

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 1

Justice Pendse Resigns

Expressing resentment over appointment of his juniors as the Supreme Court Judges Justice Madhav Laxman Pendse, the Chief Justice of Karnataka High Court, resigned his post.

Justice Hakeem Acting C.J.

Justice S.A. Hakeem, the Senior most Judge, has taken over as the Acting Chief Justice of the High Court of Karnataka consequent upon the acceptance of the resignation of the Chief Justice M.L. Pendse.

SC Gets New Judges

The President has appointed Justice M.N. Kurdekar, the Chief Justice of Punjab and Haryana High Court and Justice K.T. Thomas, the Acting Chief Justice of Kerala High Court, as the Judges of the Supreme Court of India.

Summer Vacation

Karnataka High Court and the Civil Courts in the State will be closed on account of Summer Vacation from 22.4.96 to 25.5.96

Dear readers,

This newlook Communique is the first part of the eighth year. I hope that you will appreciate the improvements made in the printing and reduced mistakes. Your valuable suggestions in respect of further improvements are awaited. Wishing you happy vacation.

*Yours sincerely,
-Editor.*

Breakdown of Law and Order in the City

The Karnataka High Court has asked the State Govt., the Director General of Police and the Bangalore City Police Commissioner to submit their explanation to the Court regarding the breakdown of law and order situation in the City of Bangalore. It has also asked them to indicate to the Court the corrective action they propose to take and to demonstrate the effectiveness thereof within a prescribed period. Taking suo motu notice of the prevailing situation in Bangalore City Justice M.F. Saldanha has directed the Registrar General to register this case as a writ petition.

In an unprecedented action of this nature the Learned Judge has referred to the recent murder of a British national in a Bangalore suburb and the fate of another British national in Bangalore and opined that these instances indicate a total breakdown of the law and order machinery in and around Bangalore.

Justice Saldanha has further referred to the unsatisfactory nature of BTS operation apart from the rude behaviour of autorickshaw drivers. Further his Lordship has noticed that there are a large number of Tempos/LCVs in the city driven by unlicensed drivers. Referring to a private survey conducted in this regard his Lordship has felt that apart from inaction regarding excess number of passengers carried by these private vehicles, harassment of the travelling public it is apparent that driving licences have been granted indiscriminately on corrupt considerations.

Justice Saldanha has also referred to the incidents of illegal selling of sandalwood trees in the city by a gang of anti-social elements which is merrily going on the basis of careful planning possibly with

the connivance of certain police officers. Referring to the disturbing feature of the working of the Police Department his Lordship has opined that with a degree of regularity good, honest and efficient police officers are transferred and or otherwise victimised to be replaced by corrupt and psychopath police officers.

Considering the blistering attack on the working of the State machinery the suo motu action has naturally attracted greater public attention. It is to be seen as to how the State Administration reacts to the situation.

Book Released

On 25-3-96 Mr. Justice J. Eshwar Prasad, released the book "Code of Civil Procedure" written by Sri S.P. Shankar, Advocate. A function organized by the AAB in the City Auditorium was presided over by Sri K.N. Subba Reddy, president of the Association.

Up to date case laws of the Supreme Court and Karnataka High Court on CPC & Civil Rules of Practice are covered. Justice S. Rajendra Babu has written the forward. The Calicobound book with 1,000 + XLVIII pages is priced Rs.440/-. Lawyers Law Book, Bangalore, has published the book.

Commonwealth Law Conference

The Canadian Bar Association is holding the Law Conference at Vancouver, British Columbia, Canada from 25th to 29th August 1996. The registration fee, Hotel deposit and the tour expenses within Canada arranged by the hosts will be around 4,000/- Canadian Dollars. The willing Advocates may contact for further information over FAX: 613 237-3726.

Tit Bits

□ M. Kishore Udupa, Son-in-law of noted Kannada movie Director Late Puttanna Kanagal, was an under trial prisoner in Bangalore Central Jail. During first week of March 96 he managed to be outside the under trial prisoners cell and a warden found him freely loitering in the jail premises. When questioned by the warden about his identity the under trial prisoner replied that he is an Advocate and had come there to meet his clients. The warden asked him to leave the jail at once. Again, he was found watching an ongoing film shooting in the jail for the second time the warden having noticed him asked to go away. Taking the queue literally the prisoner walked away to freedom in a movie style.

□ One of the Australian Cricked Test player is named Stuart "Law".

□ Sujit Somasundara, the Karnataka Ranji Trophy player, who scored 99 and 53 runs (in second innings) in the recently concluded Ranji Trophy finals against Tamil Nadu is the son of Bangalore Advocate Late Somasundara.

When their lordship asked Bacon, How many bribes he had taken
He had atleast the grace, To get very red in the face.

—Edmund C. Bentley.

New Garbs

Bofors did not merely supply 155mm Howitzers to India but also exported the terms *kickbacks* and *Quid pro quo*. Even while the media was toying with these terms perforce the terms became obsolete. Then came the *Banks scam*. This term held the field for almost 3 years when it became redundant with the invention of the term *Hawala*. With its Hindi origin Indians living outside Hindi belt were struggling to understand the full import of this term; *fodder scam* emerged from Bihar. These jargons are not only new to the Indian people but also to the legal fraternity as well. Many a times children at home bother their parents to know as to what these terms mean. The fascination for these terms has grown so much that during the 3rd week of March 1996 a *Mushaira* was held in Delhi when the writers read out stanzas on *Hawala*.

A facade of socialist raj was still in vogue when the news about Bofors appeared in India. Ofcourse, with liberalisation of economy *Banks scam*, *fodder scam* & *hawala* emerged on the scene. However it is too much to expect that the modus operandi should always be the same to achieve more or less the same objective i.e., fleecing the gullible tax payer. These happenings are explained away by the people at the helm of affairs as aberrations and when such explanation fails to dispel suspicion it becomes the *systems failure*. When crores of rupees meant for purchase of fodder for the hungry cattle are swindled away *garib rallys* are organised overnight to show that the action has backing of the poor and the downtrodden.

It is significant that each of these terms have a technical

meaning and the days are not far ahead before they find their way to the law lexicon. Once again the lawyers practising outside Hindi belt may argue that there is no need for them to understand the true meaning and import of these terms in as much as the designated courts are not functioning in their regions. However it will be prudent for the lawyers to acquire the requisite knowledge about these technical terms because there is no guarantee that for all times to come they don't have to appear before the designated courts and or such courts will not be established outside the Hindi belt. Even otherwise if some consultation is required to be made by the litigants we can't plead ignorance about these terms.

English vocabulary has been sufficiently enriched by various alien languages and Hindi language cannot lag behind without contributing its mite. In this sense the terms *hawala* & *badla* can be taken as such contribution. If the English speaking people throughout the world find any difficulty in understanding the true import of these terms they can as well come to India to acquire the knowledge and expertise. Incidentally this may give a boost to the tourist potential of our Country.

Kickbacks, *scams*, *badlas* and *hawalas* are not the iast things to happen to our economy and more and more sophisticated and mind boggling terms may appear on the horizon. Things are progressing so fast that we don't have to wait for long before we hear the new terms. Alas, when the fencing eat away the crops no one can save it. What a fall?

Judiciary and Speedy Justice

—Justice M.F. Saldanha

(continued from last issue)

The stenographers are always in short supply and the quality of most of them is terrible. They in turn complain that the machines allotted to them are hardly functioning and the quality of the stationery provided leaves much to be desired. The position in the High Court is marginally better where the condition of courtrooms is reasonably good, but when it comes to the aids available to the Judge, the handicaps are identical. If only the Government were to provide well trained and high calibre staff particularly the stenographers and efficient machines such as word-processors and computers, all of which are quite inexpensive, the delay factor would be reduced to 1/10th of what is happening at present. As far as this aspect of the matter is concerned, there is absolutely no justification for the manner in which the government is totally neglecting the needs of the judiciary. If the people's representatives are so sincere about what they profess from public platforms, I would like to see a little better budgeting and proper allocation of funds for the legitimate needs of the courts.

I refuse to accept that nothing can be done to infuse speed and efficiency into the working of the system. The Supreme Court had some time back dismissed a government appeal holding that it came within the category of fake litigation. Individuals, Institutions, public sector organisations and the State which is the largest litigant are all responsible for choking up the Courts with tonnes of unnecessary litigation. We have now reached a situation whereby the courts will have to cull out all this deadwood and insist on effective checks on such cases by imposing exemplary costs whenever they are filed. I do believe that it

would be very necessary to man the courts with a set of efficient and dynamic judicial officers because then alone can one really expect good and fast disposal. For this, the system of appointments will have to be completely overhauled, the terms and conditions of service of Judges which are among the worst in the country will have to be drastically upgraded but more importantly an atmosphere will have to be created whereby the Judges can work comfortably and free from any pressures. One will have to boldly accept that the policy of transferring higher judicial officers can only bring about total ruination of the system and that a situation will have to be created whereby the best talent from the Bar will willingly come over to the judiciary provided they are assured of good terms and conditions and a guarantee that their independence will not be encroached upon. It will also be necessary to do a realistic appraisal of the number of Judges required to cope with the existing work-load. My research indicates that we need as of now a ten-fold increase in the number of Judges at all levels. I do hope the Government will take this matter seriously.

One highly controversial area that I need to dwell on is the aspect relating to loss of precious Court time due to the absence of Judges. In the Supreme Court and the High Courts where the small number of Judges is most felt, the absence of any Judge leads to tremendous dislocation of work. Articles have been written pointing out that Judges are very often absent for reasons other than illness and unforeseen difficulties, such as when they accept invitations to attend functions, conferences and seminars or are part of goodwill delegations and lecture tours. The working of the whole court is upset as a result of the required reshuffling.

A Newcomer On Curtailing Litigation Time

Mr. Harikishore, Advocate.

With the onset of 1996 I completed a year's tenure at the Bar. While the profession proved to be alternately challenging and satisfying in a variety of ways I am sure any entrant will testify to what struck me as above all was the stragging backlog of pending cases. The resulting delay in Court proceedings some what dampened my eagerness as each time I urged the Court to expedite matters I encountered a sense of resignation that seemed to suggest that to accelerate proceedings called for intervention that was beyond the human. I am, however, convinced otherwise since the current state of affairs is almost entirely man-made, to begin with.

These very columns have carried articles by experienced and eminent members, both of the Bar and the Bench, expressing anguish at the largely avoidable tardiness in the dispensation of justice. I share their concerns in putting forth suggestions aimed at reducing the more obvious of the procedural delays at various stages in the progression of a case. It must be clarified that my observations are based on my experience and are therefore relevant to, procedures in vogue at the Lower Courts, mainly Civil Courts.

The suggested measures involve a compression of procedural time, expended so generously at present, by seeking to impose limits on the duration being granted for the determination of the many steps in the conduct of cases before the Courts. Experience, however, has shown that not only are limits prescribed in the form of guidelines or recommendations adhered to more in their breach, thus making a mockery of the stipulations themselves, as in the case of the laudable intent to decide Consumer Complaints and Appeals within a certain specified number of days; it has

not been possible to enforce even mandatory time limits.

The resolve then, to hasten the process of law has to emerge from within the Institution, and no organ of the Judiciary is better placed to translate the intention to quicker disposal of cases than the fraternity of judges. As Presiding Officers of Courts and having been invested with enormous powers of discretion it would not be beyond them to crack the whip and dictate the pace of Court proceedings. Whether it is to ensure prompt compliance with time schedules by Litigants, Court staff, Advocates or even by themselves Judges are in a vantage position to discipline the system. And they can proceed to do so without awaiting Legislative directions or sanctions. Needless to add a certain degree of objective harshness is required, which may not be entirely uncalled for, given the scenario we are now confronted with.

The single largest devourer of Court time is the culprit otherwise known by the rather respectable title, 'Service of Summons'. It would be statistically safe to assume that well over half the time spent in litigating most cases is apportioned by it; which is quite disproportionate to its degree of importance vis-a-vis the dispute itself. Adjournments to tide over the indeterminate period until notice is taken by the Defendant are ordered under the name and style, 'Await'. This is taken to mean that the Petitioner and Court cool their heels while the Summons Server and the intended recipient of the summons connive to hold the course of justice to ransom by prolonging the state of limbo for as long as they can. It is no secret that the service of the summons can be arranged to be kept in abeyance endlessly by the good grace of a pliant Summons Server.

Around the Courts

□ *Art. 19(1)(c) of the Constitution, 'alien' has no right to stay in India:*

A foreigner has no fundamental right under Art.19(1)(c) of the Constitution to claim extension of stay permit, the Madras High Court has ruled in a recent decision. Justice Shivaraj Patil gave this ruling while dismissing a writ petition filed by a French National Mr. Gilles Pfeiffer who had sought to quash an order of the Regional Registration Officer, Ministry of Home Affairs, Pondichery dated Nov. 1, 1995 asking him to leave the country within a fortnight. The Judge observed that under Sec.3 of the Foreigners' Act the Central Government had the power to pass an order either granting or refusing permission to a foreigner to stay in India. Considering the policy and object of the Act there might be many exigencies which could impel quick and lightning action to be taken failing which the very security of the nation might be jeopardised.

The Petitioner came to India in 1947 and was staying at Auroville in Pondichery. His stay term in India expired on May 5, 1994. On April 7, 1994, he applied to the Union Home Secretary for extension of his stay permit. The request was rejected by the impugned communication. Aggrieved by the said communication the petitioner approached the High Court.

□ *"No Work No pay":* operates and concession given to do union work on full time basis for a long time does not get elevated into an implied agreement:

A division bench of the Mumbai High Court comprising of Justices G.R.Majithia and D.K.Trivedi in a Judgment delivered in the 3rd week of March 96 while striking down an Industrial court order upheld the right of Blue Star Ltd., to refuse to pay the salary of an employee who insisted on doing only trade union work and refused to carry out duties

assigned to him on the ground that he had been allowed to devote himself full time to union work for many years. The High Court held that a concession given however long standing it may be to an office bearer of a union by an employer could not be elevated to the status of an implied agreement and withdrawal of such a concession did not amount to an unfair labour practice. The High Court also held that "the Industrial Court's approach was not only illegal but perverse too. Practice may be more or less common but it does not become a custom unless it is consciously accepted as having the force of law".

□ *Attempt to commit suicide & its abetment, punishable Under Sec.309 & 306 of IPC, Art.21 of the Constitution does not include the right to die:*

A five judge Constitution Bench of the Supreme Court comprising of Justices J.S.Verma, G.N.Ray, N.P.Singh, Faizanuddin and G.T.Nanavathi in a judgment delivered on 21.3.1996 held that "right to life is a natural right embodied in Article 21 of the Constitution but suicide is an unnatural termination or extinction of life and therefore, incompatible and inconsistent with the concept of right to life". The Bench overruled the judgments of Delhi and Mumbai High Courts and its own Division bench decision of April 24, 1994, which declared that Sec.309 of IPC was unconstitutional. In their unanimous verdict the Judges observed that "whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the right to die as a part of the fundamental right guaranteed therein". They further clarified that they had not taken into consideration the debate on euthanasia and said that it was a matter of policy which fell within the domain of the legislature.

MISCELLANY

□ Mr. V.N. Holla, Advocate has been appointed as the Addl. Senior Central Govt. Standing Counsel for CAT for a period of three years.

□ In the Election to the Vokkaligara Sangha held on 10.3.96 Prof. B.T. Parthasarathy (Bangalore), Mr. B.R. Arun(Chickmagalur), Mr. S.T. Rajashekar (Hassan), Advocates were elected to the Executive Committee.

Moot Court Competition

A Moot Court Competition was held at the National Law School of India University, Bangalore, on 13-4-1996. The topic selected was on International Law viz-Law of Seas. The winning team is expected to participate in the Commonwealth Moot Court Competition being held at Vancouver, Canada.

Clarification

With regard to the news item under caption 'Miscellany' reported in December 1995 part it is hereby clarified that M/s. King and Patridge paid tax of Rs. 8.2 lakhs on the total income of Rs. 18.5 lakhs

News Focus

□ On 22.3.96 under the auspicious of Lahari Prof. V. Narayana Swamy spoke on the Karnataka Societies' Registration Act and Rules made thereunder.

□ On 26.3.96 Justice M.F. Saldahna spoke on the topic "Obscenity and the Law" in the AAB Auditorium. The programme was sponsored by the Indian Federation of Women Lawyers, Karnataka.

□ On 12.4.96 Sri M.M. Rahman spoke on the topic "Inheritance under the Mohammedan Law". This programme was organised by Lahari.

Mahila Adalat

A State Commission for women on the lines of the National Commission will soon be set up according to Mrs. Leeladevi R. Prasad, the Karnataka Minister for Women and Child Welfare. Mrs. Prasad was addressing the valedictory function of the month long Mahila Adalat sponsored by the National Commission for women, New Delhi and jointly organised by the Karnataka Chapter of Karuna and the Karnataka Legal Aid Board.

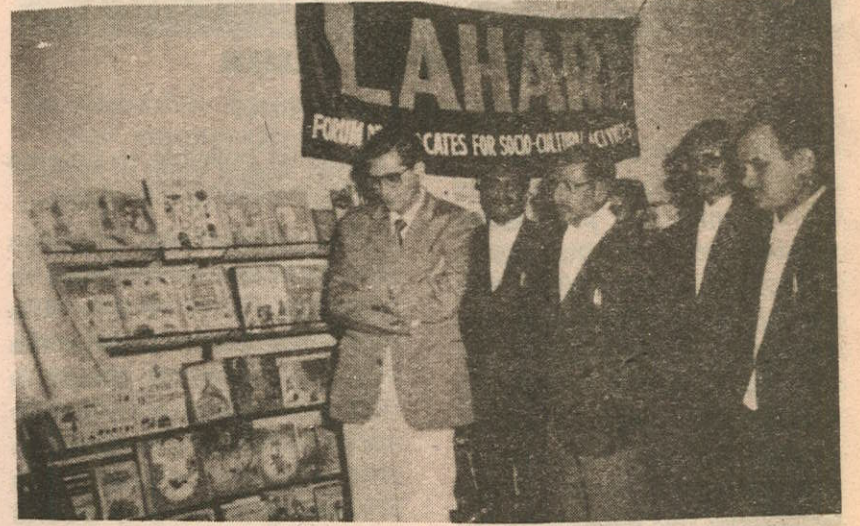
Justice S. Rajendra Babu in his valedictory address said that more than seminars and workshops there ought to be real work done for the welfare of the women in State. Justice Babu commended the work of voluntary organisation in this regard. Sri D. Basavaraju, Executive Chairman of the Karnataka Legal Aid Board urged that Family Courts be established in all the Districts in order to expedite pending matrimonial cases.

Secretary of the Board Sri K.V. Vasudeva Murthy reported that this Adalat had heard 67 cases and resolved 46 of them including 22 divorce cases. Smt. Shaukat Qureshi, Chairman of the Karnataka State Welfare Board presided. Joint Secretary of Karuna Smt. Kamala Kumar welcomed the participants while Advocate Smt. T.N. Manjula Devi proposed vote of thanks.

Trekking and Yoga

Under the auspices of the Adventure Wing of AAB four Advocates viz. Mr. D. Gangadhara (Team Leader), Mr. C.R. Lakshmana Murthy, Mr. Vishwanatha Shettar and Mr. K.N. Sridhar, participated in the Trekking and Yoga meditation camp at Kumaraparvatha (Kukke Subramanya) held on 30-31 March 1996.

INAUGURATION OF 2nd LAHARI BOOK FAIR



The Principal Civil and Sessions Judge, Bangalore, Sri Patribasavana Goud going round the Lahari Book Fair after inaugurating the same.

LAHARI BOOK FAIR

On 2.4.1996 Mr. Patri Basavana Goud, the Principal, City Civil and Sessions Judge, Bangalore inaugurated the Second Lahari Book Fair held in Bangalore City Civil Court Complex. The three days Book Fair in which more than twenty book distributors participated was attended by large number of Advocates, Judicial Officers, Judicial Department Employees and members of public.

RETIRED

Sri B.N. Srikanthiah, Addl. District and Sessions Judge, Bangalore District retired from service with effect from 11.3.96. It is learnt that he took voluntary retirement.

ರಾಮೋತ್ಸವ

28.3.96ರಂದು ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ಸಿಟಿ ಯೂನಿಟ್ ವಿಭಾಗದಲ್ಲಿ ರಾಮೋತ್ಸವ ಆಚರಣೆ ಏರ್ಪಡಿಸಿತ್ತು. ಮೇಯೋಹಾಲ್ ಯೂನಿಟ್‌ನಲ್ಲೂ ಸಹ ರಾಮೋತ್ಸವದ ಆಚರಣೆ ಏರ್ಪಡಿಸಿತ್ತು. ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಹೆಚ್.ಎನ್. ತಿಲರಿ, ಕೃಷ್ಣಮೂರ್ತಿ, ಎಸ್. ವೆಂಕಟರಾಮನ್, ಎ.ಜೆ. ಸದಾಶಿವ ಹಾಗೂ ಚಂದ್ರಶೇಖರಯ್ಯ ಇವರುಗಳು ಮೇಯೋಹಾಲ್ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಭಾಗವಹಿಸಿದ್ದರು.

OBITUARY

Gururaj B. Adhyapak (32), advocate from Athani, Belgaum District, passed away on 5.4.96 at Bangalore.

ಲಟರಿ ಯೂನಿಯನ್

18.3.96ರಂದು ಹೆಸರಾಂತ ಕನ್ನಡ ಕವಿ ಶ್ರೀ ಎಸ್.ಕೆ. ಕರೀಂಖಾನ್‌ರವರು ಸದಸ್ಯರನ್ನು ದ್ದೇಶಿಸಿ ಮಾತನಾಡಿದರು.

31.3.96ರಂದು ಸುಮಾರು 70 ಜನ ವಕೀಲರು ಹಾಗೂ ಅವರ ಪರಿವಾರ ಜನರು ಮೇಲುಕೋಟೆ ಮತ್ತು ಬಲಮೂರಿ ಜಲಪಾತಕ್ಕೆ ಭೇಟಿ ನೀಡಿದರು.

6.4.96ರಂದು ಕನ್ನಡ ಚಲನಚಿತ್ರ ನಟ ಶ್ರೀ. ಶಿವರಾಮ್‌ರವರು ಕಲೆ ಮತ್ತು ಹಾಸ್ಯ ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು. ನ್ಯಾಯಮೂರ್ತಿ ಚಿದಾನಂದ ಉಲ್ಲಾಳ್‌ರವರು ಸಮಾರಂಭದ ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು.

10.4.96ರಂದು ನ್ಯಾಯಮೂರ್ತಿ ಎ.ಜೆ. ಸದಾಶಿವರವರು ವಕೀಲ ಸಿ. ಪ್ರಾಕಾಶ್‌ರವರ ಕವಿತೆಗಳ ಸಂಗ್ರಹ "ಸ್ಫುರಣ" ಮತ್ತು ವಕೀಲ ಎಚ್.ಆರ್. ಶಂಕರ ನಾರಾಯಣ ರವರ ವಿಡಂಬನಾತ್ಮಕ ಬರವಣಿಗೆಗಳ "ಸಂಗ್ರಹ ಯಾರಿಗೆ ತಲೆ ಸರಿಯಾಗಿ ಇದೆ" ಎಂಬ ಪುಸ್ತಕಗಳನ್ನು ಬಿಡುಗಡೆ ಮಾಡಿದರು. ಖ್ಯಾತ ಬರಹಗಾರ ಶ್ರೀ ಆ. ರಾ. ಮಿತ್ರರವರು ಶ್ರೀ ಶಂಕರ ನಾರಾಯಣರವರ ಪುಸ್ತಕದ ಬಗ್ಗೆಯೂ ಹಾಗೂ ಸಾಹಿತಿ ಶ್ರೀ. ಲಿಂಗರಾಜುವರು ಶ್ರೀ. ಪ್ರಕಾಶ್‌ರವರ ಪುಸ್ತಕದ ಬಗ್ಗೆಯೂ ಪರಿಚಯಾತ್ಮಕ ಭಾಷಣ ಮಾಡಿದರು.

"The art of amassing riches becomes a degrading and despicable art, if it is not accompanied by the nobler art of how to spend wealth usefully. Let not possession of wealth be synonymous with degradation, vice and profigacy.

— M.K. Gandhi