

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 6

April 1994

Part I

## Communique Is The Forerunner And We Are Proud Of It K. H. Ranganath

Bangalore, April 7th : In the temple called the Courts, Judges are the Idols. The High priests called the Lawyers have to invoke the attention of the Idols for getting justice to the Bhaktas called the Litigants. The role of a lawyer is onerous in this regard & it requires hard work, presentation & pursuation on the part of the lawyer in discharging his professional obligation. These observations were made by Justice S. B. Majmudar while inaugurating the 5th Anniversary Celebrations of 'Communique' at Bangalore.

Justice Majmudar lauded the role of Lahari in the field of Socio-cultural activities & stated that he was particularly impressed by the publication of Communique during the last five years. Stressing the importance of the news letter, which can serve as a medium for interaction Justice Majmudar wished that the Communique will celebrate Silver Jubilee in due course.

Justice Majmudar held the audience in rapt attention by his erudite & witty speech for almost half an hour. First part of his speech concerned the working of the Courts & the role of Judges & Lawyers in the process of dispensation of justice. The later part devoted to mentioning of several anecdotes. In the end Justice Majmudar stressed the importance of Lok Adalats. While, according to him there can be victors and vanquished in the regularly fought litigation there is no such concept in the functioning of Lok Adalats since it is based on the

concept of providing justice for all. His Lordship quoted several stanzas from the Sanskrit & quadruplets from Urdu in his masterly dealing of the subject. He advised the youngsters to do hardwork and self reliant instead of heavily depending on others. He concluded his speech by drawing comparison between the young lawyers and 'Chataka Pakshi' which waits for the rains to swallow pristine rain water rather than drink the ground water.

Hon'ble Mr. K. H. Ranganath, Minister for Public Works, who presided over the function released the Souvenir brought out to mark the occasion. He was all in praise for the role played by Lahari and its publication Communique. He felt that where the Government is unable to provide adequate infrastructure to the courts functioning in Taluka level such as library etc., Communique should try to fill the void. In this view of the matter he felt that Communique is doing good service and Karnataka should be proud of this positive attempt.

In the beginning P. G. C. Chengappa, President of Lahari, welcomed the guests. At the end J. Jeshtmal, on behalf of the Commemorative Committee, proposed vote of thanks. As a part of the celebrations cultural events were presented in the form of Bharatanatyam by Nandini K. Mehta, Singing of popular songs by the National award winner Shimoga Subbanna & Swaralahari under the direction of Mahantesh Hosmath.

## Humour in Courts

□ A British lawyer was arguing a case before a British Judge in the Madras High Court before independence. Since the arguments were lengthy and unimpressive the Judge wanted to discourage the lawyer from further arguing.

Judge : Mr. Counsel, your arguments enter from one ear and finding exit from the other.

Lawyer : Yes My Lord, there must be something in between to hold the arguments !

□ Before independence there were Judges recruited from the ICS cadre and amongst Barristers. Mohammed Ali Jinnah who had a fairly good practise at Bombay before independence, was tired of the ICS Judges. In a function he gave vent to his feelings by calling the ICS Judges useless. On the next day news papers prominently carried the item. To his ill luck, Jinnah had to appear before a ICS Judge on that date and the Judge had read the news item. After hearing the arguments of Jinnah on merits the Judge could not restrain himself from raising the question of Mr. Jinnah's remarks made about the ICS Judges the previous day.

Judge : Mr. Jinnah, I have surprised to read about your remarks about ICS Judges.

Jinnah : Yes, My Lord. I had your Lordship also in my mind while making the remarks !  
Courtesy : Justice S. B. Majmudar.

**Wish You Happy  
UGADI**

## New CJs Appointed

The President has by a notification made the following judicial appointments with effect from April 12, 1994. K. L. Rao as Chief Justice, Delhi High Court; G. C. Mittal as Chief Justice, Rajasthan High Court; K. C. Agarwal as Chief Justice, Calcutta High Court; A. M. Bhattacharjee as Chief Justice, Bombay High Court & S. V. Manohar as Chief Justice, Kerala High Court.

## H. C. Judges Shuffled

The President, in consultation with the CJI, has ordered transfer of 50 High Court Judges belonging to 16 High Courts.

Three Judges of Karnataka High Court i.e., Justice N. Y. Hanumanthappa (A. P. High Court) Justice C. Shivappa & Justice Shivaraj Patil have been transferred to the High Court of Madras.

Justice P. Krishna Moorthy (Kerala), Justice J. E. Prasad (A. P.), Justice M. F. Saldanha (Bombay) and Justice H. N. Tilhari (Allahabad) have been transferred to Karnataka High Court.

## Office Bearers

In the Annual General Body meeting of the Bangalore Literary Union held on 27-3-94 the following office bearers were elected :

President: S. Srinivasa Murthy, Secretary : C. Prakash, Treasurer; Sampige Mahadeva Murthy, Executive Committee Members: M. Shantha, V. Jayalakshmi, D.C. Ravindra, K.L. Ratnakar & M. D. Basavanna.



*Judges are idols ; the high priests (lawyers) have to move the idols by invocation for the benefit of worshippers (litigants).* Justice S. B. Majmudar

## Need for Work Efficiency

It is evident that not much attention is bestowed on the functioning of the High Court Office. Virtually, there appears to be no control over the functioning of the office staff. Memos filed by the Advocates for having the cases listed before the Court on specific dates receive little attention. Somebody has to be behind the Memo in case the case has to be listed on the required date.

With regard to the listing of the cases for hearing there appears to be no attempt to list the older cases. Often, the case of later origin are listed for hearing and many a times they get disposed even while the older cases will be rotten in the office. Grant of certified copies is another aspect where unusual delay takes place. Even when more than one lawyer is applied for the certified copies of the same Judgments/Orders it is not simultaneously prepared & given to the concerned lawyers.

Sending of process is another field where delay is taking place. The process is not despatched the moment it is furnished. Similarly, the acknowledgments received are also not brought into the case file without delay. In the scrutiny of Appeals the office is raising unnecessary objections in the matter of furnishing the typed copies of the impugned Orders/Judgments even where the certified copies are prepared after taking xerox of the typed Orders/Judgments. This is done on the basis that the certified copies are not legible. If that be so, action has to be taken on the concerned Courts/Tribunals for granting such illegible certified copies. Secondly, if the Judges cannot read the

certified copies the office cannot expect the lawyers to read them and prepare the typed copies for the benefit of the judges.

Previously, the Registrar was the administrative head of the High Court office. However, at present a separate Registrar is there to look after the functioning of the High Court office & naturally one can reasonably expect that the working efficiency of the office staff could be more effectively supervised by the Registrar. However, there is no such improvement. But the standard of work efficiency is deteriorating day by day. Will the authorities look into these aspects and bring about the desired change?

### Campus Watch

During Feb 1994 Justice M.N. Venkatachalaiah, Chief Justice of India, inaugurated a two day intercollegiate level cultural festival 'Aakarshan' organised by the University Law College, Bangalore. Dr. Jeevaraj Alva was the chief guest. Students from various colleges in Bangalore participated in the festival.

### Consumer Forum

The pecuniary jurisdiction of a District Forum is Rs. 5 lakhs; that of a State Commission is Rs. 20 lakhs and the National Commission will deal with the matters involving more than Rs. 20 lakhs.

### Hiremath Retires

Justice D. P. Hiremath retired as a Judge of the Karnataka High Court on 18-3-94. Chairman, Karnataka State Bar Council, read the farewell speech in Court Hall No. 1 of the High Court. On the same day AAB had also arranged a farewell function in honour of the retiring judge.

## THE SCAM

(Its Genesis and causes)

C. B. Srinivasan. LL.B., Advocate

(from the last issue)

from nowhere, invest it in share market and save phase in time to redeliver the Banker's Receipt.

In ordinary day - to - day banking, there are instances of gain made with no investments, or at any rate, somebody else's investments. The Bank opens in the morning. The Cashier quietly passes a bundle of notes to a comrade outside the bank. That man uses the money in a deal so as to have his returns quickly. As the Cashier gets ready to close the counter in the evening the money is re-paid. The Cashier gets his commission. The practice is risky. But, in risky deals the players are prompt. Honesty is their best policy! So also, the banker's receipt is the broker's gold bond. In the share market the adventurer who quotes high and pools up a wide net is a Bull. He who plays his cards close to his chests and the serious investment of his own money, waiting for a fall in the market for him to close his hands in gathering the shares he is the Bear.

The Bull - the ordinary one has the prowess to quote high the price of the shares and also overbuy them. In the share market the primary source is what a company releases for public issue. It is a fair deal. Once the issue closes the game starts. Those who are thrust for money rush to sell for any obvious gain. Those who are missed the primary gain to the secondary they Stock Exchange - to buy also for an obvious gain. The broker who was no investor all along would show the charts of the performance of the company to both.

"The company is flourishing. The dividends are likely to be high. Even investments

likely to be good," he would tell the buyer. "The company had its hey day. The weather is uncertain. For you, it is now or never," he would tell the seller.

Under such forces the market maintains its equilibrium. But, when slop money brought out of pseudo securities, and at no time personal stakes are pumped into the share market all indices go awry. The bank-man wants to buy; the bureaucrat wants to buy, broker wants to buy. The consequence is the managing director of E. D. Bank during the 50's used valuable securities of another; the brokers of 90's used a scrap of paper (BR) as security. May be as the temptation rises high for his pressing obligation the broker also fabricates and forges a Banker's Receipt.

### The Mob Frenzy

Be it chit funds, lottery or other games the capital markets in the country is a bee hive. It is no haven for the rich. The middle class, the lower middle class, the upper middle class all have a distaste for low yielding investments. There is a scramble for quick profit, large profit and tax free profit. Thus, statistically speaking, the investment in the share market which was a mild Rs. 20,000 crores during 80's rose to Rs. 60,000 crores at turn of the decade. The first year of 90's saw an investment of Rs. 1,25,000 crores. By the D. day when the scam broke out the investment was Rs. 2,40,000 crores!

The broker takes the time by the forelock. He is finding the flow of money from banks, mutual funds, portfolio management schemes, PSU Bonds, individual investors and thus catchy

(to be continued)



## Article 356 - Scope of Judicial Review

Justice (Retd.) **M. Rama Jois**

(from the last issue)

been answered in the negative by the Supreme Court repeatedly but still the question is being raised again & again. Therefore it has become necessary to refer to the Judgments of the Supreme Court.

At the outset, it should be pointed out that those raising such objection do not realise that such an objection means even if the power is exercised malafide and or for collateral purpose people should suffer. Is this the type of political justice, ensured to the people by the Constitution? Further, it should also be pointed out that judiciary is the safety valve for airing the grievances and if it were to be closed consequences could be disastrous. However, the truth is the Judicial review is available.

Under the scheme of our Constitution the sovereign power of the Union of India and the States are distributed among the three organs of the State namely: (1) The Legislature, (2) The Executive & (3) The Judiciary. The question as to whether there could be any exercise of power under the Constitution by the Legislature or the Executive which cannot be a subject matter of judicial review was considered by a eleven judge Bench of the Supreme Court in the case of **MADHAVA RAO SCINDHIA Vs UNION OF INDIA** (A.I.R. 1971 S.C. 530). The Supreme Court said thus :-

"The functions of the State are classified as Legislative, Judicial and Executive; the executive function is the residue which does not fall within the other two functions. Constitutional mechanism in a democratic polity does not contemplate existence of any function which may qua the citizens be designated as political and orders

made in exercise whereof are not liable to be tested for their validity before the lawfully constituted Courts".

In the above case the Supreme Court further ruled that if the power is exercised for collateral purpose the same is liable to be struck down by the Courts. The relevant portion of the judgment is at para 271 at page 618. It reads :-

"The impugned orders are also unconstitutional for the reason that the power conferred under Article 366 (22) is exercised for a collateral purpose... Exercise of a Constitutional power for collateral reasons has been considered by this court in several decisions as a fraud on that power".

Again at para 276, the Supreme Court said thus :-

"There is nothing like a political power under our Constitution in the matter of relationship between the executive and the citizens. Our Constitution recognises only three powers, viz., Legislative power, the Judicial power and the Executive power. It does not recognise any other power. In our country the executive cannot exercise any sovereignty over the citizens. The legal sovereignty in this country vests with the Constitution and the political sovereignty is with the people of this country. The executive possesses no sovereignty. There is no analogy between our President and the British Crown. The President is a creature of the Constitution. He can only act in accordance with the Constitution. It is true that some aspect of the executive power of the Government is for the sake of convenience called political power but it is none-the-less an executive power derived from the Constitution."

(to be continued)

## Free Legal-aid Scheme Inaugurated

The Lawyers fraternity was held in high esteem by the Indian society before the attainment of independence and even thereafter. In recent time we do not command the same level of respect and a section of the society thinks that advocates are unwanted evil. Even the legislators started to lookdown lawyers by passing legislation such as the Karnataka Land Reforms Act and the Family Courts Act etc. which prohibited lawyers from representing parties. It is another thing the Supreme Court struckdown the provision of the Karnataka Land Reforms Act providing for prohibition of lawyers from representing parties before the Land Tribunals. We need introspection as to the steady decline of the advocates' image in the Society. These are the observations of Sri. B.V. Acharya, Advocate General of Karnataka, made during the inauguration of the Free Legal-aid Scheme held under the auspices of Adhivakta Parishad, Bangalore on 25-3-94.

While mentioning that advocacy is not business but a service Sri Acharya called for the restoration of the past glory of the profession by providing competent service to the clientele and free legal aid to the needy. Cautioning that free legal aid should not mean rendering of service by inexperienced lawyers he appealed that experienced and competent lawyers must come forward to discharge this onerous obligation. Commenting that the legal-aid provided by the statutory bodies like the Karnataka Legal-aid Board are wholly inadequate and insufficient Sri Acharya called upon the members of Adhivakta Parishad to fill up the lacuna and provide genuine legal-aid to the poor and needy. He also announced that it will be too glad for him to attend the first brief entrusted

to him by the Adhivakta Parishad provided the State Govt. is not a party to such proceeding.

Former Judge of the Karnataka High Court Sri S. R. Rajashekar Murthy, who presided over the function, gave invaluable suggestions & offered to help needy persons by personal contributions towards Court fee etc. Former Judge of the Karnataka High Court Sri P. P. Bopanna also released a beautiful Souvenir published in connection with the recent 2nd National Conference of the Adhivakta Parishad held at Bangalore.

## Awards for Legal Luminaries

In a function held at New Delhi on 27-3-94 the International Bar Association conferred "Awards of recognition to living legends of law" on 11 Indian legal luminaries. Justice A. M. Ahmadi, retired Justice Ratnavel Pandian and Union Law Minister H. R. Bhadracharya were among those present on the occasion.

The persons honoured by the IBA are former Chief Justice of India Sri R.S. Pathak, H.M. Seervoy, A.K. Sen, N.A. Palkhiwala, S. Govinda Swaminathan, H.L. Sibal, J. B. Dadachandji, Subrata Roy Chaudhary, Justice R.S. Narula and Justice Leila Seth & the Director of National Law School of India, Bangalore, N.R. Madhava Menon.

## Attempt to Escape

High drama was created on 29-3-94 in the Court premises of Munsiff & JMFC, Hunsur. The JMFC on that day convicted one Nadeem and sentenced him to undergo punishment of three years R I & pay a fine of Rs. 10,000. While the convict was being escorted out of the Court he put aside the Head Constable and the Constable escorting him and started running. After a long chase the convict was apprehended & brought back to the Court premises.



### Vacation Bench

During Summer vacation the Chief Justice has constituted vacation Benches to entertain urgent matters. From 25.4.94 to 8.5.94 Justice Rajendra Babu and Justice Sadashiva constitute the Bench. From 9-5-94 to 22-5-94 Justice Rajendra Babu and Justice Kumar Rajaratnam constitute the Bench. From 23.5.94 to 29.5.94 Justice Mirdhe & Justice Raveendran constitute the Bench. After the completion of the Division Bench matters the Judges will sit singly.

### Miscellany

- With effect from 1.1.94 S. C. Bheemaraddi, Advocate shifted his chamber from J-17, 1st cross, Pipeline, Ses-hadripuram, Bangalore-20 to his own house at No 7/1, Laxmi Nivas, Kumara Park East, West Park Road, Bangalore-560 001 Phone; 2281970.
- On 25.3.94 T. H. Chikka-venkate Gowda & K. Srinivasa, Advocates, opened their law chamber at No. 618, 3rd Floor, Rajeswari Market, Avenue Road, Bangalore-2.
- During March 94 Mr. V. Rangaramu, Advocate from Bangalore, has been designated as the Government of India Notary.
- During this month Lahari foundation provided Medical assistance to Mr Michael under Mr. D. Rajashekar, Advocates, from Mayo Hall Unit.

### Obituary

- On 12-3-94 P. N. Sripada Rao, Advocate, passed away at Bangalore.
- On 22-3-94 T. M. Bharmiah Shayar, Advocate, passed away at Bangalore.
- On 27-3-94 S. P. Babu, Advocate, passed away at Bangalore.

### News Focus

□ On 15.3.94 AAB had organised a function to bid farewell to six judges of High Court of Karnataka who were transferred to various High Courts.

□ On 20.3.94 a one day Seminar on "Judges' case - a critique" under the auspices of the Karnataka State Commission of Jurists was held at Bangalore.

□ On 24.3.94 Justice Thirath Singh Thakur of J & K High Court on transfer was sworn to as a Judge of the High Court of Karnataka.

□ On 26.3.94 under the auspices of the AAB a programme to discuss Karnataka Budget 1994-95 was held at the AAB Auditorium. Mr. S. Narayana, Advocate, spoke on the occasion.

□ On 7.4.94 Mr. R. Ramalingam, IPS, Director General of Police, Bangalore addressed the members of AAB, High Court Unit, on the topic "Crime & Role of Police Force in Karnataka".

□ On 8.4.94 a Blood Donation Camp was inaugurated by Justice S. B. Majumdar, Chief Justice of the High Court of Karnataka, organised by the Lions, Lioness & Leo Clubs of Bangalore Jayamahal, in AAB, High Court Unit.

□ On 12.4.94 Mr. K. M. Anees Ul Haq, Director, Bangalore Doordarshan, addressed the members of AAB, High Court Unit, on the topic "Influence of Zee, Star and other T.V. programmes on the Society".

### Miscellany

- On 18-4-94 P. Ramalingaiah, Advocate, opened his new law chamber at No. 617, 1st Floor, Rajeswari Market, Avenue Road, Bangalore-2.

### Readers Write....

□ T. N. Raghupathy, Advocate, Bangalore-20

It looks as though the article by Justice M. Rama Jois on Article 356 of the Constitution of India will never end. Now that the Constitution Bench of Supreme Court has pronounced upon the scope of judicial review touching Article 356. I request you to conclude the article in the next issue of Lahari by giving the gist of the remaining portion of the article (of course with the permission of the author).

According to me this article is consuming much of the valuable and limited space available in the news letter.

□ Ravi B. Naik, Advocate, Bangalore-52

It is common phenomenon in the desire of individual to infuse his thoughts and ideas into the mind and heart of masses and become a leader. Before any such step is taken one should realise its impact on the society and its adverse effect. Justice Rama Jois, utilising his past gained stature in the society and judiciary, has now been sowing seeds of R.S.S. which contributed to the demolition of Babri Masjid and in rubbing salt to the injury caused by the British i.e. dividing the nation while parting.

Everyone will agree that unity is strength. Even now, it is not too late for the two nations to unite and exhibit its strength instead of bowing to super power. This could be achieved only if people like Justice Rama Jois stop sowing seeds of communal disharmony under the guise of interpretation of the Constitution of India.

Note : This article was presented by the author in the recently concluded seminar held under the auspices

of Karnataka Commission of Jurists. It is felt that the publication of the article cannot be abruptly ended on the ground that the Supreme Court has pronounced upon the scope of judicial review touching Article 356. However the letters received from our readers are published to give vent to their personal reaction. -Editor

### K.T.C.A. Seminar

On 16-4-94 Sri K.N. Subba Reddy, president of AAB, inaugurated a State level seminar on "Compulsory Audit under Sales Tax Act and levy of Sales Tax on imported Raw Silk Yarn" sponsored by the Karnataka Tax Consultants Association at Bangalore. Mr. S. K. Nahar, President, KTCA, welcomed the guests and the participants. The guest speakers in the seminar were Sri B. M. Menasinkai, M.L.C., Sri K. Anandam President, FKCCI, Sri Y. H. Venkappa, President, Silk Weavers Association, Sri S. Narayana, Sri E. R. Indra Kumar, Advocates and Sri D.G. Raghavendra, Addl. Commissioner of Commercial Taxes. Sri Subbarangaiah and Sri V. K. Ramaiah also spoke on behalf of the weavers and at the end Mr. T. P. Gandhi, Secretary, KTCA, proposed vote of thanks.

### Around the Courts

- By a Judgment dated 29-3-94 the Supreme Court (Justice S. A. Agarwal & Justice R. M. Sahay) held that Sri Narbahadur Bhandari, the present Chief Minister of Sikkim, had no powers to withdraw sanction given to the CBI to take up investigation of a case given to it by his predecessor in office Kazi Lhendup Dorji during his tenure. The Court ruled that the Chief Minister had no power to withdraw sanction retrospectively. Mr. Dorji had challenged such withdrawal of sanction by Mr. Bhandari.