

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part I

Credibility of the Institution at Stake

Bangalore, March 5 : The existence of an independent press and impartial judiciary is the hallmark of an efficient democratic system. Of late serious doubts about the credibility of and the institution of judiciary is raised in some sections of the society which requires an immediate response. Every citizen of this country should have the protection of the judicial system which in turn depends on the effective functioning of the Courts. I assure that I will exercise strict scrutiny in the appointment of judges declared Mr. Justice M. N. Venkatachalaiah while inaugurating a 3 day Conference of the officers of the Bar organisations which met at Bangalore from 12 - 14th March 1993.

The Conference jointly sponsored by the Bar Council of India, The National Law School of India University and the Advocates Association, Bangalore had on its agenda (a) Review of provisions of the Advocates Act and (b) the recent trends in the Judgments of the Supreme Court. The inaugural function was presided over by the Senior Advocate Mr. Fali S. Nariman.

Mr. Veerappa Moily, the Chief Minister of Karnataka, who was the chief guest in his speech dwelt at length the inadequacies in the judicial system and suggested remedial measures to be taken to correct those inadequacies. Mr. Moily caustically remarked that the fortunes of Lawyers cannot be built on

miseries of the weaker sections of the society and appealed to the Lawyers to develop an attitude of serving the weakest among the weak. He also suggested to distinguish the genuine public interest litigation from that of the concept of pro bono publico with a view to avoid encouragement of futile litigation.

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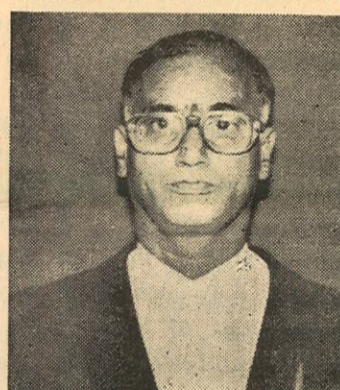
Presidential Notification Quashed

In an unprecedented Judgment the Full Bench of M P High Court (Jabalpur Bench by 2 : 1 verdict) quashed the notification imposing President's rule in Madhya Pradesh after dismissing the Suderlal Patwa Ministry & dissolving the State Assembly by exercising power under Article 356 of the Constitution of India. In its Judgment dated 2 - 4 - 93 the Court held that the Governor's report recommending for President's rule was based on non-existent circumstances requiring the Centre's interference. The Court also held that there was no breakdown of constitutional machinery in the State warranting imposition of President's rule. However, the Court granted stay of operation of its own order for two weeks for enabling the Centre to approach the Supreme Court. The outcome of this landmark Judgment in the Supreme Court will be a forerunner with regard to the interpretation of Article 356 of the Constitution.

Don't Criticise the System

Bangalore, March 11 : while non legal issues should be handled by other Forums the judicial system must be allowed to be worked honestly. A sort of cynicism has developed against the judicial system resulting in continuous tirade about the efficacy of the system. It is a bad omen.

Kudos Vasudeva



A crusader for public cause, an indomitable but affable person, with utmost courage, Mr. S. Vasudeva, an Advocate from Bangalore, requires to be congratulated. Mr. Vasudeva has personally presented several public interest litigations before the High Court of Karnataka and they are pending. However, the one of the earlier writ Petitions filed by Mr. Vasudeva challenging the validity of acquisitions of prime urban land by M/s Revajeetu Enterprises in utter violation of law was recently allowed by the Supreme Court. Considering the importance of the valuable land and the personalities claiming interest in that it required a Herculean effort on the part of Mr. Vasudeva to agitate the matter before all the Courts. Needless to state that his efforts have ultimately borne fruit when the Apex Court in the land upheld his contention.

When we criticise judiciary in effect we will criticise ourselves. Don't decry a system at least till such time you develop a better alternative.

Law is a most important cementing force which can help maintenance of national unity and integrity. The system can be more effective in releasing the shackles of the feudal system and bring about social justice. In the absence of the application of the Rule of Law the whole society degenerates into a farce. Lok Adalats and other such Forums are no substitution to a strong legal system. The Lawyer is a most potential instrument against the violation of Rule of Law and the Bar is competent enough to secure justice to all. To prevent anarchy every member of the legal fraternity must support the system.

This was the appeal of Mr. Justice M. N. Venkatachalaiah to the Lawyers who had assembled in the Banquet Hall of Vidhana Soudha in the function organised by the AAB to felicitate the Chief Justice of India during his visit to Bangalore. The programme lasting

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President's Assent Obtained

The Karnataka Rent Control (Retrospective Extension of Duration) Act, 1993 received the President's assent on 30-3-93. Consequently the principal Act shall be deemed never to have expired and its provisions stand extended up to 31-12-1997. It may be recalled that the principal Act had expired on 31-12-92.

"Every law is an evil, for every law is an infraction of Liberty..."
—J. Bentham

Retrograde Step

Even though the Advocates Act was enacted in 1961 the Union Government is yet to publish the required notification in the official Gazette to bring into force Section-30 of the Act which entitles the Advocates to practice law throughout the Indian territory. No explicit reasons are forthcoming in this regard. Notwithstanding the various agitations and insistence of the Supreme Court of India in this regard the Union Government is only observing stoic silence. It is a very unfortunate situation which requires protest in strongest terms.

Notwithstanding the inexplicable inaction over three decades to bring into force Section - 30 of the Advocates Act a move was set afoot to amend the said section by the introduction in Rajya Sabha of the Advocates (2nd Amendment) Bill, 1992 on 21-12-92 by the Union Minister for Law, Justice & Company Affairs through which the words "and any other law for the time being in force" is sought to be incorporated in Section-30 of the Act. The resultant position would be that the Advocate whose name is entered in any State Bar Council's Roll shall be entitled as of right to practice throughout the territories of India subject to the provisions of the Act (as has been done at present) and any other law for the time being in force (sought to be incorporated in Section-30 by amending the section). The proposed amendment drastically curtails the entitlement of an Advocate as of his right to represent litigants before the Courts, Tribunals and Quasi-judicial Authorities. Further the proposed amendment will

also restrict the area of practice to any particular State where the lawyer has enrolled himself as an Advocate. Needless to state that if the proposed amendment is adopted it will reduce the choice of the litigant to enlist the services of an Advocate depending upon the need. Further the amendment is bound to encourage parochialism in judicial system. India being basically a unitary State cannot encourage the parochial tendencies except at the cost of its unity. The Indian judicial system with its cherished background is a single entity and it cannot afford to function otherwise.

Ultimately judiciary in any civilised society is meant to subserve the cause of litigants by functioning as an impartial arbiter in resolving disputes. Lawyers are essentially a part of this system. In all judicial systems of the world they have an important role to play. The responsibility of lawyers increase particularly when in a country like India majority of the people are uneducated or not conversant with the judicial process. It is in this background the litigant should have the fullest freedom to choose his own lawyer in whom he can repose confidence and who in his esteem is best suited to get him justice. In the guise of amending (regulating) the Advocates Act the rights which are already vested in the litigants cannot be allowed to be taken away by the State.

Needless to state that the proposal to amend the Act is an ill advised exercise and it should be abandoned forthwith. It is in this

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Winding up of Companies

Udaya Holla, Advocate

(from the last issue)

order shall have the effect of discharging all the officers of the company including its directors. The official liquidator will step into the shoes of the directors of the company and shall be in charge of liquidation of the company. All the properties and effects of the company shall be deemed to be in the custody of the court as on the date of the order of winding up of the company and the liquidator will take possession of the properties and assets of the company and after realisation of all the assets of the company shall pay all the creditors and the balance, if any, shall be distributed amongst the contributors viz., shareholders of the company.

On a winding up order being passed, the suits and other legal proceedings filed against a company get stayed and can be proceeded only with the leave of the Company Court and further that Court shall have the power to dispose of any suit or legal proceeding by or against the company. This enables one High Court which is the Company Court to transfer to itself a suit or legal proceedings by or against the company from another High Court. In the United Provinces Commercial Corporation case [1983 (53) Comp. Case 441 (Cal)] Calcutta High Court which was the winding up court transferred to itself suits pending in Delhi High Court. Similarly in *Re Timber (P) Ltd.* [1981 (51) Comp. Case 18 (P & H)] Punjab & Haryana High Court, which was the Company Court, transferred to itself an arbitration proceeding pending in Jammu & Kashmir High Court.

On a winding up order being passed within 21 days thereafter the directors are required to file with the official liquidator a statement of

affairs of the company containing the assets of the company, its debts and liabilities and other particulars specified in Sec. 454. This is stipulated in order to help the official liquidator realise the assets of the company.

After the winding up order is passed the Court has the power to stay the winding up order under Section 466. In fact, this is one provision which can be resorted to revive a company which is directed to be wound up. Our High Court in the case of *UB Purohit Vs. Gadag & Jambhuvewara* permanently stayed winding up of a cement company which was resolved to be voluntarily wound up and which was in fact in the process of voluntary liquidation.

Section 582 of the Companies Act defines an unregistered company. The said section stipulates that unregistered company shall not include Railway company or a company registered under the present Act or under the provisions of the previous company law and shall include any partnership or company or association of more than 7 members. Section 583 specifies that unregistered company may be wound up by the Court: i) if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs; or ii) unable to pay its debts; or iii) if the Court is of the opinion that it is just and equitable that the company should be wound up.

Section 583 (5) provides deeming provision as provided under Section 434 of the Companies Act.

Section 584 of the Act specifies a body corporate incorporated outside India and which has been carrying on business in India can be wound up as unregistered company if it ceases to carry on

(to be continued)

Humour in Courts

□ An Advocate was seeking adjournment from the Family Court Judge.

Lawyer: As my senior wants to argue this IA the case may be adjourned, Your Honour.

Judge: You seem to be aged around 65 years. Then your senior must be more than 80 years old.

Lawyer: No, Your Honour. He may be around 35 years!

□ A Lawyer was seeking adjournment of the case.

Judge: You have taken a number of adjournments. It is unreasonable on your part to seek further adjournment.

Lawyer: No, Your Honour. During the last year I have taken only three adjournments. One after Summer Vacation, another after Dasara Vacation and last adjournment after Winter Vacation!

Ramnavami Celebrations

On 1-4-93 Ramnavami was celebrated with religious fervour and gaiety in the Mayo Hall Unit of the Advocates Association. On 2-4-93 the celebration was held in the City Unit of the AAB. Justice N. Y. Hanumanthappa was the Chief Guest on both the occasions.

Lawyer Shot dead

On 11-3-93 a three member gang came in a Motorcycle and attacked C. V. Betageri (45), an Advocate of Gadag, with sickles & revolver. Mr. Betageri ran for his life to a nearby hospital. But the assailants pursued him and shot him dead. According to the Police previous enmity seems to be the cause.

Need to Create Special Fund

In a decision rendered on 8-3-93 the Kerala High Court has suggested that the State Government may create a fund to provide compensation to victims of criminal offences. While ordering payment of compensation of Rs.25,000 to the mother of a 14 year old boy who died of electrocution by contact with a live wire put in water for fishing Justice Chettur Sankaran Nair said that the criminal justice system is no longer penal justice alone but it is restitutive justice too. The Court felt that Section 357 CrPC and Section 5 of the Probation of Offenders Act, have not been effectively implemented by majority of the trial Courts in spite of positive directions by the Supreme Court.

Courts deserted

As per the call given by the Bar Council of India Lawyers in Bangalore observed "cease work" on 19-3-93 by abstaining from attending the Courts in protest against the proposal to amend Section-30 of the Advocates Act, 1961. Reports received from almost all centres in Karnataka indicate that the boycott was total.

Appointments

□ Sri R. G. Vaidyanatha has taken over as the new Registrar General of the High Court of Karnataka with effect from 22-2-93. Sri Pathri Basavana Gaud has been posted as the Registrar (vigilance) in the High Court of Karnataka the vacancy caused by the appointment of Sri R. G. Vaidyanatha as the Registrar General.

□ Mr. H. Puttaswamy, Advocate, Bangalore, was recently appointed as the Official Receiver. He took over charge of the post on 1-4-93.

Munsiff & JMFC Suspended

Recently the High Court has placed Mr. Shankar Gulli, Munsiff & JMFC., Mulbagal (Kolar Dist.), under suspension pending enquiry. This action was necessitated on account of the complaints received against the Judicial Officer that he was inducing and accepting graft from the Lawyers and litigants either to give favourable decision or to delay the proceedings.

Prosecutor Trapped

During the fourth week of March 93 Public Prosecutor of Srinivasapur (Kolar Dist.) was caught accepting gratification of Rs. 100 to show favour to an accused. The Lokayukta has registered a case against the Public Prosecutor.

News Spectrum

Ms. Eronica Bland registered a claim against her employer claiming damages for allowing other colleagues to smoke in the work place. It was her case that she was a non-smoker but by inhaling the smoke spewn by other smokers in the work place she became a passive smoker. A British Court recently awarded 15,000 Pounds as damages to Ms. Bland.

Retrograde Step

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perspective the Lawyers, the litigants and all those who are concerned about the health of the judicial system should unitedly oppose the move (not necessarily by boycotting the Courts) by resorting to all democratic norms. As though a sequel to the latest all India agitation of the lawyers Union Minister for State for law, Justice & Company Affairs reportedly made a statement in Gulbarga to the effect that the Union Government is not keen on getting the Bill adopted at all costs. This rethinking by the Government is a step in the right direction and it should be the endeavour of all the concerned to see that the retrograde step is retraced at the earliest.

Views & Vignettes

□ Your President has an inimitable style of his own. When he came to me to accept the felicitation I was reluctant. I had to accede to his request on the threat of my expulsion from the Association membership.

— Justice M. N. Venkatachalaiah, while addressing in the recently held function of the AAB to felicitate him.

□ Bar Associations have been Politicised and the legal profession has become the handmade of vested interests. Adjournments are sought on per se invalid grounds. Interlocutory matters consume the valuable time of the courts. Bar Council is taking a lenient view of the complaints received by it. There has been a general decline in the professional standards.

— Justice K. A. Swamy, while speaking in the recently held Bar organisations' Officers Conference at Bangalore.

□ If the Lawyers seek adjournments on invalid grounds the Courts are liberal in acceding to such requests. The higher judiciary comes in the way of the Bar Council taking stringent action against the errant members by finding fault with the procedural irregularities.

— Sri B. V. Acharya, Advocate General, in response to Justice K. A. Swami's speech.

□ Your President Mr. Subba Reddy was called upon to deliver welcome speech. However, he has created a controversy (alluding to the demand for setting up the Bench of the Supreme Court in South India) while welcoming the honoured guest.

— Fali S. Nariman, Senior Advocate, while presiding over the inaugural function of the Bar Organisations' Officers Conference at Bangalore.

MISCELLANY

□ On 25-2-93 Mr. K. Natarajan & Mr. D. R. Sathyanarayana Iyer, Advocates, shifted their law chamber to No. 3, 1st Floor (Next to Devi Theatre), 5th Main Road, Okalipuram, Sree Ramapuram, Bangalore - 560 021.

□ With effect from 24-3-93 Mr. P. P. Muthanna Associates shifted their law chamber to F F-1, Business Point, No. 137, Brigade Road, Bangalore-560 025.

□ Mr. N. P. Amruthesh, Advocate & Dr. Sunitha Amruthesh deserve a word of appreciation for donating an inward letters collection board in the High Court Unit.

News Focus

□ On 11-3-93 Mr. Fali S. Nariman, Senior Advocate, Supreme Court of India addressed the members of AAB in the High Court Unit.

□ On 12-3-93 Justice M.N. Venkatachalaiah, CJI, addressed the members of AAB in the City Unit. Mr. M. Veerappa Moily, the Chief Minister of Karnataka, presided.

□ On 20-3-93 Sri Chowdareddy, Karnataka Minister for Housing & Urban Development inaugurated a symposium sponsored by AAB concerning the problems faced by the various Municipal Corporations in the State and particularly in reference to Bangalore City Corporation. Sri K. Lakkanna, Mayor of BCC and Sri P. D. Shenoy, Commissioner, BCC were the other speakers.

□ On 20-3-93 a Yakshagana performance 'Mohini Bhasmasura' was given by Sri Gundmi Raghuram & Party of Yaksharanjini in the City Auditorium of AAB.

□ On 8-4-93 a programme of Yoga & Bharathanatyam was given by the Universal Cultural Association, Bangalore in the city unit of AAB.

State Level Conference

On 21-3-93 a State Level Conference of the Karnataka Prosecuting Officers Association was held at Bangalore. Around 300 delegates from the Directorate of Prosecutors and the Public Prosecutors and Assistant Public Prosecutors attended the Conference.

Athletic Meet

In connection with the Annual Day celebrations of the Advocates Association, Bangalore, an athletic meet for Lawyers was held at Bangalore on 9-4-93.

Don't Criticise the System

(from the page No. 1)

slightly over an hour was marked by the spontaneous affection bestowed on Justice M. N. Venkatachalaiah by all the concerned.

The colourful function was presided over by Justice K. A. Swami, the Acting Chief Justice of Karnataka High Court. Mr. Veerappa Moily, the Hon'ble Chief Minister of Karnataka and the chief guest of the function hailed the elevation of Mr. Justice M. N. Venkatachalaiah as the CJI as a good augury for the country as a whole. Apart from being learned the fact that he hails from Karnataka should be a matter of gratification for the people of the State claimed Mr. Moily. The Chief Minister also announced that system of granting stipend to young Lawyers will be reintroduced with effect from April 93. The programme commenced with the melodious invocation rendered by the National Award winner Mr. Shimoga Subbanna. Mr. K. N. Subba Reddy, President of AAB welcomed the guests. Mr. G. Vijayakumar, General Secretary of the Association proposed the vote of thanks. The former General Secretary Lion. N. S. S. Gupta compered the programme.

Periscope

□ **Disciplining the Disciplinarians** : Politicians think that while they are entitled to preach others they need not follow what they preach. To a large extent this is also true in the case of Police Officers. When that be so how can the members of the Disciplinary Committee of the All India Bar Council be subjected to any discipline? On 13-3-93 four Committees were to conduct proceedings in Bangalore. The time was differently fixed in respect of each of the Committees between 9 a.m. and 2 p.m. Hundreds of Lawyers and litigants waited upto 3 p.m. anxiously waiting for the arrival of the members of the Disciplinary Committees. But the members were themselves said to be busy in the Conference of the office bearers of Bar Councils having specifically come over to participate in the disciplinary proceedings. What if the lawyers and litigants wait indefinitely?

□ **Silver Plate a Silver Lining** : Recently the case of a missing silver plate from the AAB office is reported. This means that AAB owned a silver plate. Though it appears to be strange in these days an Advocates Association owning a silver plate as to when it was acquired, at what cost and for what purpose remains a mystery. Will the Association take the trouble of notifying the members about particulars apart from the details of the loss of membership subscription which was collected by a former staff member of the Association but did not account for it?

- Insider

Credibility of the Institution at Stake

(from page No. 1)

Justice K. A. Swami, the Acting Chief Justice of Karnataka, in his presidential address catalogued the various facets of the judicial system, functioning of the Bar Associations, the role of Lawyers and the providing of legal education and the like. He was frank and forthright in his views on all the matters he touched upon during the course of his speech.

In the beginning Mr. Lalit Bhasin, Dr. N. R. Madhava Menon and Mr. K. N. Subba Reddy welcomed the guests and the delegates. Mr. B. V. Acharya, the Advocate-General of Karnataka also addressed the participants. The function concluded with the vote of thanks proposed by Mr. Bharath, the Joint-General Secretary of the Bar Association of India.

Literary Union

Under the auspices of the BLU 89th birthday of the National poet, Karnataka Rathna Dr. K.V. Puttappa was celebrated on 3-4-93. Justice A. J. Sadashiva presided over the function. Mr. C.H. Hanumantharaya, Advocate, was the chief guest. Noted Gamaka Vidushi Smt. Shakunthala Bai recited the selected portions of Dr. Kuvempu's 'Sri Ramayana Darshanam'. Noted writer Sri Aa. Ra. Mitra spoke about the Book 'Sri Ramayana Darshanam'.

Obituary

□ L. Ahmad Ali Khan, a former Judge of the High Court of Karnataka died at Bangalore on 10-3-93.

□ On 12-3-93 C. N. Ramamurthy, Advocate, passed away at Bangalore.