



## MPs and MLAs are public servants-Apex Court

The five judge constitution bench comprising Justice S.C. Agrawal, Justice G.N. Ray, Justice A.S. Anand, Justice S.P. Bharucha and Justice S. Rajendra Babu, unanimously held that MPs and MLAs are public servants and therefore they can be prosecuted under the provisions of the Prevention of Corruption Act, 1947. The judgment delivered on April 17, 1998 in the Jharkhand Mukti Morcha MPs bribery case rejected the contention of the former Prime Minister Mr. P.V. Narasimha Rao to the contrary. The court also rejected the plea of Mr. P.V. Narasimha Rao that the Members of Parliament are entitled to protection under Article 105(2) of the Constitution.

As regards the acceptance of bribe and voting against the motion of no confidence, the majority judgments of Justice G.N. Ray, Justice S.P. Bharucha and Justice S. Rajendra Babu held that the prosecution of the former MPs cannot be sustained in view of the immunity available to a Member of Parliament with regard to the vote cast by him in parliament as per the provisions of Article 105(2) of the Constitution. Accordingly the prosecution against the former MPs Simon Marandi, Shibu Soren, Shailendra Mahato, Suraj Mandal, Anadi Charan Das, Ram Lakhan Singh Yadav, Roshan Lal, Abhay Pratap Singh and Haji Gulam Mohammed the alleged "bribe takers" held to be untenable by the court. Curiously the prosecution against Mr. Ajit Singh, another former MP and the alleged "bribe taker", came to be sustained on the ground that he abstained from voting on the motion of no confidence. However the judgments held that the "bribe givers" are not entitled to claim the immunity under Article 105(2) of the Constitution and therefore their prosecution are tenable.

The minority judgments of Justice S.C. Agrawal and Justice A.S. Anand, differed from the view taken by the majority judges and ruled that the accused former MPs in the category of "bribe takers" could not claim exemption from prosecution

under Article 105(2) of the Constitution.

Justice G.N. Ray however agreed with the view taken by Justice S.C. Agrawal and Justice A.S. Anand to the effect that the Speaker of the Lok Sabha or the Chairman of the Rajyasabha can be the sanctioning authorities for the prosecution of the Members of Parliament of the respective Houses under the Prevention of Corruption Act.

## Attorney General Appointed

Mr. Soli J. Sorabjee tookover as the new Attorney General of India on 7-4-98. This is the second occasion when the noted lawyer has been appointed as the Attorney General. During Mr. V.P. Singh's regime Mr. Sorabjee had functioned as Attorney General during 1989-90. Immediately after his assumption of office Mr. Sorabjee said that he is opposed to abuse of Article 356 of the Constitution and he will strive for preventing the misuse of the Article.

## Solicitor General Appointed

Mr. N. Santhosh Hegde has been appointed as the Solicitor General of India by the union government headed by Sri Atal Bihari Vajpayee.

## Around the Courts

□ **Sec. 46 of the Customs Act, 1962—Transshippers are ocean-going vessels :**

A three judge bench of the Supreme Court comprising Chief Justice M.M. Punchhi, Justice S. Saghir Ahmad and Justice K.T. Thomas, in a recent ruling has held that transshippers are ocean going vessels entitling them to exemption from the payment of customs duty under a notification dated October 11, 1958 issued by the central government. By this ruling the earlier judgment of the court of 1987 in Chowgule and Co. Pvt. Ltd. Vs. Union of India and Others was overruled.

It is pertinent to state here that section 46 of the Customs Act, 1962, an importer of any goods, other than goods intended for transit or transshipment to present a bill of entry for home consumption of such goods in the prescribed form. By a notification issued by the Ministry of Finance [Department of Revenue] "Ocean going Vessels" had been exempted from payment of customs duty. Some persons, who imported transshippers [vessels fitted with equipment for transshipping and topping operations] claimed the benefit of the said notification on the premise that those transshippers were also ocean going vessels. But the customs authorities insisted that the transshippers are not coming under the exemption.

□ **Sec. 2[00] of the Industrial Disputes Act, 1947—termination of a permanent employee by a**

simple notice amounts to retrenchment:

By its judgment dated 6-4-98 a bench of the Supreme Court comprising Justice S. Saghir Ahmad and Justice N.J. Rao held that a permanent employee working in a private or public sector establishment cannot be abruptly removed from service through simple notice as the conferment of "permanent" status guarantees security of tenure. The court said that the services of a permanent employee cannot be legally terminated either by giving him a month's or three month's notice or pay in lieu thereof even without notice notwithstanding that there may be a stipulation to that effect either in contract of service or in the certified standing orders.

While dismissing an appeal filed by Uptron India Ltd., against the Allahabad High Court's judgment [Lucknow bench] upholding the Industrial Tribunals finding that the termination of the operator Ms. Shammii Bhan was retrenchment, the Supreme Court said that any clause in the certified standing order providing for automatic termination of services of a permanent employee, not directly related to "production" in a factory or industrial establishment would be bad if it did not purport to provide an opportunity of hearing to the employee concerned.

□ **Reservation of single post cadre for backward class in government appointment impermissible :**

A five judge constitution bench of the Supreme Court comprising Justice S.C. Agrawal, Justice G.N. Ray,



## SC Pulls up MP Government

On 7-4-98 Justice A.S. Anand and Justice B.N. Kirpal of the Supreme Court pulled up Madhya Pradesh's govt. failure in checking police officers from illegally handcuffing a lawyer. The judges remarked that "We are disturbed at the causal manner in which the state has taken the whole incident. The judges repeatedly asked the state government counsel to explain the delay in taking action against the concerned police officers. While rejecting the explanation already offered as unacceptable and unreasonable, when the counsel pointed out that the guilty had already been arrested, the court wanted to know how long it will take the authorities to file a chargesheet. The court directed that the state govt's action in proceeding against the guilty police officers under Section 220 of the IPC will have to be confirmed before the court within 2 weeks time.

It may be pointed out that above 3 years ago a lawyer Mr. Suresh Chandra Jalwa was illegally handcuffed on the charge of disorderly behaviour and taken from Neemuch to Ratlam a distance of 150 Kms.

## Kolar Diary

□ The Bar Association of Chickaballapur has elected the following Advocates as its office bearers for the year 1998-99. President : Sri R. Nagaraju; Vice President : Sri K.M. Jagadish; Secretary: Sri Kaleemuddin; Committee Members: S/s. Ramamurthy, Venkatalaxamma, G.R. Harikumar, S.Sudarshan, Balakrishna Raju, S.Lakshmikantha and C. Trembak.

□ The Bar Association of Bagepalli has elected the following Advocates as its office bearers for the year 1998-99. President : Sri M.K. Alla Bakash; Working President : Sri Karuna Sagara Reddy ; Vice President: Sri H.S. Madan Mohan; Secretary : Sri H. Satyanarayana Rao and Treasurer : Sri B.A. Narasimha Murthy.

## Transfers/Promotions

Two District Judges in super time scale viz. Mr. R.D. Deshpande [Bider] and Mr. L.M. Ladkhan [Karwar] have been transferred as District and Sessions Judges, Kolar and Bijapur respectively.

The following District Judges have been transferred viz. Mr. A. Krishnappa to KAT, Bangalore. Mr. M.S. Evani to KAT, Bangalore, Mr. G.T. Veerabhadrapa to Mangalore, Mr. K. Radhakrishna Holla to Mysore, Mr. J.C. Neeralagi to KAT, Bangalore, Mr. Basavantharaya Patil to KAT, Bangalore, Mr. H.G. Ramesh to STAT, Bangalore, Mr. A.C. Kabbin as the Registrar [Judicial]. Karnataka High Court, Mr. C.R. Kumaraswamy to Industrial Tribunal, Mysore, Mr. M. Sham Bhat to Industrial Tribunal, Bangalore, Mr. K.N. Nagendra Kumar to Labour Court, Madikeri, Mr. A.H. Adappanavar to Labour Court, Bijapur, Mr. M. Chidananda Rao to Family Court, Mysore, Mr. S. Siddalingesh to Family Court, Bijapur, Mr. H.M. Bharathesh to Family Court, Gulbarga, Mr. K.G. Lakshmi pathi to Family Court, Raichur, Mr. S.S. Bhagoji to Karwar, Mr. K. Satyamurthy Holla to Bidar, Mr. Arali Nagaraj to Bijapur, Mr. H.S. Kempanna to Mangalore, Mr. P.G. Kulkarni, to Bijapur, Mr. Shekharagouda Patil to Hubli, Mr. G.V. Hegde to Kolar.

The following Civil Judges [Senior Division] are temporarily promoted as District Judges and Posted to places noted against them: Mr. Suresh D. Parmaj, Mr. B.K. Manohar, Mr. S.N. Navalgund, Mr. P.G. Nadagouda, Mr. A.L. Pujar, Mr. H.M. Bhajantri, Mr. A.M. Bennur, Mr. A.T. Munnolli all as Addl. Judges, Bangalore City Civil Court, Mr. K. Diwakar Rao to Kolar, Mr. N.S. Patil to Labour Court, Bangalore Mr. Jayaram Ramakrishna Hegde, Labour Court, Bangalore, Mr. L. Subramanya to Madikeri, Mr. H.S. Ramanna to Mangalore, Mr. Joshi Arun Rama Rao to Bijapur, Mr. S.B.N. Prakash to Labour Court, Gulbarga, Mr. M.S. Balakrishna to Mangalore, Mr. A.M. Pattar to Raichur, Mr. H.R. Sudheer as Addl. Law Secretary, Bangalore and Mr. I.S. Antin as OOD Leave Reserve, High Court of Karnataka.

## Poetic Submission

The RBI [Amendment] Act, 1997 amended Section 45 of the RBI Act, 1934 by inserting sub-section "s" to the original Section. After amendment Section 45s prohibits acceptance of deposits by NBFIS i.e., individuals, firms and in-corporated bodies. In this background one of our readers Mr. N. Devadas, Central Govt. Standing Counsel has written a poem. The same is reproduced below:

### Validity of S.45S of RBI (Amendment) Act, 1997

Traditional Ways of money lending degenerated  
New Generation of money lenders originated  
Penniless becomes a money lender  
Depositor with him becomes penniless later  
Money lender offers depositors no guarantees  
Borrower offering guarantees loses properties  
Mobile money lenders fly, so depositors cry  
Action not taken public asked why  
Parliament prohibits deposits acceptance  
Money lenders challenge legislative competence  
H.C. and S.C. Upheld the competence  
So, no longer this is a question of importance  
Provision made to promote country's credit policy  
Provision to strengthen nation's monetary stability  
Lesser restrictions canvassed for chronic malady  
Law makers thought, prohibition is only the best remedy  
Protection of depositors is the wisdom of the legislative policy  
"Interfere Not" in economic legislation is the wise judicial policy  
Freedom hinges upon socio-economic democracy  
Law to put an end to lenders autocracy  
Money lenders called the law unreasonable  
To contend that engaged many lawyers who are able  
Learned Holla's arguments brilliant, fearless, but groundless  
But courts have already answered them in peerless  
Mayavaram, Kantamehta, DCM-Verdicts are many  
No more occasions for depositors to lose money  
Sweet arguments, singing but swinging  
Competent arguments, save not those swindling  
Oh, Traditional money lenders come with your own money  
Then you are good to society as you serve many  
Oh, Mylord, Marvellous way of hearing, country now awaits your verdict  
First Judgment on the validity of amendment would go to your credit.

**Donate Liberally to  
Lahari Foundation**



## News Focus

- On 2-4-98 AAB Organised a farewell function at the High Court Unit to felicitate Mr. Justice M.F. Saldanha on the eve of his departure to Washington DC to participate in an International Conference on Environmental Law.
- Between 2nd and 4th April 1998 a National workshop on human rights training was held at Bangalore which was jointly organised by the Centre for Research and Training in human rights and the Karnataka State Commission of Jurists.
- On 3-4-98 a dharna was held in front of the High Court to protest against the non-cooperation of the administration towards the demand of the AAB to provide additional accommodation in the High Court.
- On 17-4-98 the Karnataka State Bar Council and AAB had separately organised farewell function in honour of Mr. Justice L. Sreenivasa Reddy due to retire in May 1998.
- On 18-4-98 Annual Day Celebration of AAB was held in the city Unit. Mr. Justice L. Sreenivasa Reddy was the chief guest.

## Miscellany

- With effect from 1-4-98 Mr. Indrajeet Shah, Advocate, is functioning from his new chamber at No. 83, Sunkalpet Main Road, Near Corporation Market, Bangalore-560 002.
- On 3-4-98 Rahamathulla Shariff & Associates, opened their new law chamber at No. 1, 4th Cross, N.R. Road, Bangalore-560 002.

## Use of Contempt Jurisdiction

In a judgment aiming at introspection of its stand in V.C. Mishra's case a five judge constitution bench of the Supreme Court held that the judiciary should "sparingly and with caution" exercise its special jurisdiction of punishing for contempt. The 68 page judgment was delivered during April 98 on a petition filed by the Supreme Court Bar Association challenging a decision of the Court by which the former chairman of the Bar Council of India was punished. The Court observed that the "power of the Supreme Court to punish for contempt of court, through quite wide, is yet limited. It cannot be expanded to include the power to determine whether an advocate is also guilty of professional misconduct in a summary manner giving a go-bye to the procedure under the Advocates Act."

The question which the court was to decide was whether the punishment for established contempt of court committed by an advocate can include debaring him from practice by suspending his sanad for a specified period in exercise of its powers under Article 129 of the constitution? The bench held that the contempt power of the Apex Court cannot be used to deprive a lawyer of the due process contained in the Advocates Act by suspending his sanad in a summary manner while dealing with a contempt of court case.

## Lahari Advocates Forum

On 13-4-98 renowned singer and national awardee Mr. Shimoga Subbanna spoke on the topic "My impressions of the USA and the level of Kannada consciousness there" under the auspices of Lahari Advocates Forum. The function organised in the City Auditorium, AAB was presided over by Mr. H.R. Shankara Narayana, noted writer and Advocate.

## Around the Court

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Justice A.S. Anand, Justice S.P. Bharucha and Justice S. Rajendra Babu has held that total exclusion of members of the general public and hundred percent reservation for backward classes, as in a single post cadre, was not premissible within the constitutional scheme. The 51 page judgment delivered on April 17, 1998 observed that "In making reservation for the backward classes the state cannot ignore the fundamental rights of the rest of the citizens." It was also observed that "It cannot, however, be lost sight that in anxiety for providing reservation for backward classes a situation should not be brought about by which a chance of appointment is completely taken away so far as the members by making single post cent percent reservation for the reserved categories to the exclusion of other communities even when such a member is senior in service and is otherwise more meritorious". The judges held that Articles 14, 15 and 16, including 16(4) and 16(4A), should be applied in such a manner so as to strike balance in the matter of appointment by creating reasonable opportunities for the reserved classes and also for other members of the community.

The Constitution bench judgment came on a review petition by the Post Graduate Institute of Medical Education and Research, Chandigarh, seeking a court direction to validate the constitutionality of reservation in a single post cadre.

### □ Sec. 63 of the Indian Succession Act, 1925 - Attesters of will cannot operate by proxy:

In a 18 page judgment delivered on April 15, 1998 a bench of the Supreme Court comprising Justice G.N. Ray and Justice M. Srinivasan held that a witness attesting a will cannot authorise another person to write his name, sign on his behalf or make marks on the document on the ground that he is illiterate. "For the purpose of valid attestation under

Section 63 of the Indian Succession Act it is absolutely necessary that the attesting witness should either sign or affix his thumb impression or mark himself as the section does not permit an attesting witness delegate that function to another" the court ruled. The judges upheld an Andhra Pradesh High Court's decision holding that a will said to have been executed in 1945 by one Madamanchi Velugondaiah was not proved.

### □ Sec. 197 of the Cr.p.c. - Sanction to prosecute Officers of PSU's and Govt. Cos. not required:

In a judgment delivered on 30-4-98 the Supreme Court has held that no prior sanction is needed for prosecuting delinquent officers of public sector undertakings and Govt. Companies. Justice G.N. Ray and Justice G.B. Pattanaik held that protection by way of sanction under Section 197 Cr.P.C. is not applicable to officers of Govt. Companies or PSUs even while such Companies and Undertakings are "state" within the meaning of Article 12 of the constitution. The judges held that although the instrumentality or agency with a corporate veil for all intents and purposes may be held to be a third arm of the Govt. and it discharges the duties and functions which the state intends to do as indicated such an agency is nonetheless a judicial person having a separate legal entity. Therefore, such an instrumentality must be held to have an independent status distinct from the State and cannot be treated as a Govt. Department for all purposes. The judges said even if an officer of such an agency takes or receives, keeps or expends any property or executes any contract, such acts, even though in the ultimate analysis may be held to have been done in the interest of the state cannot be construed as of rule an action of the government by its employees or by an authority empowered by the government.





## Kempe Gowda Award

In a solemn function held on April 13, 1998 under the auspices of Bangalore Maha Nagara Palike Hon'ble Mayor Sri J. Hucchappa presented Kempe Gowda Day Award to Sri H.S. Renuka Prasad, Advocate and Notary in recognition of the social service rendered by him.

## Prize Winners

The following are the prize winners in the competition of various cultural events held in connection with the Annual Day Celebration of AAB:

**Patriotic Songs :** Ms. Bharathi Bhat, First prize; Ms. Nagarathna, Second Prize; Mr. Diwakar Maddur, Third prize and Ms. Hamsaveni, Consolation prize.

**Bhavageethe :** Mr. Ramsingh, First Prize; Ms. Bharathi Bhat, Second Prize; Ms. Nagarathna, Third prize; Mr. Diwakar Maddur and Mr. S. Venugopala, Consolation prize.

**Film Songs :** Ms. Bharathi Bhat, First Prize; Ms Hamsaveni, Second prize; Ms. Nagarathna; Third prize; Mr. Shivakumar and Mr. Shankarnarayana, Consolation prize.

**Folk Songs :** Mr. Diwakar Maddur, First prize; Ms. Hamsaveni, Second prize; Ms. Radharaju, Third prize and Mr. Ravishankar, Consolation prize.

**Revolutionary Songs :** Ms. Annapoorna, First prize; Mr. Diwakar Maddur, Second prize and Mr. Krishnamurthy, Third prize.

**Devotional Songs :** Ms. Bharathi Bhat, First prize; Mr. T Subharaya,

Second prize; Ms. Hamsaveni, Third prize and Ms. Radharaju, Consolation prize.

**Pick and Speak :** Mr. Ramesh Babu, First prize; Mr. Gopal, Second prize, Mr. Vishnumurthy, Third prize and Ms. Sathyashree, Consolation prize.

**Mono Acting:** Mr. K.R. Subhash, First prize; Mr. R.T. Krishnamurthy, Second prize and Mr. Gopal, Third prize.

**Mimicry :** Mr. K.N. Mohan, First prize, Mr. K.M. Basavaraju, Second prize and Mr. Krishnamurthy, Consolation prize.

**Prathamakshari [Kannada Film Songs] :** Mr. S Venugopal, First prize; Ms. B.P. Radha, Second prize; Ms. Hamsaveni, Third prize and Ms. Nagarathna, Consolation prize.

**Prathamakshari [Hindi Film Songs] :** Ms. Nagarathna, First prize; Ms. Smitha, Second prize; Ms. Ajeera, Third prize and Ms. Hamsaveni, Consolation prize.

Read  
Communique

## Foreign Tours

- Mr. S.K.V. Chalapathy, Advocate, left Bangalore on 29-3-98 for six weeks tour of USA.
- On 3-4-98 Mr. Justice M.F. Saldanha left for USA to participate in an International Conference on Environmental Law.
- On 4-4-98 Mr. B.E. Kotian, Addl. Govt. Advocate, High Court of Karnataka, left Bangalore on eight weeks tour of USA and Canada.
- During first week of April 98 Mr. Justice R.V. Raveendran left Bangalore for USA.
- On 7-4-98 Mr. Ashok Harnahalli and S.N. Satyanarayana, Advocates, left Bangalore for two months tour of USA.
- Sri N.K. Gupta, Advocate, left Bangalore during the last week of April 1998 for one months' tour of USA.

## Trekking Expedition

Following Advocates participated in the Trekking Expeditions to Kumar Parvatha Between 3-4-98 to 5-4-98 under the banner of "SAGAR-MATHA" a group of advocates for adventure sports :

S/s. S.B. Pavin, K.B. Adhyapak, Dinesh Byadagi, Z.A. Kureshi, Mohan Reddy Sawkar, B.R. Satenahalli Ashok. Karamadi and few others.

## News Panorama

On 29-4-98 President Alberto Fujimori of Peru revoked a controversial law which prohibited parents from giving their children long, offensive or ridiculous names. Only a week ago the said law was passed preventing parents from giving children three or four first names and clogging computer and legal records of giving them outrageous names that would subject them to ridicule. The authorities had cited couple of names such as Michael Jackson Quispe and Patricia Neurona H2O Poggi. The ban sparked outrage of opposition legislators Roman Catholic leaders and the parents who said it infringed on the parents' right to name their child as they pleased.

## Book Released

In a function organised by the Bangalore Literary Union on 12-3-98 at the AAB Auditorium Mr. Justice B.N. Mallikarjuna released the book *Sonnalige Siddarama Darshana* written by Advocate Sri B.S. Virupakshappa. Belur matt swamiji was the Chief Guest at the function. Sri G.G. Sastri, Advocate, introduced the book. Sri C.H. Hanumantharaya, President of the Union, welcomed the guests. Sri N.C. Narayana, Treasurer of the Union, proposed vote of thanks.

