



Lahari

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 10

March 1999

Part 12

Positive Response

In response to the appeal published by Smt. Poornima Narayan w/o S. Narayan, Advocate, in the February 1999 part of Communique the following lawyers have sent in their contributions. Lahari Advocates Forum has made arrangements to hand over the cheques to Smt. Poornima Narayan. Mr. K. Suman Rs. 5,000/-, Mr. Chandrakanth R. Goulay Rs. 500/-, Mr. B.S. Rangappa Rs. 500/-, Mr. S.P. Shankar Rs. 1001/- Mr. H.S. Dwarakanath Rs. 2000/-

Senior Advocates

Mr. S.S. Ramdas and Mr. A.B. Patil have been designated as Senior Advocates by the Karnataka High Court.

Lahari Foundation

During March 1999 the Foundation received following Donations:

S/s, H.S. Dwarakanath Rs. 1,000/- B.H. Shamanna Rs. 1,000/-; B. Dasarath Rs. 1,000/-; Kalleshappa Rs. 1,000/-; B.N. Muralidhar Rs. 1,000/-; A.S. Girish Rs. 1,000/-; Pradeep Naik Rs. 1,000/- A.N. Krishna Rs. 1,000/-; H.R. Sathypal Rs. 1,000/-; Ms. T.V. Honnamathi Rs. 1,000/-; M/s Malkala Ramachandra Setty Mangamma Trust Rs. 1,000/-; Sri B.S. Virupakshappa Rs. 115/-.

Appointments

Mr. S.B. Pavin and Mr. B.V. Pinto, High Court Government Pleaders, have been appointed as additional public prosecutors.

**Read
Communique**

Justice Shivappa-A disgraceful exit

President K.R. Narayanan ticked off Mr. Justice C. Shivappa from the post of judge of the Madras High Court after having concluded that the latter had to retire during December 1998 itself after having completed 62 years of age. Before taking this extreme step President K.R. Narayanan had consulted the Chief Justice of India in the matter. Like any other working day Justice Shivappa was functioning in the court hall on Thursday March 4, 1999 forenoon when the Registrar of High Court entered the court hall and informed Justice Shivappa about the fax message received from the union law ministry about the decision of the President. The judge had to return to his chamber after information conveyed by the Registrar.

Eventhough the judge had declared his date of birth as December 11, 1938 the high school records showed it was December 11, 1936. Lawyers from Tamil Nadu and Karnataka had lodged complaints against this discrepancy about the date of birth and contended that Mr. Justice Shivappa had no constitutional right to continue as the High Court judge beyond December 10, 1998. Mr. C. Shivappa was appointed as a Judge of the Karnataka High Court at the first instance on 5-8-1991. On 28-4-1994 he was transferred to Madras High Court. During his tenure as a judge of the Madras High Court Mr. Justice C. Shivappa had dealt with a number of politically sensitive cases including those concerning AIADMK's supremo J. Jayalalitha and some of her associates.

The immediate reaction of Mr. Justice C. Shivappa after the presidential decision was conveyed to him was that he would comment only after receiving a formal communication from the president. On Friday March 5, 1999 Justice Shivappa seems to have claimed that he is proceeding on leave. However, on Sunday he airdashed to Delhi to call on the Chief Justice of India Mr. Justice A.S. Anand palpably on a direction from the latter. Apparently Justice Shivappa was unable to convince the Chief Justice of India about the need to revise the stand taken by the president and consequently returned to Chennai to finally bid adieu to

Madras High Court. Things went from bad to worse when even the farewell party arranged in his favour got cancelled as the opinion was divided at Chennai about the need to organise a farewell function. Thus Mr. Justice Shivappa who was sworn in as a Judge of the Karnataka High Court with all the fanfare had to leave the portals of the Madras High Court unceremoniously. In his retirement Justice Shivappa has created a history of sorts.

Literary Union

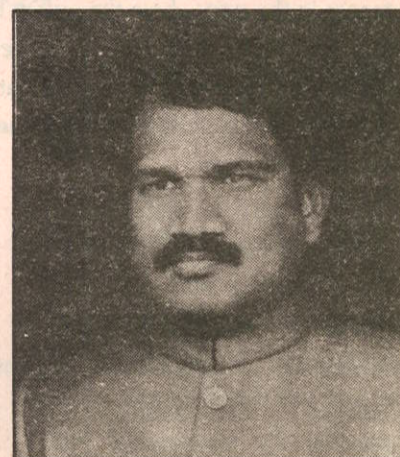
Under the joint auspices of BLU and department of Kannada and Culture, Government of Karnataka, Bharatanatyam by Ms. Sandhya Keshava Rao and Ms. Rekha Chaitanya was held at AAB Auditorium on 2-3-99.

On 3-3-99 Sri Aralu Mallige Parthasarathy, renowned exponent of Dasa Sahitya, addressed the members of Literary Union on the theme "Karnataka's Cultural Heritage."

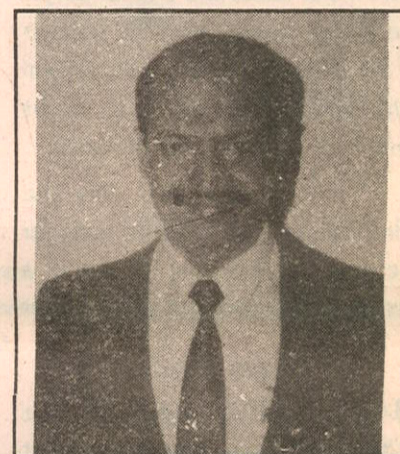
On 11-3-99 a competition in presenting Dr. Kuvempu's poems was held at AAB Auditorium. Ms. Hamsaveni secured first prize, while Mr. A. Jayatheertha Rao and Mr. Shanthesh Avage secured second and third prizes respectively. Mr. N.C. Narayana, former Treasurer of the Literary Union, sponsored the above prizes.

On 13-3-99 an excursion to Atmalingeswara temple, Shivanasamudra, Talakadu and Somanathapura had been organised in which 55 members participated.

On 26-3-99 a dance performance was provided by Sri A.V. Satyanarayana and friends.



Mr. S.S. Kumman, Chairman,
State Bar Council



Mr. S.N. Aswathanarayana,
Vice-Chairman, State Bar Council

Point Blank

As I was interested in playing hockey at the University level I joined law college. At best it was a part time study.

-Mr. Justice N. Santhosh Hegde, judge, Supreme Court of India speaking at a function held at Bangalore to felicitate him.

Rich clients pay. Poor clients pray. Therefore the lawyers stay.

-Mr. Justice Shivaraj Patil, Chief Justice, Rajasthan High Court, speaking at a function held at Bangalore to felicitate him.

**Read
Communique**

He who lies hid in remote places is a law unto himself.

-Publilius Syrus

Honesty is at discount

Abrupt exit of a judge of Madras High Court during the month emphasises the fact that solemn declarations made by persons being appointed to higher judiciary with regard to their age cannot be safely acted upon. There have been instances in the past where the judges had wrongly declared their age in a bid to gain the advantage of being in office beyond the permissible age prescribed under the Constitution. Perhaps the latest incident has highlighted the issue in such a way that a person can continue to occupy the office of judge due to administrative lapses.

Honesty is no longer in premium. Instances of presidents, prime ministers and other high dignitaries of the world have lied in self interest. Social values have changed and therefore it is naive to hope that the members of higher judiciary would avoid the temptation of not being honest. Self interest overrides moral values and after all judges are human beings too. The trappings of the office they occupy, the esteem with which they are held, might embolden a judge to be dishonest.

It is ironical that why the administration has failed to consider the need for reckoning the age of a person to be appointed to the higher

judiciary with reference to his school records, rather than relying upon the personal declaration made by him. This would reduce the occurrence of such instances in future. Even when complaints are received with regard to the age of an incumbent judge it should be investigated within the shortest possible time so as to enable the administration to take a decision in the matter at the earliest. Allowing the matter to linger on is not in the interest of the institution as well as the person involved. Embarrassing situations and erosion of the faith of litigants in the institution of justice could be avoided by the administration being vigilant and expedient.

News Focus

- On 20-3-99 the 30th Lok Adalat at the High Court level was held at the Karnataka High Court Annexe, under the auspices of the High Court Legal Services Committee.
- On 25-3-99 Sri Ramanavami was celebrated in AAB city unit with traditional gaiety and reverence.
- On 26-3-99 Mr. J.S. Verma, Former Chief Justice of India, addressed the members of AAB, High Court Unit, on the subject "Indian Judiciary".

Kolar Diary

- On Munichowdana Bovi (65) of Abbenahalli who had suffered a money decree for Rs. 10,000/- against one Kempegoda at the hands of the Civil Judge (Jr. Dn.), Malur visited the court on 23-3-99 and committed suicide by consuming poison. Bovi seems to have told the judge before succumbing that he had been denied justice.



Holi revellers posing for a photograph. See Miscellany

News Focus

- On 3-3-99 AAB had organised a function in banquet hall, Vidhana Soudha, Bangalore, to felicitate Mr. Justice N. Santhosh Hegde, Judge, Supreme Court and Mr. Justice Shivaraj Patil, Chief Justice of Rajasthan High Court. Mr. Justice Y. Bhaskar Rao, Acting Chief Justice of High Court of Karnataka was the Chief Guest.
- On 5-3-99 AAB had organised a function to bid farewell to Mr. Justice A.J. Sadashiva who retired as a judge of the High Court of Karnataka. Mr. Justice Y. Bhaskar Rao, Acting Chief Justice of High Court of Karnataka was the chief guest.
- In a simple ceremony held at Raj Bhavan, Bangalore, on 9-3-99 Mr. Justice Y. Bhaskar Rao, was sworn in as the Chief Justice of Karnataka High Court by Governor H.E. Khurshed Alam Khan.
- On 11-3-99 Mr. Justice Y. Bhaskar Rao, Chief Justice of High Court of Karnataka, inaugurated the newly constituted courts of chief Metropolitan Magistrate [Addl. CMM XII to XVI] in a function held at Magistrates Court Unit, Bangalore. Mr. Justice Ashok Bhan was the chief guest at the function. Mr. Justice H.N. Narayan, who is also the administrative judge of the unit presided over the function. Office bearers of the AAB, number of High Court judges, judicial officers, lawyers and litigants participated in the function.
- On 12-3-99 students of Vivekananda Law College, Bangalore, provided a cultural programme in AAB Auditorium, City Unit.
- On 13-3-99 Karnataka State Commission of jurists organised a seminar on "the ratio decidendi of a case and the doctrine of binding precedent" at hotel Atria, Bangalore. The seminar was inaugurated by Mr. Justice Y. Bhaskar Rao, Chief Justice, High Court of Karnataka. Mr. Justice B.N. Srikrishna, Judge, High Court of Bombay, delivered keynote address. Mr. Justice P.P. Bopanna, former Judge, High Court of Karnataka and President of KSCJ presided.
- On 19-3-99 the 29th Lok Adalat at the High Court level was held at the Karnataka High Court Annexe, under the auspices of the High Court Legal Services Committee.

Jurisdiction for NI cases

In exercise of powers conferred by section 19(3) of the Criminal Procedure Code, 1973 the Chief Metropolitan Magistrate Bangalore has re-allocated and redistributed the criminal cases pertaining to the Negotiable Instruments Act among the five newly created additional courts with effect from 11-3-99. In consequence thereof the presiding officers of the newly created courts are vested with jurisdictional powers to entertain the cases falling under this category apart from the cases reassigned to them which were hitherto pending before the existing CMM courts. Details of police stations within whose territorial jurisdiction the offence has occurred which are attached to the newly created CMM courts are as follows:

XII ACMM, Bangalore:

Yeswanthapur, Jalahalli, Yeswanthapura Market yard, Peenya, Gangammanagudi, Jayachamarajendra Nagar, Hebbal, Yelahanka, Ravindranath Tagore Nagar, Vidyaranyapura, Sanjaynagar, Yelahanka Upanagar, Central, Shankarapuram, Tharagupet, Victoria Hospital, Chamarajpet, Hanumanthnagar, Kempegowda Nagar and Girinagar.

XIII ACMM, Bangalore:

Ulsoor, Sampangirama Nagar, Silver Jubilee Park, Wilsongarden, Koramangala, Adugodi, Mico Layout, Madivala, Ulsoor Women Police Station, Malleswaram, Sadashivanagar, Srirampura, Rajajinagara, Subramanyanagar, Mahalakshmi Layout and Rajagopala Nagar.

XIV ACMM, Bangalore:

Ulsoor, Vivekanagara, H.A.L., Airport, Jeevanabheemanagar, Indiranagar, Byyappanahally, Krishnarajapuram, Mahadevapura, Ramamurthy Nagar, Frazer Town, Kadugondanahalli, Banasavadi, Devarajeevanahalli, Commercial Street, Shivajinagar, Bharathinagar, Bowring Hospital, Hennur and Ashokanagar.

XV ACMM, Bangalore:

Seshadripuram, Vyalikaval Cubbon Park, Vidhana Soudha, High Grounds, Chickpet, Upparpet, Market and Kalasipalyam.

XVI ACMM, Bangalore:

Basavanagudi, Siddapura, Tilak Nagar, Tyagaraja Nagar, Jayanagar, Subramanyapura, Banashankari, Jayaprakash Nagar, Kumaraswamy Layout, Kengerigate, Magadi Road, Jagajeevanaram Nagar, Byatarayanapura, Vijayanagara, Kengeri, Gnanacharathi, Kamakshipalya, Basaveshwaranagar, Kempapura Agrahar and Chandra Layout.

HIGH COURT OF KARNATAKA NOTIFICATION

NO. LCA./536/92 BANGALORE, DATED 6TH JANUARY, 1999

Whereas the draft of the following rules further to amend the Karnataka Civil Rules of Practice, 1967, was published as required by Section 122 of the Code of Civil Procedure, 1908 (Central Act V of 1908), in Notification No. ICA./535/92 dated 16th February 1993 published in Part IV Section 2D of the Karnataka Gazette dated 4-3-1993, inviting objections or suggestions from all the persons likely to be affected thereby within fifteen days from the date of publication of the said draft in the Official Gazette.

And, whereas, the said Gazette was made available to the public on 4th March, 1993.

And, whereas, no objections or suggestions have been received by the High Court of Karnataka.

Now, therefore, in exercise of the powers conferred by Section 122 of the Code of Civil Procedure, 1908 (Central Act V of 1908) and with the prior approval of the Government of Karnataka, the High Court of Karnataka hereby makes the following rules, namely:

RULES

1. Title and commencement: (1) These rules may be called the Karnataka Civil Rules of Practice (Amendment) Rules, 1999.
2. They shall come into force on the date of their publication in the official gazette.
3. Amendment of Rule 100: In rule 100 of the Karnataka Civil Rules of Practice, 1967.
 - (i) for clause (a) the following clause shall be substituted, namely:

"(a) In the original suits, the fee shall be calculated on the value or the subject matter of the suit, which shall be the same as that prescribed by the Karnataka Court Fees and Suits Valuation Act, 1958, for determining the jurisdiction of the Court, according to the following scales:

SUIT CLAIM

On the first sum of Rs. 5,000/-	..	10 percent of the suit claim
On the sum exceeding Rs. 5,000/- upto Rs. 10,000/-	..	Rs. 500/- + 7 1/2 percent on the amount exceeding Rs. 5,000/-
Exceeding Rs. 10,000/- upto Rs. 20,000/-	..	Rs. 875/- + 5 1/2 percent on the amount exceeding Rs. 10,000/-
Exceeding Rs. 20,000/- upto Rs. 50,000/-	..	Rs. 1,425/- + 4 percent on the amount exceeding Rs. 20,000/-
Exceeding Rs. 50,000/- upto Rs. 1,00,000/-	..	Rs. 2,625/- + 3 percent on the amount exceeding Rs. 50,000/-
Above Rs. 1,00,000/-	..	Rs. 4,125/- + 1 1/2 percent on the amount which exceeds Rs. 1,00,000/- subject to a maximum of Rs. 15,000/-

Provided that the fee allowed in any suit shall not be less than Rs. 250/- unless the Court orders otherwise."

- (ii) In clause (b), in the proviso for the figures '100' the figures '350' shall be substituted;
- (iii) In clause (c) for the figures '5' and '25', the figures '7' and '100' shall respectively be substituted;
- (iv) for clause (f), the following clause shall be substituted namely,

(f) In other proceedings the fee shall be fixed by the court regard being had to the time occupied in the hearing of the case and the nature of the questions raised, but subject to the minimum and maximum prescribed hereunder. If in any case coming under this clauses the court awards costs without fixing the Advocate's fee, the court shall be deemed to have awarded the minimum prescribed.

Nature of Proceeding	Minimum Rs.	Maximum Rs.
(i) Land Acquisition cases and Motor Accident Claims Cases	-	5,000/-
Note: If a group of cases is heard together the minimum shall be Rs. 500/- and maximum Rs. 5,000/- for all of them together and the court may apportion the fee for each case separately.		
(ii) Matrimonial case	250/-	1,000/-
(iii) Guardian and Wards case	200/-	1,000/-
(iv) Probate and succession case		
(a) If uncontested	200/-	1,000/-
(b) If contested	500/-	3,000/-
(v) Insolvency case		
(a) Contested / Adjudication	200/-	1,000/-
(b) Determination of title and priority	200/-	1,000/-
(c) Dispute relating to alienation	200/-	1,000/-
(vi) Arbitration cases	200/-	1,000/-
(vii) Cases under the Karnataka Rent Control Act.,	200/-	1,000/-
(viii) Any other Original Proceeding	200/-	1,000/-
(ix) Injunction suits before Civil Judge (Jr.Dn.)	-	2,000/-
(x) Injunction suits before Civil Judge (Sr. Dn.)	-	5,000/-
(xi) Interlocutory matter	100/-	200/-
(xii) Miscellaneous Appeal or House rent Control Appeal or Revision or Revision Petition under any other enactment	250/-	1,000/-

By Order of the High Court,
Sd/-
(V.G. SABHAHIT)
Registrar General

To
The Compiler, Karnataka Gazette Bangalore in favour of publication in the next issue of Gazette in Part IX Section 2D(in duplicate).

Humour in Courts

☐ A regular appeal contained the following relief:

"Wherefore the appellant prays that this Hon'ble Court be pleased to set aside the judgment and decree of the trial court and remand the case to the trial court for fresh disposal of the suit in accordance with law, if any, by allowing this appeal with costs to meet the ends of justice."

Obituary

- ☐ On 15.3.99 G.R. Karisidda devaru [60], Advocate, passed away at Bangalore.
- ☐ On 25-3-99 K. Malle Gowda (60), Advocate, passed away at Bangalore.

Retirement

Mr. Justice A.J. Sadashiva retired as a judge of the Karnataka High Court on 6-3-99.

Foreign Tour

☐ On 30-3-99 Mr. C.S. Ramdas, Advocate, left Bangalore for ten weeks stay in USA.

**Read
Communique**

Kolar Diary

On 27-2-99 members of the Kolar bar abstained from court work in protest against the killing of a Mysore lawyer.

On 6-3-99 members of the Kolar bar abstained from court work protesting against the manner in which Mr. Justice C. Shivappa, judge of the Madras High Court, was made to retire.

On 6-3-99 Mr. Justice V. Gopala Gowda, judge, High Court of Karnataka, inaugurated the first lok adalath jointly organised by Malur Taluk Legal Services Authority and the Malur Bar Association. Mr. Justice H. Rangavittalachar, judge High Court of Karnataka, presided over the function.

On 12-3-99 Mr. R.D. Deshpande, Principal District and Sessions Judge and Chairman, District Legal Aid Services Authority, Kolar inaugurated the fourth lok adalath at Kolar. Mr. P.N. Krishna Reddy, President of Kolar Bar Association presided over the function.

On 20-3-99 Mr. R.D. Deshpande, Principal District and Session Judge and Chairman, District Legal Services Authority, Kolar inaugurated the first lok adalath jointly organised by Taluk Legal Services Authority and Bagepalli Bar Association. Mr. G.V. Srirama Reddy, M.L.A. presided over the function. Mr. S.N. Aswathanarayana Vice-chairman, State Bar Council, Mr. A. Nagarajappa, Mr. G. Papi Reddy, Government Advocates High Court of Karnataka and Mr. Karuna Sagar Reddy, President, Bagepalli Bar Association were the chief guests.

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Karnataka Civil and Criminal Reporter fortnightly law journal published by Lawyers' Law Book, Bangalore. Contains latest decisions of SC, Karnataka High Court as well as short notes of cases. Annual subscription Rs. 950/- [for four volumes]. Mail your orders to lawyers' Law Book, No. 8, 1 Floor, Dattatreya Swamy Temple Complex, Next to Ramakrishna Lodge, S.C. Road, Bangalore-560 009.

A View Point - S.P. Shankar

An incident, that did not visualise ramifications now noticed, occurred in early nineties. A Judge was appointed to High Court of Karnataka. The event was marked by the fact that a special aircraft carried a messenger to New Delhi to bring the warrant of appointment. The said Judge served Karnataka High Court with as much of ease and elegance as with dignity. The Judge was transferred to Madras High Court, alongwith other Judges. The process of transfer of Judges virtually started with the transfer of these and other Judges. It is said that Judges who were transferred from Karnataka fared better in the transferee Courts and they earned name and fame, without exception. The experiment in transfer of Judges proved to be a success in every conceivable aspect.

Some disgruntled persons went on with witch hunting and causing embarrassment to some of the Judges transferred from Bangalore. Noble and respected Judge, Hon'ble Mr. Justice Shivappa, was not spared from this vicious attack of being accused of doing this and that, including furnishing false information about his date of birth. Since the complaint was supported by verifiable and authentic documents, the process of enquiry had to be set afoot. Enquiry was completed by the process of consultation by his Excellency the President of India with Hon'ble the Chief Justice, under Article 217. On an intense exercise, based on an objective assessment of harsh realities and the findings of enquiry, it was clear that the concerned Hon'ble Judge had knowingly suggested his date of birth as one that made him two years younger carrying with it the prospect of accommodating in service for 2 more years. His Excellency the President, based on effective consultation with Hon'ble the Chief Justice, did what Article 217(3) ordained. The presidential order reached the Department of Justice, Union of India just like any other Presidential order or declaration. It should have found its way to media and reached the people of the country, including those concerned, in the normal course.

Some one wanted to carry this news on horses back, no on fax, to Chief Justice of Madras High Court. This did the undoing of the majesty of the news itself. The method of breaking of the news turned out to be counter productive. Whatever may be the purpose of Hon'ble Mr. Thambi Dorai he betrayed his anxiety and interestedness. He exceeded his

authority in doing what he did. This excess could have been high lighted by those offended in a simple manner, which did not involve any pains taking exercise. It is not to be.

Sadly, Judge Mr. Shivappa over reacted to the news. He had ample opportunity to see the order of His Excellency the President of India when it was to be served on him and then draw his own conclusions and make up his mind as to future course of action. This was not to be. He broke loose and stated a few things which he may not have meant and which he may, in a different mood, regret. Mr. Justice Shivappa in the process has let down the Institution which he represents, beyond retrievance. The damage done to the institution may not be realised immediately. If one were to introspect into this episode, he would find that no external force is necessary to destroy the Judiciary. In retrospect it should be placed on record that both Mr. Thambi Dorai and Mr. Justice Shivappa exceeded in their attitude towards the issue. History would bear testimony to the fact of these two men of authority defied due process of law and provided means to be viewed with less dignity and more suspicion.

Miscellany

On 7-3-99 about fifty lawyers participated in holi-milan at Rajajinagar, Bangalore.

Weddings

On 7-3-99 Mr. C. Vinay Swamy, Advocate, married Ms. Malini at Bangalore.

On 11-3-99 Mr. K.P. Ramdas, Advocate, married Ms. Bhargavi at Bangalore.

Around the Courts

Bar Council of India Training Rules, 1995 as amended by resolution dated 19-7-98, prescribing training to entrants, beyond rule making power:

In a significant judgment of national importance delivered on 12/15-3-99 a bench of the Supreme Court comprising justice S.B. Majumdar and Justice S.N. Phukan declared that the Bar Council of India Training Rules, 1995 as amended by its resolution dated 19-7-98 prescribing training to entrants to legal profession is stillborn being beyond the rule making power of the Bar Council of India. The court observed that "It is true that these suggestions of the High Power Committee clearly highlighted the crying need for improving the standards of legal education and the requirements for new entrants to the legal profession of being equipped with adequate professional skill and expertise. There also cannot be any dispute on this aspect. However, as the saying goes "a right thing must be done in the right manner". We appreciate the laudable object with which the Bar Council of India has framed the impugned rules for providing training to the young entrants to the profession by laying down details as to how they should get appropriate training during their formative years at the Bar. Unfortunately, for the Bar Council of India that right thing has not been done in the right manner. We equally share the anxiety of the Bar Council of India for evolving suitable methods for improving the standards of legal education and legal profession. The aforesaid recommendations made by the High Power Committee could have been put into practice by following appropriate methods and adopting appropriate modalities by the Bar Council of India. Unfortunately, the attempts made by the Bar Council of India by enacting the impugned rules has resulted into firing at the wrong end though backed up by a very laudable purpose.

In a clarification made on 15-3-99 the court has directed that the judgment will operate only prospectively and it will have no retrospective effect in the sense it is not applicable to those applicants who have earlier applied for enrolment and have successfully completed their pre-enrolment training as per the impugned rules. However, all those who apply for enrolment after the judgment will not have to undergo pre-enrolment training.