

Volume 9

April 1997

Part 1

## AAB Election

Election of office bearers of the Advocates Association, Bangalore is scheduled to be held on Saturday the 12th July 1997.

## Prof. Basheer Hussain is the Chief of Minorities Commission

The Governor has appointed prof. M. Basheer Hussain, Advocate and the Former principal, Government Law College, Bangalore, as the Chairman of the Karnataka State Minorities Commission.

## Justice Shivaprakash Made Upalokayuktha

Justice G.P. Shivaprakash has taken over charge of the office of Upalokayuktha in Karnataka after his appointment by the Governor for a period of five years.

## Appointed

Recently Mr. Y. Hariprasad, Advocate, has been appointed as the Addl. Senior Standing Counsel for the Union Government in the High Court of Karnataka for a period of three years.

## Chairman Felicitated

Recently the Karnataka Muslim Advocates' Forum felicitated Mr. K. Shaik Kasim on his being elected as, the First Muslim Advocate, Chairman of the Karnataka State Bar Council.

**Read  
Communique**

## Justice Verma Defends In-camera Proceedings

Chief Justice J.S. Verma strongly defended the holding of in camera proceedings by the court in certain sensitive cases and rejected the suggestion that by doing so the court was taking on the role of prosecution. Speaking in New Delhi on April 28th Justice Verma cited the example of Jain Hawala and Chandraswamy cases and said that the court had held in camera proceedings at the request of the Attorney General and the Amicus curiae. He expressed shock at the criticism of such procedure by persons "who ought to know better".

Obviously Justice Verma was alluring his stand in reply to remarks made by the Former Chief Justice of India Justice A.M. Ahmadi. In a recent interview to a Delhi newspaper, Justice Ahmadi had remarked that in camera proceedings should be avoided as far as possible if the court do not wish to take on the role of a prosecutor. Justice Ahmadi had also said that particularly the Supreme Court should refrain from this practice lest it may give a feeling to the prosecution that the court wants the prosecution to act against the accused. He had further stated that any such over activist role may misfire.

Justice Ahmadi was also critical that the prolonged monitoring of certain cases and the filing of charge sheet at intervals, often a day or two before the date of hearing, may have given the impression that they were filed at the behest of the court and sent wrong signals down the line even though the bench had said it was not entering into merits. Remarking that no investigating agency should give the impression that it had abdicated its function and is acting on court direction in chargesheeting the accused. Justice Ahmadi further remarked that if courts below read it as a message that the Supreme Court

considered the material, relied on by the presumption, as prima-facie ground to indict a suspect it would cause prejudice to such suspect.

Though the two views expressed by the learned Judges can be described as the difference in perceptions the incident has evoked lot of interest in the legal circles.

## Annual Day Celebrated

AAB celebrated its Annual Day on 19-4-97 in the City Civil Court Complex. Justice P. Viswanatha Shetty was the chief guest at the function. As a part of the cultural programme Mr. D.H. Mokhashi and friends presented a Kannada play "Varabhrashta". Prizes to the winners of Advocates Sports and Cultural Meets were also distributed on the occasion. The function ended up with a dinner.

## Point Blank

The designated Judge did not seem to have elementary knowledge of criminal law especially about harbouring offenders.

-Justices M.K. Mukherjee and S. Saghir Ahmed's of the Supreme Court observation against Mr S.N. Dhingra, the designated TADA Judge, while granting bail to Mr. Kalpanath Rai.

## Humour in Courts

Two Litigants were discussing something amongst themselves:

First Litigant : Where there is a will there is a way.

Second Litigants : Where there is no 'will' there is a Lawyer !

Operative portion of an Eviction Petition read as follows :

Petition filed under Section 21(I)(h) of the KRC Act, 1961 is allowed. Tenant will vacate and hand over possession of the Schedule premises as and when he secures an alternate premises!

## Foreign Tour

Justice M.F. Saldanha left Bangalore on 19-4-97 on foreign tour. Apart from participating in the International Conference of the Environmental Law Institute at Washington DC he is to visit the Harvard Law School, the London School of Economics, London and Sorbonne University, Paris before returning to Bangalore.

## Communique Classifieds

Eight furnished Apartments on ownership basis, located 1.5 Kms from H.A.L. Airport, readily available. Contact Mr. Rahamathulla Shariff, Advocate, No.10, S.K.R. Market, Bangalore-2, Phone : 627948. Loans from financial institutions, if needed, will be arranged.



THE POWER TO TAX INVOLVES THE POWER TO DESTROY

- John Marshall

## In the Name of Welfare !

**M**embership of the Welfare fund has been made compulsory as a result of which all practicing Advocates are required to make an initial contribution of Rs.1,000/- each. They are further required to affix welfare stamp of Rs. five on each Vakalathnama they file. Considering that there are 25,000 practicing Advocates in Karnataka the welfare fund is expected to garner deposit of Rs 2.5 crores from the initial cash contributions alone. It is not certain as to what is the expected accruals from the sale of welfare stamps. The welfare fund is also expected to get periodical grants from the government apart from other sources like interest/dividend and deposits of costs levied by the courts from time to time. The aggregate income from all these sources is bound to be a substantial amount.

An Advocate is expected to receive an amount of not more than Rs.5,000/- in the event of illness. The legal representatives of a deceased Advocate are entitled to receive a sum of Rs.50,000/- in the event of the death of a practicing Advocate. Perhaps in the event of retirement of an Advocate from practicing he is entitled to receive lumpsum payment calculated as Rs.1,000/- per annum for each completed year of such practice subject to a maximum of Rs.30,000/-. For the purpose of computation of total number of years of service four years of such completed service prior to becoming member of the welfare fund is considered as one year's service. From a comparative analysis of the contributions made and the benefits to which an Advocate is entitled to receive from the welfare fund prima facie the Advocate will be incurring loss by becoming a member of the welfare fund. Since the

membership is made obligatory the Advocate has no choice of continuing as a non-member.

It is pertinent to state here that hitherto, when the membership of the welfare fund was optional welfare stamp of Rs.two was required to be affixed on the Vakalathnama. Now that it is made Rs.five there is an upward revision of 150 %. Whether such a revision was required to be effected is a point for reconsideration by the Welfare Fund Committee. The way the amount of contribution is sought to be raised gives an impression that the levy is nothing short of taxing the practising Advocates.

Since the welfare fund is handling huge public funds it is just and appropriate for the Committee to publish its balance sheet periodically in an appropriate manner including the newspapers/periodical. Under any circumstances there is no justification to withhold this information particularly since it is treated as a welfare measure. This will also help to instill confidence of the contributors regarding the financial health of the welfare fund. Added to it would be appropriate for the authorities managing the welfare fund to publicise the basis on which the Advocates are required to contribute so much money in the name of their own welfare.

### Lahari Foundation An Appeal

**Lahari Foundation, Bangalore, seeks donations for augmenting its financial base. This foundation is providing assistance to lawyers for health reasons. The donations you make now will be of immense help to some one who needs it.**

- Trustee

## The Ultimate Saving Factor

Shri D.B.Thengadi

from the last issue

Our leaders did not care to study in depth the Bharatiya systems. But, what was worse, they did not even assimilate the real spirit of the Britishers and their systems. Thus they managed to miss the best of both the systems.

In April, 1948, Jawaharlal Nehru told the Constituent Assembly:

"One has to be careful to the steps one takes so as not to injure the existing structure too much - I am not brave and gallant enough to go about destroying any more."

Right from the beginning it was evident that the Constitution was inadequate and unable to protect the interests of the weaker sections.

Dr.Babasaheb Ambedkar is rightly described as the Chief Architect of the Constitution. But the Constitution does not reflect his views completely and accurately.

Because he has to accommodate the views of various sections in the Constituent Assembly. He was often obliged to evolve compromise formulae. He was of the view that -

"Political power in this country has too long been the monopoly of a few and the many are not only beasts of burden but also beasts of prey... the downtrodden classes must not be allowed to evolve into a class struggle or class war... The recognition of the class structure of society and the income structure of society as sacrosanct, was utterly undemocratic and unrealistic. It set in motion influences which were harmful to rational human relationships. There were no common interest. The isolation and exclusiveness following upon the class structure creates in the privileged classes anti-social spirit of a gang."

The constitution has succeeded in elimination of the danger.

In his concluding speech in the Constituent Assembly Dr.Ambedkar said: On the 26th

January 1950, we are going to enter into a life contradictions. In politics, we will have equality, and in social and economic life, we will have inequality. In politics, we will be recognizing the principle of "One man one vote, and one vote, one value". In our social and economic life, we shall, by reason of our social and economic structure continue to deny the principle of one man, one value. How long shall we continue to live this life of contradictions ? How long shall we continue to deny equality in our social and economic life ? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this assembly has so laboriously built-up". Dr.Ambedkar was convinced that..."it was equally essential to prescribe the shape and the form of economic structure of society, if Democracy, is to live up to its principles of one man, one value. Subsequently, he even declared that he would publicly burn a copy of the Constitution drafted by himself, if as he apprehended, it failed to protect the rights of the downtrodden.

Dr.Sivaramayya remarks: The balance between the meritorious and proportional concept of equality, it postulated in Article 16 brings in its wake certain problems, quite apart from the inherent incongruence between them... The right of equality of opportunity based on the meritorious concept exists in favour of the individual whereas protective discrimination exists in favour of collectives. The former right is enforced by the courts, the latter is based on the politics of Legislatures and their implementation by executives. Conflicts arise out of the varying degrees of emphasis placed on the rights by the judicial and executive organs of the state".

to be Continued



## Around the Courts

### Articles 323 A (2) (d) and 323 B(2) (d) of the Constitution, Un-Constitutional :

A seven Judge Constitution Bench headed by Chief Justice A.M.Ahmedi struck down the provisions of Articles 323 A (2) (d) and 323 B (2) (d) of the Constitution which had the effect of ousting the jurisdiction of the High Courts under Articles 226 and 227 of the Constitution in respect of the decisions of the Administrative and the Tax Tribunals. In a 89 page judgment delivered on March 18th 1997 the Supreme Court held that "the jurisdiction conferred on the High Courts under Articles 226 and 227 and upon Supreme Court under Article 32 was part of the inviolable basic structure of the Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role". The Court ruled that henceforth the Administrative and Tax Tribunals were possessed of the competence to test the Constitutional validity of statutory provisions and rules. But all their decisions would, however, be subject to judicial scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal fell.

### Sec.31 A of the Air (Prevention and Control of Pollution) Act, 1981 - Whether the Chairman has the power to give directions?

Power to give directions to polluting Industry/Establishment including the direction for closure of Industry and writing to statutory authorities to stop supply of electricity, water and other amenities lie with the Pollution Control Board and in the absence of delegation of power under Section 15 of the Act the Chairman of the Board cannot exercise the power under Section 31 A of the Act. The Chairman of the Board is liable to pay costs of Rs 2,500/- to the writ petitioner for having exercised power under Section 31 A of the Act and misusing statutory power in flagrant violation of the provision. **M/s Suma Traders Vs. The Chairman, Karnataka State Pollution Control Board. W.P No.34389/96. D.D.26-2-97**

### Sec.147 (b) of the Income Tax Act, 1961- IT Officer has power to reopen the tax

assessment of the previous year following fresh revelations of the income in the subsequent year :

A Division Bench of Bombay High Court comprising Justices B.P.Saraf and P.D.Upasani has ruled that the income tax personnel can reopen the tax assessment record of the previous year following fresh revelations of the income in the subsequent year. The Court made this ruling on a reference received from the Income Tax Appellate Tribunal in the case of the assessee Muljimal Raghuvanshi. Based on the information received in 1960-61 assessment year about the rise in circulating capital of the assessee the IT Officer sought to reopen the assessment, the assessee had contended that the rise in the circulating capital was due to sale of jewellery. The IT Officer having not been pleased with the explanation reopened the assessment of 1959-60 and the suspected amount was added to the income of the assessee. This was questioned by the assessee before the Income Tax Appellate Tribunal leading to the reference.

### Kerala Civil Service (Classification, Control and Appeal) Rules, 1960, Rule 3 Part II- Whether an employee under suspension be compulsorily retired?

An employee under suspension pending enquiry cannot be compulsorily retired from the date of suspension after his attaining the age of superannuation as per the decision of the Kerala High Court delivered recently. The Single Judge Justice C.S.Rajan has held that when an employee retired from service the master-servant relationship between them ceases. Thereafter the employee ceases to have authority to suspend the employee or to take any disciplinary action against him. The Court observed that Rule 3 part II of the Rules provide that the disciplinary/departmental action taken while an employee is in service can be continued after his date of superannuation. But the above proceeding can only culminate in ordering recovery from his pension and not in any punishment enumerated in the Rules.

**Bhaskaran Pillai Vs. Devaswom Board O.P.13500/95.**

## Literary Union

★ Between 24/31-3-97 the Union held competitions in cultural events and the following Advocates secured prizes:

**Bhavageethe:** Ms. Bharathi Bhat I ; Mr.R.Yateesh Kumar II; Ms.Nagarathna III ; Mr. Subramanya Bhat, Consolation. **Rangageethe:** Mr.B.R.Deepak I; Mr.P.G.Cheluva Murthy II; Mr.D.H.Mokhashi III; Mr.S. Venugopal, Consolation.

**Janapadhageethe:** Mr.Ramsingh I; Mr.Diwakar Maddur II; Mr.B.R.Deepak III; Ms.Bharathi Bhat, Consolation.

**Mono Acting :** Mr.D.H.Mokhashi I; Mr.K.M.Nagaraj II; Ms.Srilatha V.Murthy III; Mr.N.Onkarappa, Consolation.

**Kannada Filmsongs :** Ms. Bharathi Bhat I; Diwakar Maddur II; R.Yateesh Kumar III; Ms.Hamsaveni and Mr. Subramanya Bhat, Consolation.

**Fancy Dress:** Mr.K.N.Shivaram I; Ms.Satyashri II; Ms.Shobha Shankar III; Mr.N.Onkarappa, Consolation.

**Impromptu Talk:** Mr.D.H. Mokhashi I; Mr.V.Manjunath II; Mr.S.R.Suresh III; Ms. Satyashri, Consolation.

**Mimicry :** Mr.K.N.Shivaram I; Mr.K.M.Basavaraju II; Mr. D.H.Mokhashi III; Ms.H.Y. Annapurna, Consolation.

**Prathamakshari:** Ms.Hamsaveni I; Ms.Nagarathna II; Mr. D.G.Chinnappa Gowda III; Ms.B.P.Radha, Consolation.

★ Between 12/14-4-97 an excursion was arranged to Kukke Subramanya, Dharmastala, Kateel, Mangalore, Udupi, Malpe, Anegundi, Kudremukha, Murudeswar, Kollur, Sringeri Hornadu and Belur. 50 persons participated in the excursion.

## Justice K.S.Bhat Resigns

Expressing unhappiness over the latest ruling of the Supreme Court striking down certain provisions of Articles 323 A and B and bringing the decisions of the Tax and Administrative Tribunals under the scrutiny of the High Courts, Justice K. Shivashankar Bhat, Chairman of the Karnataka Administrative Tribunal has resigned from his post.

## Strong Foundation can only Sustain the Edifice

Strong and secure foundation can only ensure the safety and effectiveness of the edifice built on it. In this view of the matter recruitment of suitable persons as Munsiffs/Magistrates constituting the lower wing of the judicial system is an important task. It is a good augury that there is enough competition in the State to occupy these posts. Efforts of the organisations like Lahari Advocates Forum in motivating Lawyers to groom themselves for the task is commendable, declared Justice B.N. Mallikarjuna, Judge of the Karnataka High Court. He was addressing the members of the Bar on 4-4-97 at the City Auditorium of AAB after inaugurating the orientation programme. Sri K.N.Subba Reddy, President of AAB was the guest of honour in the function. While appreciating the constructive role played by Lahari Advocates Forum in organising such programmes he assured all co-operation from the Association.

Sri N.S.Satyanarayana Gupta, President of the Forum welcomed the gathering. Sri S.N.Prashanth Chandra, Chairman of the programme committee presented his report. While Sri K.N.Subba Reddy, presented mementos to the teaching faculty Sri P.K.Mohan Rao, Vice-President of the Forum distributed the folders to the Trainees. In the end Sri P.H.Ramalingam, Secretary of the Forum proposed the Vote of Thanks. Thirty three Advocates have registered themselves to undergo the training.

## News Panorama

✱ In an act of recognition of studious paper work by Revati Mohite, a young lady Advocate in a Criminal Appeal, the Bombay High Court has directed the State to pay remuneration fee of Rs.5000/- to her. The Appeal was filed by the State Government against eleven Respondents who were acquitted by the Chief Judicial Magistrate of Pune. After going through the 31 page hand written notes of Revati Mohite, who was appointed as Amicus curae, the Division Bench dismissed the Government Appeal on merit.

See page 4



## AAB Sports Meet

In the month of April 1997 Advocates Association Bangalore conducted competition in various Sports events and the following Advocates won the prizes:

### Mens's Events- Below 30 years:

H.V.Marigowda; 100mts I, 200mts-I, Long Jump-I & Shotput-III; Puroshotham; 100mts-III, 200mts-III & Long Jump-III; Siddaraju; 100mts-III; Divakar Maddur; 200mts-II, Long Jump-II, Shotput-II, Discus Throw-II & Javelin Throw-III; Appaiah; Discus Throw-I & Javelin Throw-II; R.Raghuram; Shotput-I, Discus Throw-III & Javelin Throw-I.

### Between 30 to 40 years:

H.S.Chandraiah; 100mts-I, 200mts-I & Long Jump-II; I.M.Devaiiah; 100mts-III & 200mts-II; Gangadhar; 200mts-II, 400mts-I & 800mts-II; K.Manjunath Rao Bhonsle; 400mts-II; K.R.Dinakar; 400mts-III; H.Ramachandra; 400mts-III; S.N.Amarnath; Shotput-I, Discus Throw-I & Javelin Throw-I; R.Rajashekar; Shotput-II & Discus Throw-III; K.Prakash; Shotput-III, Discus Throw-II & Javelin Throw-III; Amruthesh; Javelin Throw-II; N.B.Shivadutt; 800mts-I; Padma Raj Mutha; 800mts-III.

### Above 40 years:

K.M.Basavaraj; 100mts-I, 200mts-I & 400mts-II; Basavaraj M.Mekki; 100mts-II, 200mts-III & 400 mts-I; K.Natarajan; 100mts-II, 200mts-II, Long Jump-II & Shotput III; Shankar Rao; Long Jump-I; G.Sathyavelu; Long Jump-III; T.H.Chikkavenkate Gowda; Shotput-I, Discus Throw-I & Javelin Throw-II Chandrakanth Koujalgi; Shotput-II, Discus Throw-II & Javelin Throw-II; N.N.Puttegowda; Discus Throw-III & Javelin Throw-III; Sathyanarayana; 400mts-III.

### Women's Events- Below 30 years:

A. Manjula; Shotput-I, Discus Throw-I & Javelin Throw-I; Anuradha; 400mts-III, Shotput-II & Discus throw-II; V.Aruna; 400mts-II & Long Jump-I; B.L.Rukmini Gangadhar; 200mts-III, 400mts-I, Long Jump-II, Javelin Throw-II, Shotput-III & Discus Throw-III.

### Above 30 years:

M.L.Sreemathi; 100mts-I, 200mts-I, 400mts-II, Long Jump-I, Javelin Throw-I, Discus Throw-I & Shotput-I; Sathya Shree; 100mts-II, 200mts-II, 400mts-I, Long Jump-II, Javelin Throw-III, Discus Throw-II & Shotput-II; Shoba Shankar; 100mts-III, 400mts-III, Long Jump-III, Javelin Throw-II, Discus Throw-III & Shotput-III.

### Men's Event (Staff): Venkatesh;

Long Jump-I & Shotput-I; Naik; Long Jump-II & Shotput-II; Amaranth; Long Jump-III & Shotput-III.

### women's Event (Staff): Prema

Janardhan; Shotput-I.

## Miscellany

Recently Mr Y.A.Sudhakar Babu, Advocate, opened his Law Chamber at No.114, I Floor, Near Gandhi Bazaar Circle, Basavanagudi, Bangalore-560 004. Phone:6601777.

On 11.4.97 Mr Y.N.Satyanarayana Rao, Advocate opened his Law Chamber at No.617, Rajeswari Market, III floor, Avenue Road, Bangalore-560 002.

On 22.4.97 Mr R.L.Agnihotri and Mr B.S.Subbaramiah, Advocates, opened their Law Chamber under the name and style of M/s Guru Associates at No.782, II floor, 7th "A" Main, Srinagar, Bangalore - 50.

## News Focus

On 21.3.97 Swamy Brahmanandaji of Chinmaya Mission, Bangalore addressed the members of AAB City Unit on the topic "Mankuthimmana Kagga".

On 25.3.97 AAB had organised a function to felicitate Padmabhushana Dr. Rajkumar.

On 25.3.97 Karnataka Tax Consultants Association had organised a "Debate on State Budget 1997-98". Sri Sudhir Krishna, IAS, Commissioner of Commercial Taxes was the chief guest on the occasion. He along with Sri D.R.Balaji Singh, JCCT (Legal) and Sri S.Narayana, Advocate were the prime Speakers on the budget. President of the Association Sri S.K.Nahar presided over the function.

On 27.3.97 AAB had organised a function in the High Court Unit to bid farewell to Justice G.P.Shivaprakash on the eve of his relinquishment of the office of the Judge of Karnataka High Court.

On 4-4-97 Smt.Leeladevi R.Prasad, Minister for Kannada and Culture released a book "Savinudi" written by Mr.Ko. Chennabasappa, Advocate, under the auspices of Nyayavadi Sahitya Vedike. The function organised for this purpose in Gandhi Smarak Bhavan, Bangalore, was presided over by Justice P.V.Shetty.

On 15-4-97 Justice M.F.Saldanha addressed the members of AAB, Magistrates' Courts Unit on the topic "Working of Criminal Courts in the Administration of Justice." Sri K.N.Subba Reddy presided over.

On 17.4.97 AAB had organised a farewell function in honour of Justice S.Venkataraman who is to retire during summer vacation. The same day Karnataka State Bar Council had also organised a function to bid farewell to Justice S.Venkataraman.

On 17-4-97 AAB had organised a function in the High Court Unit to felicitate Justice M.F.Saldanha on the eve of his tour of USA and Europe.

On 17-4-97 Justice Chandrashekaraiiah inaugurated an arts exhibition cum sale of Paintings of the renowned artist Sri G.M.Hegde of Sagar. The exhibition was sponsored by AAB in its City Auditorium.

## Lahari Advocates Forum

On 28.3.97 the Forum had organised an excursion to Thorekadanahalli.

On 4.4.97 Justice B.N.Mallikarjuna inaugurated the Munsiff's Orientation Course.

Sri K.R.Prasad Rao, Principal City Civil and Sessions Judge, Bangalore was the chief guest in the Valedictory function of the Munsiff's Orientation Course on 14.4.97. Apart from advising the trainees on the occasion he also distributed prizes to the outstanding trainees.

## Lahari Foundation

In response to the Foundations Appeal the following donations have been received:

Mr.Udaya Holla Rs.10,000/-, Malaka Ramachandra Setty Mangamma Trust Rs.5,000/-, Mr.B.V.Acharya Rs.3,000/-, An Advocate Rs.500/-

Financial assistance of Rs.5,000/- was provided to Mr.T.S.Krishna Murthy, Advocate.

## Ramanavami

On 16.4.97 Ramanavami was celebrated in AAB City Unity with religious gaiety. In the Mayo Hall Unit also Ramanavami was celebrated in a grand manner. Several High Court Judges participated in the celebration.

## News Panorama

### From page 3

During the second week of April 97 K.R.Market Police in Bangalore arrested five persons in the age group of 18 and 23 from a lodge in N.R.Road and seized from them fake Court Fee Stamps and Stamp Papers worth over Rs.Three Lakhs along with cash of Rs.26,000/-. According to the Police those five persons were involved in the preparation of fake Court Fee Stamps and Papers for use in Banks.

## Obituary

On 29.3.97 S.B.Swethadri (72), Advocate, passed away at Bangalore

On 15.4.97 B.K.Ramaiah (48), Advocate, died in a road accident on the way to Chennai.