is no secret that in its anxiety to do justice the various High Courts in the past have resorted to impromptu criticism of the Sub-ordinate Judges and all such instance could not be justified. In the light of the latest Apex Court's directive one can hope that the High Courts would henceforth refrain from passing unjust strictures or comments on the Sub-ordinate Judges.

When a judgment or order of the Sub-ordinate Court is challenged before the High Court it is only the validity and appropriateness of the impugned judgment/order of the Sub-ordinate Court requires scrutiny and not the conduct of the Judge who passed it. On occasions this fact is lost sight of by the High Courts resulting in observations against the Sub-ordinate Judges. It should not be forgotten that in the judicial hierarchy the Sub-ordinate Courts have to play their legitimate role and any unjust criticism will only have the effect of demoralising the Sub-ordinate judiciary. This is not a healthy trend while the Superior Courts have always a right to set aside the judgment/order of the Sub-ordinate Court on valid grounds the High Courts should not feel that they can make observations against the conduct of the Sub-ordinate Judges because they are down in the hierarchy.

As rightly observed by the Apex Court the Sub-ordinate Judges will have no opportunity

to justify their actions before the High Courts since they recede to the background after passing of the judgment/order. The principle that no person could be condemned without affording an opportunity squarely applies to these situations in as much as the Sub-ordinate Judge will not be in the High Court when the latter passes its order containing observations/strictures.

It is possible due to various factors such as non-following of the legal position, wrong appreciation or bonafide mistake the Sub-ordinate Judge might have passed the impugned judgment/order. Remedy is always open to the aggrieved party who can seek redressal from a higher Court and in some cases even from the same Court. Unless it is patent that the Sub-ordinate Judge has acted malafide, illegal or with impropriety their cannot be any justification to criticise the Sub-ordinate Judge.

It is noteworthy that justice Kuldip Singh on the eve of his retirement had expressed more or less similar views in a function. The purport of his suggestion was that the Lower Courts must have sufficient liberty to function freely without the lurking fear of adverse comments from the higher Courts. With the latest observations of the Apex Court on this subject one can legitimately expect that the High Courts will henceforth give up the practice of judging the conduct of the judicial officers and confine to decide the case on hand.

Lahari Foundation An Appeal

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

— Trustee

The Ultimate Saving Factor

Shri D. B. Thengadi

from the last issue

The story improves with the selling. It is offered to the newspapers. There are only a few of them who deal in this commodity. They vie with one another to buy it. Each is afraid the other will get it first. So they put it on chance that it will turn out profitable. Sometimes it is no use to them. It is palpably false. At other times it is creditable. But even so they dare not publish the whole of the information. The law of libel and the rules of contempt of court exert an effective restraint. They publish what they can, but there remains a substantial part which is not fit for publication. Thus unpublished part goes round by word of mouth. It does not stop in Fleet Street. It goes to Westminster. It crosses the channel, even the Atlantic and back again, swelling all the time. Yet without the original purchase, it might never have got started on its way.. when such deplorable consequences are seen... the one thing that is clear that something should be done to stop the trafficking in scandal for reward."

Thirty years ago Denning had touched yet another aspect in his "Freedom Under The Law". He remarked:

"Our procedure for securing our personal freedom is efficient, but our procedure for preventing the abuse of powers is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and action on the case, are not suitable for the winning of freedom in the new age - we have in our time to deal with changes which are of equal constitutional significance as those which took place 3000 years ago. Let us prove ourselves equal to the challenges."

But, again, about keeping the balance between freedom and security, he observes;

"It (i.e. freedom) must be matched, of course, with social security, by which is meant, the peace and good order of the community in which we live. The freedom of the just man is worth little to him if he can be preyed upon by the murderer or the thief. Every society must have means

to protect itself from murderers. It must have powers to arrest, to search and to imprison those who break its laws. So long as those powers are properly exercised, they are the safeguards of freedom. But powers may be abused, and if those powers are abused, there is no tyranny like them."

In the "Discipline of Law" Denning's theme is that:

"The principles of law laid down by the judges in the 19th century - however suited to social conditions of that time are not suited to the social necessities and social opinion of the 20th Century. They should be moulded and shaped to meet the needs and opinion of today."

He explains how the British law has tried to keep pace with the times in respect of, among other things, divorce, the disputed property rights and the custody of children; the deserted wife's equity and the wife's share in the matrimonial home; a seizure of assets so as to conserve them for the creditor in case he should afterwards get judgment; the construction of documents according to the "schematic" method of interpretation instead of the traditional, strict constructionism; the position of law regarding locus standi, enabling an ordinary citizen to enforce the law for the benefit of all, against public authorities in respect of their statutory duties, the means of restraining the abuse or misuse of their powers by 'Voluntary organisations', against one of their own members as well as against third persons, that is, the public at large; the effort to narrow down the gap between strict rules of law and the social necessities of the 20th Century, the law evolving negligence as an independent and vigorous wrong-extending thereby the liability of professional men and of public authorities, and the flexibility regarding the doctrine of precedent.

All this indicates the vigour and the cautious dynamism of the British legal system. Our leaders have been blind followers but on the whole had disciplines of their intellectual masters.

to be continued

Justice R.P.Sethi's call for a Strong Bar

Chief Justice R.P.Sethi called for a strong and united Bar and an independent judiciary supported by the Bar. Pointing to the attempts made by certain quarters for weakening the judiciary he said that such attempts could be effectively thwarted by the strong Bar. Justice R.P.Sethi was speaking at the Kolar District Level Lawyers' Conference at Hosur, gauribidanur Taluk after inaugurating the Conference on February 16th 1997. He appealed to the lawyers to render positive assistance to the litigants and find solutions to their vexed problems.

Sri K.N.Subba Reddy, who was the Chief guest at the inaugural session, advocated for the formation of a State level Advocates' Forum with a view to unite the Bar. In his presidential address Sri G.V.Shantaraju recalled the contribution of eminent people from the District. He also pleaded for structural reforms in judiciary so as to effectively serve the litigant. Working Chairman of the Conference Sri K.H.Somashekhara Reddy welcomed the guests as well as the participants. President of Kolar Bar Association Sri D.Rama Gopal proposed the vote of thanks.

There were three working sessions and the subjects discussed in these sessions were (a) Procedural reforms for speedy disposal of cases. (b) Common causes and law, and (c) Problems of rural Advocates and solution. The Conference unanimously adopted three resolutions calling upon the government to suitably amend procedural law to enable speedy disposal of cases; to explore legal provisions for institution of suits or proceedings relating to "Common Causes" and demanding stipend to all deserving Advocates, providing library and adequate furniture to rural Bars and providing land for construction of Lawyers' Bhavan.

In the valedictory session S/S Thathachar, D.Anandathirthachar, B.R.Narasimha Murthy and Krishnaswamy Rao who have completed fifty years of practice and Sri Gundaiah Setty, Advocate

from Bangalore; were felicitated Sri S.S.Patil, Chairman KSBC, presided over the valedictory session, Sri K.M.Krishna Reddy, Minister for Social Welfare, Smt. Jyothi Reddy, local MLA and Sri Gundaiah Setty, Advocate and Former MLC were the Chief guests.

Report by Sri J.G.Chandramohan, Advocate.

Assault on Advocate leads to Agitation

An incident on 24-2-97 in which an employee of Bangalore City Civil Court assaulted an Advocate was considered seriously and the employee was ordered to be suspended forthwith. On the next day the employees working in the City Civil Court Complex resorted to a snap strike demanding immediate revocation of the suspension order. Within one hour after the employees resorted to strike the administration revoked the suspension order. Enraged by the unilateral decision of revoking the order of suspension Advocates in City Civil Court Complex immediately came out of the Court Halls. In spite of the protracted negotiations by the Advocates Association the administration refused to review its decision of revoking the suspension of the Court employee. In this background a resolution was adopted by AAB calling upon the Advocates to boycott the Courts. Between 26-2-97 and 1-3-97 the boycott was complete in Bangalore. Reports of boycott from out station have also come. On 3-3-97 it was resolved to temporarily suspend the agitation and to resume the Court work with immediate effect.

Administration has ordered separate enquiries in respect of the incident dated 24-2-97 leading to the suspension of the Court employee and also the incident which took place on 26-2-97 while the General Body meeting of AAB was in progress in the High Court unit when few Court employees reportedly assaulted some Advocates and threw acid on few others.

Around the Courts

Continued from page 1

1997 has ruled that a citizen has no fundamental right to approach the Courts with a public interest litigation. A Bench comprising Justice J.S.Verma and Justice S.P.Kurdurkar observed that "it is not the Court's duty to entertain any and every public interest petition. When the Court grants leave to a petitioner to raise and issue it will only be after due deliberation and after finding out whether it was in the nature of a representative action. Matters were being raised in the garb of PIL by persons who were not equal to the task of raising the issue and if this trend was entertained such petitioners could unwittingly get away with decisions of the Court which may prove detrimental to public interest". By this judgment the Court dismissed three PILs moved by Mr S.P.Anand challenging the Union Government's decision of dismissing the BJP Government in Gujarat.

Offence under Section 188 IPC - Initiation of proceedings

by the Magistrate - Not in conformity with the provisions of Section 195 r/w Section 340 Cr.P.C, illegal :

Initiation of proceedings on the basis of an F.I.R lodged by the police in respect of an offence punishable under Section 188 I.P.C. not being in conformity with the provisions of Section 195 r/w Section 340 Cr.P.C ie. with out a complaint in writing of the Court whose order is said to have been disobeyed is illegal. The fact that the Accused have committed offences punishable under other provisions of I.P.C. alongwith Section 188 I.P.C. does not alter the situation with regard to taking cognisance of the complaint by the magistrate.

Basappa and Another Vs State by Honnali police station CrI.petition No.2834/95. D.D.13-1-97.

Colleague Needed

Advocate with experience/
trainee Advocate wanting
placement may contact

Sawant & Sawant

Advocates & Solicitors
102, I Floor,
Sepping's Road,
Bangalore - 560 001.
Phone : 563630.

Campus Watch

☆ On 15th and 16th February 97, University Law College, Bangalore had organised an inter collegiate Cultural Fete named "Akarshan-97"

☆ Justice B.N.Mallikarjun was the Chief Guest on the occasion of the inauguration of the new building complex of the Vidyodaya Law College, Tumkur, held on 16-2-97. In his speech Justice Mallikarjun appealed to the legal fraternity to uphold professional dignity. Justices A.J.Sadashiva, Chandrashekaraiha, H.N. Narayan and the Former Judge R.S. Mahendra participated in the function. Prof H.S.Seshadri, Trustee of the Vidyodaya Foundation presented a report.

☆ Moot Court team from University Law College, Bangalore comprising Ms.Pallavi Rabinathan and Ms.Anitha Abraham bagged First Prize and the trophy in the Second All India Moot Court Competition held in Calicut(Kerala) during February 1997. They also secured the Best Memorial Award. Ms.Pallavi Rabinathan was awarded prizes for being the best

student Advocate and the best lady student of India. Ms.Anitha Abraham was declared the second best Student Advocate of India. The team from NLSIU Bangalore secured Second Prize in the competition in which 26 team had participated.

Karnataka State

Commission of Jurists

In the Annual General Body meeting of the Karnataka State Commission of Jurists held on 2-3-97 the following office bearers were elected

President

Mr.Justice P.P.Boppanna,

Vice - Presidents

Mr S.S.Naganand

Mr A.N.Jayaram, Sr Advocate

Hon.Secretaries

Mrs P.G.Gouri Kuranga

Mrs Hemalatha Mahishi

Treasurer

Mr V.Sudhish Pai

Members

Mr Justice K.H.N.Kuranga

Mr Justice A.M.Farooq

Mr Justice H.G.Balakrishna

Mr M.P.Eswarappa, Sr

Advocate

Mr B.V.Acharya, Sr Advocate

Mr P.G.C.Chengappa

Mr K.P.Kumar

Mr K.Kasturi

Mr S.N.Hatti.



Ms. Pallavi Rabinathan of the University Law College, Bangalore, secured the best All India Student Advocate prize in the Moot Court Competition held recently at Calicut.

Inserted by : KTCA

Judges Appointed

President Dr. Shankar Dayal Sharma has recently appointed Justice M. Jagannatha Rao, Chief Justice of Delhi High Court, Justice V.N. Khare, Chief Justice of Calcutta High Court and Justice D.P. Wadhwa, Chief Justice of Patna High Court as Judges of the Supreme Court of India.

Membership Compulsory

The Amended Karnataka Advocates Welfare Fund Act will come into force from April 2, 1997. The membership is compulsory for all Advocates on the rolls of the Bar Council of Karnataka.

Explaining the salient features of the Amended Act Mr. Sheik Kasim, Chairman of KSBC told press persons that Rs.1,000/- is to be paid towards admission to the Welfare Fund. Those who are already members of the Fund will have to pay Rs.800/-. It has been made mandatory that every Advocate has to affix a Welfare Fund Stamp of Rs.5/- on each Vakalath filed before any Court, Tribunal or Authority. The legal representatives of a deceased Advocate will get Rs.50,000/-. The ceiling on medical benefit is raised to Rs.5,000/- from the present level of Rs.2,500/-.

News Focus

□ On 17-2-97 Sri. Mahaganapathi Mahila Yakshagana Sangha Bala-Kata Palya, Mangalore, performed a play "Sudhama Moksha" in AAB, High Court Unit.

□ On 21-3-97 Prof. S.H. Patel, Former Principal of R.L. Law College, Davanagere, addressed the members of AAB, City Unit on the topic "Doctrine of Equality under the Constitution". Justice M.F. Saldanha was the Chief Guest at the function which was presided over by Sri. K.N. Subba Reddy, President of AAB.

□ On 25-2-1997 AAB, Mayo Hall Unit, had organised a function to felicitate Mr. K.S. Kasim, the new Chairman of KSBC.

□ On 15-3-1997 a Seminar on "Reservation For Women In Parliament And State Assemblies" jointly organised by the Karnataka State Bar Council, Karnataka Legal Aid Board and Women Advocates Forum was inaugurated by Mr. Justice R.P. Sethi, the Chief Justice of High Court of Karnataka, at Bangalore. The Seminar was presided over by Justice P. Krishna Murthy. Justice Nittoor Srinivasa Rao, Former Chief Justice of the High Court of Mysore honored the Senior Lady Advocates. Justice S. Venkataraman, Smt. Rani Sathish, Deputy Speaker, Karnataka Legislature Council and Sri. S. Vijayashankar, Advocate General were the Guests of honour.

□ On 15-3-1997 Chief Justice R.P. Sethi released the questionnaire prepared by the First National Pay Commission for Judiciary at Bangalore.

□ On 20-3-1997 Sri Yogiraja Seshadri addressed the members of AAB, City Unit on the topic "Relaxation Yogic remedy-antidote for stress".

Lahari Advocates Forum

* On 21-2-97 Mr. B.K. Narasimhan, a Chartered Engineer delivered a demonstration lecture on the topic "Effective communication".

* On 21-3-97 Sri. S. Krishnamurthy, Director of Studies, Meditation and study circle, Bangalore, spoke on the topic "Impact of Spirituality on Modern Science".

* On 22-3-97 Prof. H. Billappa, Advocate, delivered a lecture on the topic "Defences available in Criminal Trials" in the Magistrates' Court Unit.

Miscellany

★ With effect from 9-2-1997 Mr. P.K. Venkataramana, Advocate has shifted his chamber to No.88, First Floor, 8th Cross, Malleswaram, Bangalore- 560 003. Phone No.3348445.

★ Recently Mr. K.V. Umesh, Advocate, was appointed as the Law Officer in M/s. Himalaya Drugs & Pharmaceuticals, Bangalore.

Retired

■ On 19-3-1997 Justice K.A. Swamy retired as the Chief Justice of High Court of Madras. Justice Tanikachalam has taken over as the Acting Chief Justice of the High Court consequent upon the retirement of Justice K.A. Swamy.

■ On 25-3-97 Justice A.M. Ahmadi retired as the Chief Justice of India.

Literary Union

✿ On 13-3-1997 Advocate poets Meet (Kavi Goshti) was held in which 25 Advocates read their poems.

✿ On 18-3-1997 Dr. A.S. Sripad Lecturer, Department of Kannada, Vijaya College, Bangalore, entertained the members by signing Folk Songs (Janapada).

Justice Verma Sworn In

Justice J.S. Verma was sworn in by President Dr. Shankar Dayal Sharma on 25-3-97 as the new Chief Justice of India.

Foreign Tour

✈ Between 18th and 24th February 1997 Mr. K. Muniswamy Gowda, Advocate from Kolar, toured Singapore and Malaysia.

Obituary

✿ On 25-12-1996 M.A. Shaik, Advocate, passed away at Bangalore.

✿ On 22-1-1997 Prof. D.V. Ramachandra, Advocate, passed away at Bangalore.

✿ On 23-2-1997 D.V. Padmanabhaiah (61), Advocate, passed away at Bangalore.

✿ On 27-2-1997 B.C. Keshava Gowda, Advocate, passed away at Bangalore.

Vacancy Available

Lady Advocate with good command over English knowing typing preferably with LL.M qualification willing to join a Senior may write to the Editor, Communique.