

Volume 11

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Part 12

Congrats Kamath



Younger brother of K J Kamath and K G Kamath of M/s Kamath and Kamath, Advocates and Tax consultants from Bangalore Mr. K. Arvind Kamath has been practising as an Advocate in Bangalore Since June 1994. Having Completed LL.B from Mysore University, passed LL.M from the NLSIU, Bangalore. One amongst the Sixteen young lawyers selected by the British Council under the British Chevening Scholarships to undergo Six Weeks training in corporate laws at the college of law, york beginning Twenty Seventh March, 2000 and a further practical training from the law firm Lawrence Jones, London. The selection was done on All India basis and Mr. Arvind Kamath is the lone participant selected from Karnataka. While the congratulating Mr. Kamath it is hoped that other young lawyers from the State will draw inspiration from him while completing for securing the scholarship in future.

Patil elevated to SC

Mr. Justice Shivraj Patil, Chief Justice of High Court of Rajasthan was elevated as the Judge of the Supreme Court. On 31.3.2000 Justice Patil was sworn in as the Judge of the apex court. On 20.3.2000 AAB had organised a function at Banquet hall in Bangalore to felicitate Justice Patil. Mr. Justice Y Bhaskar Rao, Chief Justice of High Court of Karnataka, was a chief guest at the function which was presided over by Sri. K.L. Manjunath, President of AAB.

Bar Council Election

Election to Karnataka State Bar Council for a further period of five years is scheduled to be held on Tuesday the 6th June, 2000.

SC takes serious note of HC's approach

The 12 page judgement of the Supreme Court delivered on 31.3.2000 by a bench comprising Chief Justice A S Anand, Justice R C Lahoti and Justice S N Variava took strong exception to a Judgment of the Karnataka High Court for "lacking sensitivity towards a rape victim". The Judgment observed that the crimes of violence upon women need to be seriously dealt with - it is a serious blow to her supreme honour and offends her self esteem dignity - it degrades and humiliates the victim and, where the victim is a helpless innocent child, it leaves beyond a traumatic experience. The courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence which may serve as a deterrent for the commission of like offences by others. To show mercy in cases of such heinous crimes would be travesty of Justice and the plea for leniency is wholly misplaced. Referring to the High Court's approach in the case, the apex court said "it was, to say the least, most casual and inappropriate." while setting aside the Judgment of High Court which had reduced the sentence from ten years to four years on the ground that the accused was under the influence of alcohol while committing the crime, the apex court restored the sentence passed by the trial court.

Single Judge Can't hear PIL

A Constitution Bench of the High Court of Karnataka comprising Chief Justice Y. Bhaskar Rao, Justice Ashok Bhan, Justice R Raveendran, Justice Chandrashekariah and Justice A M Farooq, set aside 56 orders passed by Justice M F Saldanha between September 22, 1997 and July 30, 1999 "as without jurisdiction". The same bench also upheld the validity of a notification issued by the former Chief Justice R P Sethi prescribing that all Public Interest Litigations were to be heard and disposed of by the Division Bench of two Judges. The Judgment also declared that the Chief Justice has power and authority not only to constitute benches that also to allot judicial work and that said power is absolute and unquestionable.



The Photo depicts the moment of felicitation to Sri Venkatesha Rao by Sri Anjeneya Kala Vrinda (R), Bangalore. (L to R) S/S M. Narasimhan, President, SAKV, K L Manjunath, president, AAB, Venkatesha Rao, Advocate. K N Subba Reddy, MLA, B Prasanna Advocate.

Stir for Dharwad Bench

This stir demanding establishment of a High Court Bench at Dharwad is now not confined to the northern region of the State. Infact the scene has already shifted to capital city of Bangalore a large contingent of lawyers from Dharwad sqated on the approach road to the High court on March 27, 2000. Speaking to the reporters at Dharwad on March 26, 2000 Dharwad Bar Association president warned that the Lawyers from the region would spearhead an agitation for a separate state if their demand for bench of High Court was not acceded to by the Government. He charged the State government of not making efforts to obtain a report from the five member committee of Judges appointed to look into the demand even after lapse of one year.

Judge Discharged

Mr. Kazia Mohamed Muzzammil, Addl. City Civil and Sessions Judge, Bangalore (CCH No 5) was discharged from service w.e.f. 26.3.2000. He has challenged the order of discharge before the High Court by filing a writ petition. The High Court has ordered notice to the Respondents.

Advocates Co-op Society

□ The Board of Management of the society at its meeting held on 27.2.2000 adopted a resolution declaring payment of dividend at the rate of 9% for the year 1990-91 and at the rate of 12% for the years 1991-92 to 1995-96. Dividend for subsequent year will be finalised after the appropriation of profits and completion of IT assessment.

□ The executive committee meeting of the society held on 24.3.2000 approved the admission of 45 new members, sanction of loan of Rs. 30,000/- each to 145 members, grant of 4 addl. shares to 75 members, grant of Rs. 5000/- each to dependents of C V Guruswamy, L Krishna Murthy and G N Nagaraja Rao as DRF, grant of medical assistance of Rs. 5000/- each to Karandur Krishnappa, N Sheshagiri Rao, K Rathnaiah Setty, Masood Ali Khan Mecci, B K Janardhan, S Narayana Gowda, J N Nagaraja and R. Suryanarayana Swamy, to release Rs 10,000/- for advertisement in BLU Souvenir, to sell court fee stamps in city unit from 3.4.2000, donate additional reading tables to city civil courts and provide a water cooler to magistrate courts unit.

Views and Vignettes

□ Kronje's misfortune is that by the time the scam broke he was back in his own Country. This deprived him of access to legal advice from Indian lawyers. A seasoned Indian Criminal lawyer would have told him to keep denying everything till the bitter end. In our Country, the rule is 'never confess always deny'. This is based on the time-tested principle that new scams recur with reliable frequency. The new scam replaces the old scam. The media, hungry as it is for news, moves on to the new scam. If you hang on to the denial, you may even survive.

Hansie has done it all wrong. He started with a denial. Somewhere along the line his conscience started pricking him. A former Attorney-General (who is no more) once told me that he had a very well trained conscience. He had trained it so well that it never disturbed him. Hansie's predicament has something to do with the theory that, if you commit a sin and confess, your sins get washed away. It does not quite work that way.

— Goolam Vahanvati,
Advocate General of Maharashtra.

□ Can the Supreme court create institutions like the Judicial Collegium, not mentioned anywhere in the constitution, for the appointment of judges to the high courts and the apex court as also for the transfer of judges from one high court to another? Does the principle of the Independence of the judiciary from the government permit the court to create such institutions for its own governance? Does the creation of such a collegium amount to an amendment of the constitution? Can the apex court bypass parliament, which alone can amend the constitution by stating that the judicial collegium is the result of an "Interpretation" of the constitution? Can such a judiciary created collegium be a totally non-transparent body with no judicial or other remedy against what it does to high court judges?

These and other vital issues about parliament vs the Supreme Court and the Supreme Court vs the high courts in a federal structure have been raised for a

decision by the apex court by the petition of Justice Vishwanath Gopal Palshikar of the Rajasthan High Court.

The special leave petition and the writ petition of the judge give an opportunity to the highest court to remove atleast the following consequences of it's judgment: high court judges have no fundamental right against arbitrary action of the Collegium; they have no fundamental right against mala fide action of the collegium and they have no fundamental right to approach the Supreme Court for redressal of the violation of a fundamental right.

— Krishan Mahajan,
Supreme Court Advocate and columnist.

Introspection is always a desirable exercise, but only in private. But judges of the High Court and the Supreme Court being public functionaries have to do so in public. But it is necessary that the timing is appropriate, otherwise it causes unnecessary speculation. That is what seems to have happened when the Chief Justices conference held last December published its "Restatement of values of judicial life".

People have become so cynical that they term this decision a self protective diversion against the Prime Minister's statement made earlier about the need for a National Judicial Commission (NJC). This assessment is unfair because the Chief Justices' Conference had been called months earlier and the talk of an NJC has been in the air for years.

It is, of course, a matter of gratification to find that the judiciary itself is conscious of the gravity of the problem as was expressed with visible humility by the Chief Justice of India, Justice Anand, at a seminar some months ago where he said, "Our function is devine. But, the problem begins when we start thinking that we have become divine. We fail to draw a line between our functions and the individuality with petty egos overriding everything else."

— Justice Rajindar Sachar,
Former High Court Judge.

Notice

Advocates can become subscribers of communique in the following manner:

- by being life member of Lahari Advocates Forum, in which event they will get complementary copies through post;
- by being annual member of Lahari Advocates Forum, in which event they will get complementary copies for one year (Between April month of the year and March month of the subsequent year);
- by paying subscription of Rs. 15/- per year with Addl. sum of Rs. 24/- towards the postage ;

Note : Subscribers are to pay/remit the amount to the Editor, Communique, C/o. Advocates Association, Bangalore - 560 009.

Indian Democracy-Electoral Reforms

Justice Ashok Bhan

From the last issue

Another aspect is that only those national parties which have obtained at least 10% of the national votes should be allowed to participate in the Lok Sabha elections. Registered state political parties or the registered unrecognised political parties should not be allowed to contest election for Lok Sabha as they do not have a national perspective. Nearly 100 Lok Sabha seats in the last election have been won by the state political parties. India has had a sad experience in the 12th Lok Sabha where state political parties which did not have a national perspective wrecked the functioning of the parliamentary democracy in the country. There is too much of politicalisation at every level in the country. Suitable law should be made so that once a party or group of people is elected to power, then they should be allowed to function for the period for which they have been elected. Policy of destabilising the government, as if the only role of the opposition is to destabilise the elected

government should be given up. Criticism in the form of debate and cristalising the issues for the acceptance of the nation should be taken up in a constructive manner.

Democracy in a parliamentary form of government will have no legitimacy or authenticity if free and fair elections are not held. Experience shows that if the elections are not free and fair the people in general would lose faith in the system itself. Time has come for steps to be taken to remove the defects in the electoral system which are being pointed out by the political pundits, lawyers, intellectuals and academicians. If we fail to do so we shall be failing in our duty resulting in our losing the democratic form of government itself. Our constitution is a magnificent document, conceived and drafted by some of best brains in the country. It is not the constitution which has failed for it may be blamed, but the people responsible for acting in accordance with it.

(concluded)

Contempt case on Railway Platform

Mr. Justice I M Quiddishi of Allahabad High Court reportedly held contempt of court proceedings on a platform of New Delhi Railway station on March 8, 2000 and punished a Railway employee as the latter could not provide him birth in a express train obviously, the unusal incident created lot of ripples throughout the Country. With a view to restore the common man's faith in the rule of law the Supreme Court promptly ordered on March 13, 2000 that the Chief justice of Allahabad High Court would collect all the necessary facts in connection with the incident and send a report.

Procedings dropped

While refusing to take cognizance against the Chief Editor, Indian Express, New Delhi and Hon'ble Mr. Justice J.S. Verma, Former Chief Justice of India in CCC (Criminal) No 25/1998 filed by A.V. Amarnathan, Advocate the Division Bench of Karnataka High Court Comprising Chief Justice, Y. Bhaskar Rao and Justice A.M. Farooq observed that the press and media must always be careful in publishing statements with caption, which will prima-facie look contemptuous and misguide the readers and it is better, they avoid such captions.

The best way to keep good acts in memory is to refresh them with new

- Francis Bacon

Code of Civil Procedure (Amendment) Act, 1999

from the last issue

First Schedule
Order XXVI,
rule 4A

Inserted

that it takes a long time for obtaining certified copy of the decree and thus filing of appeal takes a long time. It is provided to dispense with annexing certified copy of the decree along with Memorandum of Appeal and it is also provided that the whole judgment shall be made available to the parties immediately after the judgment is pronounced.

Order XXVI enables the court to issue commission only in cases where witness resides outside the local limits of the jurisdiction of the court. Order XXVI is amended by inserting a new rule 4A so as to enable the court to issue commission in any case where the interest of justice so demands.

First Schedule
Order XXXIX
rule 1

Rule 1 renum-
bered as sub-
rule(1) and sub-
rule(2) inserted

It has been observed that after obtaining temporary injunction the party in whose favour injunction has been granted causes delay in disposal of cases on flimsy and unreasonable grounds. To curb this practice Order XXXIX is amended so as to provide that the party who applies for obtaining injunction shall also furnish security so that it may not adopt delaying tactics during the trial of the case.

Order XLI is amended so as to provide for filing of appeal on the basis of the copy of the judgment, to avoid delay as obtaining copy of decree takes considerable time. Further to avoid delay it is provided that an appeal may be filed in the same court which passed the judgment and that court shall direct the parties to appear before Appellate Court.

First Schedule
Order XLI
rule 1

Certain words
substituted in sub-
rule(1)

First Schedule
Order XLI
rule 9

Substituted

First Schedule
Order XLI
rule 11

Sub-rule(1)
substituted

First Schedule
Order XLI
rule 12

Sub-rule(2)
substituted

First Schedule
Order XLI rules
13, 15 and 18

Omitted

First Schedule
Order XLI
rule 19

Certain words
and figures omitted

First Schedule
Order XLI
rule 22

Sub-rule(3)
omitted

(Concluded)

Court to try Special Power Offences

A Karnataka Power Transmission Corporation (KPTC) release says that a government notification has brought offences committed under the Indian Electricity Act, 1910 and the Electricity (supply) Act, 1948 for trial by the special court. The jurisdiction will include the Bangalore Metropolitan Area as well as Bangalore Revenue District. The offenders under the above Acts as well as abettors of such offences are triable by the Special Court to be presided over by the Judicial Magistrate I class.

New Publication

Commencing from April, 2000 readers of communique will get complement of Samvada, a Kannada monthly Publication, from Lahari Advocates Forum. It has been decided to supply this complement free of cost for one year. Sri G S Natarajan and Sri V N Murthy, Advocates, will be the editor and associate editor of the New Publication.

News Panorama

□ During March 2000 Mr. Tahir Abbas Shah Bokhari gunned down one Adnan near the Lahore High Court. A victim set to be father of Four Children had affair with the magistrate's niece Humaira who was much younger than him. Reports said that Adnan was attempting to marry the girl.

□ On 10.3.2000 deposed Prime Minister Nawaz Sharif's defence lawyer in hijacking case Iqbal Road was gunned down by four masked gunmen in his chamber along with two of his clients at Karachi.

□ Again in Pakistan on 16.3.2000 a court in Lahore sentenced Javed Iqbal to be publicly executed in a park in front of the parents of his victims. He was accused of murdering 100 Children in serial killings. The court further ordered that the body of the accused be cut into 100 pieces and put into acid, the same way he had killed the children.

□ During March 2000 Albania's Justice ministry announced that during the last three years the country's Supreme Justice Council sacked 70 Judges on charges of corruption and professional incompetence. It is also stated that another twenty judges were disciplined during the period. The Supreme Justice Council is headed by the Country's President and 14 top judges.

□ The 10th circuit court of appeals in Denver (US) ruled 3-0 on 8.3.2000 against Dorothy Nelson who had exposed breasts to police to prove she was not the person wanted for a burglary cannot sue the officers for violating her personal rights. Interestingly the police were looking out for a woman who had tattoo on her chest.

□ Around four lakh women of which more than half are Chinese who are commonly known as "Comfort Women" have started a drive to obtain apology and compensation from the Japanese Government. These Women were sexually abused by the invading Japanese army during World War II by forcibly enslaving them in Comfort Women lodges with the acquiescence of Japanese authorities. Comfort Women Studies Centre at Shanghai

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Around the courts

□ Section 17 (1) (iv) and 3(ii) of the Income Tax Act-word "Profits" include income by way of DA, HRA and CCA;

In a significant ruling delivered on March 6th 2000, the Supreme Court has ruled that the "income" derived by the employees from dearness allowance, city compensatory allowance and house rent allowance is taxable under the Income Tax Act. Applying the general meaning of word "profits" and its dictionary meaning given under Section 17(1) (iv) and 3(ii) of the Act, the court said "advantage" in terms of payment of money received by the employees from the employer in relation to or in addition to any salary or wages would be covered by the inclusive definition of the word "salary". The bench comprising Justice Wadhwa and Justice M B Shah observed that "since counsel for the employees did not make any submission with regard to other allowances like night allowance, tuition fee, leave encashment linked with leave travel concession, running allowance etc., we do not pass any order with regard to those allowances". The bench also observed that "equity or hardship would hardly be relevant grounds for interpretation of tax laws". By this judgment the court dismissed several petitions filed by employees of the Central & State Governments, Public Sector undertakings, Banks and other institutions.

Kolar Diary

□ In the annual general body meeting of the Mulbagal Bar Association held on 8.2.2000 the following office bearers for the year 2000-01 were unanimously elected;

President : C.M. Govinda Reddy; Vice president : D.V. Mohan Reddy; Secretary: N. Prabhakar; Joint Secretary; G.R. Aruna; Internal Auditor: S. Basheer Ahmed;

□ During March 2000 Mr. Divakar Rao was posted as I Addl. District and Sessions Judge, Kolar. Earlier he was working as the II Addl. Judge. Mr. Yoginatha has taken over as the II Addl. District and Sessions Judge, Kolar, vice vacancy caused due to shifting of Divakar Rao.

News Focus

□ On 24.2.2000 Mr. K. Ramanna pr city civil and sessions judge inaugurated a orientation course for civil judge (Jr Dr) examinees organised by the Advocates Association, Bangalore. About 110 advocates attended the course. On 2.3.2000 Mr. Justice P.V. Shetty delivered the valedictory address marking the conclusion of the course.

□ On 25th and 26th February 2000 pursuant to a resolution of AAB opposing the amendments to the Advocates Act and the Civil Procedure Code abstained from attending the courts in Bangalore.

□ On 9.3.2000 Sri. S.M. Krishna, Chief Minister of Karnataka addressed the members of AAB in a function held at City Civil Court complex. Mr. Justice Y Bhaskar Rao, Chief Justice, High Court of Karnataka, Sri A.N. Jayaram, Advocate General, Sri M. Lokesh, Chairman, KSBC and Sri M.S. Mandanna, president, BACS spoke on the occasion. Sri. K.L. Manjunath, President, AAB presided over the function.

□ On 11.3.2000 V.S. Ramadevi, Governor of Karnataka, inaugurated a state level conference of Public Prosecutors at Bangalore. Mr. Justice Y. Bhaskar Rao, Chief Justice of High Court of Karnataka also addressed the delegates.

□ On 15.3.2000 Mr. Justice Y. Bhaskar Rao, Chief Justice, High Court of Karnataka inaugurated the Bruhat Lok-Adalath at Bangalore city civil court complex. The Bangalore District Legal Services Authority had organised this camp for conciliation and settlement of claims against the United India Insurance Company.

□ On 21.3.2000 Mr.A.L. Pujar, Addl. City Civil and Sessions Judge, Bangalore inaugurated a programme titled "Prathibhanveshane" under auspices of AAB in its city Auditorium at Bangalore.

□ Saturday the 25.3.2000 was a working day for Judicial work at the High Court of Karnataka.

Miscellany

□ On 1.3.2000 Mr. K. Dilip Kumar, Advocate, opened his new law chamber at Sri Sudha Building, Opp: Kino Teatre, S C Road, Bangalore - 560 020. Ph: 3444993.

□ On 9.3.2000 KPCC legal cell tookout a protest rally to Raj Bhavan and submitted a memorandum to the Governor opposing the review of constitution.

Lahari Law Academy

The above Academy proposes to hold a workshop on arbitration and conciliation law on Saturday the 10th June 2000 at Century Club, Bangalore. Advocates desirous of registering as delegates may contact the Director of the Academy Mr. P G C Changappa. Limited delegates will be entertained on first come first basis.

Lahari Foundation

The above foundation provided medical assistance of Rs. 2,500/- to Mr. K. Ratnaiah Setty, Advocate, who underwent a surgery.

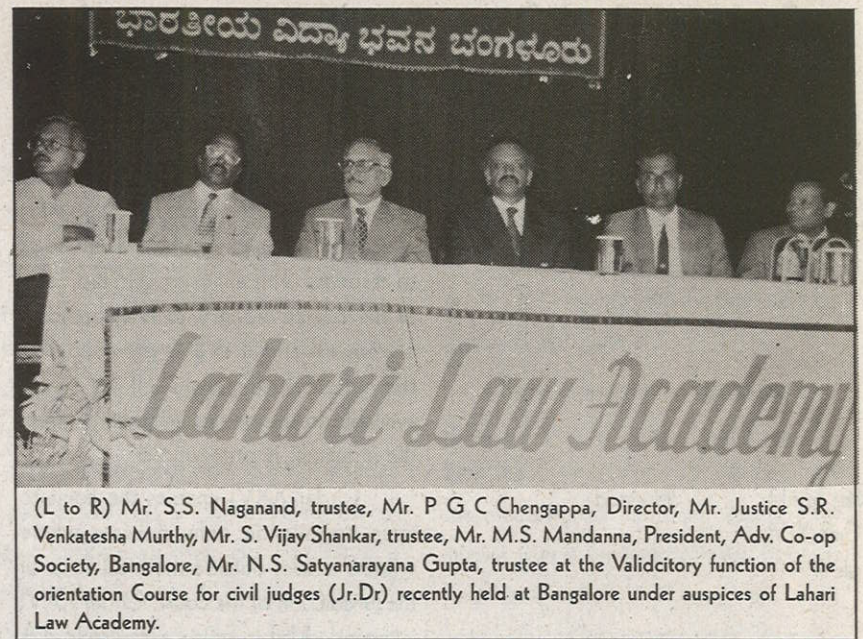
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But instead of functioning as an alarm clock, the judge functioned as a time-keeper.

Five Judges Bench observation about the single judge passing orders in PIL cases.



Mr. Shivadutt. N Bangalore, Advocate from Bangalore, receiving Gold Cup for being the best bowler of the recently concluded XI All India Advocates Tournament held at Allahabad.



(L to R) Mr. S.S. Naganand, trustee, Mr. P G C Chengappa, Director, Mr. Justice S.R. Venkatesha Murthy, Mr. S. Vijay Shankar, trustee, Mr. M.S. Mandanna, President, Adv. Co-op Society, Bangalore, Mr. N.S. Satyanarayana Gupta, trustee at the Validictory function of the orientation Course for civil judges (Jr.Dr) recently held at Bangalore under auspices of Lahari Law Academy.

Litarary Union

□ On 2.3.2000 comedian Film Actor Mimicry Dayananda presented a programme of humour at the AAB, auditorium city unit.

□ On 30.3.2000 a programme on mimicry and instrumental music was presented by blind artists Sri M. Sylendra Swamy and friends at the AAB Auditorium.

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News Panorama

from Page 3

Normal University as identified atleast 83 such lodges in and around Shanghai City in China.

□ Of late several schools in kentucky and other US Cities have taken steps to inscribe ten commandments, a christian prescription of "das" and "dents" which were handed down by mooses according to the Old Testament, in class rooms to infuse moral character among the pupils. The Managements of the schools are of the view that inscriptions are necessary to inculcate moral values among the students in the vake of increase in the number of gun shooting incidents in the schools. Noticebly America is a multi religious and cultural

society and the American Civil liberties union (ACLV) has lodged complaint against the use of ten commandments as it affects religious rights of students belonging to non christian communities.

Retirement

On 13.3.2000 Mr. Justice V.K. Singhal retired as a Judge of the High Court of Karnataka. A farewell address was read in the High Court of Karnataka by Chairman of Karnataka State Bar Council. AAB had organised a farewell function in this regard in the afternoon of 13.3.2000 at the High Court Unit.

Judge Convicted

During the month of March Mr. S. Janardhana Rao, an Addl. District and Sessions Judge from Andhra Pradesh was convicted on the charges of accepting bribe for granting bail.

Obituary

□ On 6.3.2000 Former Judge of the High Court K. Ramachandraiah (65) passed away at Bangalore. On 10.3.2000 a reference was made in the High Court in honour of the deceased.

□ On 10.3.2000 Former High Court Govt. pleader Krishna murthy passed away at Bangalore.

□ On 12.3.2000 Ramakant V Desai (43) Advocate passed away at Bangalore.

□ On 13.3.2000 K. Dinakar Holla (52) Advocate passed away at Bangalore.

□ On 27.3.2000 Kolar Subba Rao, Advocate, passed away at Bangalore.