

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 2

SC Comes Down Heavily On Allahabad HC

The Supreme Court on Tuesday, the 3rd instant, stayed the ex parte orders of the Allahabad High Court transferring 30 students from all over the country to the recognised colleges in Uttar Pradesh during 1992. The Court directed that the concerned students should not be allowed to attend classes until further orders. The Court was passing an interim order on Appeals preferred by the State of UP against the orders of the Allahabad High Court urging that the transfers ordered by the High Court were illegal.

Chief Justice M. N. Venkatachalaiah and Justice S. Mohan who passed the order castigated the State Government & observed that even the Judiciary which was the only protection against injustice seemed to have being involved in the fraudulent transfer of the Medical students from unrecognised, recognised & non-existent Medical colleges. Under the Medical Council of India Rules, migrations are possible only from the recognised institutions. But under the cases in reference the students concerned were able to get into prestigious Medical colleges in UP with the collusion of the State of UP & with the help of the High Court orders even while they were originally admitted to unrecognised & non-existent Medical colleges outside the State.

While passing strictures against the Allahabad High Court the Supreme Court observed that "this kind of stinking mess in the administration of Justice has to stop.

The authorities concerned will have to be prosecuted. We are more bothered in keeping our house clean." The Judges repeatedly wanted to know whether the same Judge has passed all the ex parte orders in the High Court. Further, commenting on the role of the High Court with regard to exercise of their power the Supreme Court observed that "why do the Courts want to take over the function of the concerned authorities like the Government in transfers". The Judges further observed that it was very strange that instead of directing the authorities to effect transfers the High Court itself had taken on this responsibility. Even though the matter involved serious questions, the Chief Justice observed that the High Court has made a pretence of impleading parties like the Medical Council of India but notices had not been issued by the High Court and instead ex parte orders passed.

Severely castigating the State Government the Court observed that "this Government seems to be conniving in this fraud. The very fact that the State has come in appeal before the Apex Court two years late shows the depth of corruption involved. The State Government seemed to have involved even the Judiciary in this fraud". The Court further observed that "it must be presumed that this impropriety has been committed for considerations. Otherwise, what is the compelling reason for the High Court to make such ex parte orders".

Congrats Satya



Lion N. S. Satyanarayana Gupta, a prominent advocate of Bangalore, who is in the forefront of the Lion's movement since 1980 has been elected as the Governor of the Lions International District 324 D1 for the year 1994-95. He is also a prominent member of Lahari besides being the former General Secretary of AAB & Lieutenant Governor of the District 324 D1 during 1992-93. It is likely that the Governor-elect will be installed in the office on 31-7-94 at Bangalore. Lahari wishes all the best to Mr. Gupta in his new endeavour.

Justice Krishnan Retires

Justice B. N. Krishnan retired during April 94 as a Judge of the Karnataka High Court. On 22.4.94 the Chairman of the Karnataka State Bar Council read the farewell address in honour of the retiring judge at a function in the High Court. On the same evening AAB hosted a farewell function in the City Unit.

Around the Courts

□ Section 309 IPC : A Division Bench of the Supreme Court of India, consisting of Justice R. M. Sahai and Justice B. L. Hansaria, declared that Section 309 of IPC is violative of Article 21 of the Constitution of India and so is void. However, the Court said that aiding and abetting suicide stood entirely on a different footing and shall remain on the statute book. The court also made it clear that it was not expressing its views on the question of euthanasia (mercy killing) as it was beyond the scope of the present petitions before it and also in euthanasia a third person was either actively or passively involved about whom it may be said that he aids or abets the killing of another person.

Disposing of the two petitions presented by survivors of suicide attempts viz, P. Rathinam and Nagbhushan Patnaik, the Judges said that the right to live of which Article 21 speaks about can be said to bring in its trail the right not to live a forced life. The Court observed that the provisions of IPC which provides for sentencing of a jail term extending up to one year and fine or both for persons found attempting to commit suicide was cruel because such persons need psychiatric treatment instead of being treated as a criminal and prosecuted. Sixty pages of scholarly judgment was delivered on 27th April 1994.

□ Custodial Deaths : In a recent landmark Judgment the Rajasthan High Court has

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Ye judges who give judgments by law, ought to be obedient to the laws
—W. Gurney Benham

Unjust Criticism

The recent large scale transfer of High Court Judges has brought in its wake sharp reactions from different quarters. In the light of the Constitutional provisions and the Verdict of the Supreme Court there can be hardly any justification for these reactions. Even otherwise the reactions are not sustainable as the grounds on which they are based are trivial. In this background we may have to examine some of those grounds.

Transfer of Judges at the High Court level is opposed on the ground that it gives scope for executive interference and consequent loss of Independence of judiciary. Now that the Supreme Court has ruled that it is only the Chief Justice of India in consultation with two of his senior Judges who can recommend for transfer of Judges and it is binding on the President, this argument cannot hold good. Infact the Executive has hardly any say in the matter of transfer of Judges & or their functioning as judges. Excigencies of the judicial administration may require transfer of Judges. What are those excigencies & which of the Judges require to be transferred is purely a matter for the Chief Justice of India and his senior companion Judges to decide. One cannot justifiably doubt about their discretion if he or she is interested in the well being of the system.

Another argument is that transfers are effected as a penalty which in term is based on the integrity of the concerned Judge. The fallacy of this contention lies in the fact that this argument advances only a negative aspect of the issue. It is not necessary that the transfers are always ordered with a view that a

certain Judge is not required in a certain High Court. It may also be due to the fact that some Judges are wanted somewhere with a view to improve overall efficiency of any given High Court. A reading of the list of recently transferred Judges also do not support the contention that all transfers are effected as a measure of penalty. Further when a Judge keeps high integrity it makes no difference for him or her to serve in any High Court rather than opting to a particular High Court. Besides integrity of a Judge has nothing to do with his transferr to any High Court. These aspects are entirely different and it is a clumsy effort to link-up both the issues.

It is an accepted principle that Ceasere's wife should be above suspicion. So also a Judge must also be above suspicion. It is in this background that the situation where the Kith and Kin of Judges are practicing in the same High Courts where those Judges are functioning it may be a consideration for transfer of those Judges. However it should not be meant that the concerned Judge was favouring his Kith & Kin but there is every possibility of the situation leading to unnecessary reactions. One way of avoiding such concern is that the Judge may have to move out of the scene rather than giving scope for such concerns.

One another ground on which the transfer of Judges is opposed is on the ground that such Judges who came from outside the State are unable to read the vernacular judgments and orders which come up for consideration before them. To say the least

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slogans like "Fairgrowth Services" and "Growmore investments" have immediate success. One success leads to another and nothing succeeds like success. For the needy there is the "Vyaja badla" counter. Surrender a security; borrow loan; deduct the interest; pay double interest after a date and buy back the security, if you can. There is Hawala Services too. Go abroad pay here in Indian currency. Get the amount in foreign currency from the Hawala man stationed abroad. After a circuitous route the money comes back to the Hawala man in the country. In the process the Hawala man manipulates profit to his best advantage. Of course, at the cost of the individual and the Country.

The high point is not yet reached. The denouement is yet to come. Imagine an ultra modern textile showroom. It is opened in day light. Glaring lights expose the gorgeous coloured clothes all round. Our man wearing gold rimmed spectacles walks in. There is brisk business inside. He runs through the counters. He checks up a lot of clothing. He gets into one of the lighted booths. He changes into picked clothes; comes out and peers into mirrors. Still, looking around, quietly hangs his old clothes into an arranged hanger slot and boldly walks out to mix in the milling crowd. Similarly, the broker was till now passing off a Banker's Receipt for a security, takes courage. He writes out a challan of one of his personal accounts. He pins to it the Banker's Receipt and hands over the challan in the counter. Lo! and wonder! the next day he finds the entire amount of Banker's

THE SCAM

(Its Genesis and causes)

C B. Srinivasan, LL B., Advocate

Receipt credited to his account. This encourages him to repeat the exploits. His credits go up and he withdraws the credited amounts with ease.

The Curtain is Raised

Investigative journalism found occasion to open the pandora's box. A girl from Mangalore wrote an epistle to the Governor of the Reserve Bank of India. In the gallery of the SBI counters she had heard whispers of accounts that never tallied. The Governor directed inspection. For the world which saw, as it were, the climax of the bulging of the broker's personal accounts on tender of BR's proved only to be the tip of the iceberg. Because, a committee appointed by the Governor which is now eponymously called the Janaki Ramen Committee, tabled at the top of the report that a sum of Rs. 1795.66 Crores had been paid to the brokers or purchase of investment without securities SGL forms or BRs. This meant that the brokers oral demand was met with the banks implicit obedience.

And in this wonder world of money racket, the humdrum event of every thing having two sides, appears to have a proved existence. It was found that sums had been credited without BRs or any other securities. Conversely it was found that the BRs were issued by some banks without at all possessed of securities. The report says that a total of Rs. 1287.97 Crores worth of BRs were on the counters of the banks without "the seller having goods to sell". As the BRs were issued just to announce an advance intention to acquire securities the broker buys and sells in words and pockets prices in crores.

(to be continued)

Article 356 - Scope of Judicial Review

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

(from the last issue)

From the above observations it may be seen, unlike the British Crown, the President of India, is a creature of the Constitution. He could only act in accordance with the provisions of the Constitution, and he exercises executive power derived from the Constitution. Therefore it follows if the power is found to have been exercised arbitrarily or for a collateral purpose the same is liable to be struck down by the Courts.

The above law declared by the Supreme Court by 11 Judge bench holds the field :

In the case of **STATE OF RAJASTHAN Vs. UNION OF INDIA (A.I.R.1977 S.C.1361)** even when clause (5) of the article which provided that satisfaction of the President was final and conclusive and shall not be questioned in any Court on any ground existed. The Supreme Court held thus :

"But before we do so, we must at the threshold refer to one other argument of the learned Additional Solicitor General which sought to exclude the jurisdiction of the Court in relation to a question of this kind. He contended that the question whether in a particular State a situation has arisen where the Government of a State cannot be carried on in accordance with the provisions of the Constitution and, therefore, action should be taken under Art-356 Clause (1) is essentially a political question entrusted by the Constitution to the Union executive and on that account it is not justiciable before the Court. He urged that having regard to the political nature of the problem, it is not amenable to judicial determination and hence the Court must abstain from inquiring into it. We

do not think we can accept this argument. Of course, it is true that if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the Court would not entertain it, since the Court is concerned only with adjudication of legal rights and liabilities. But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of Constitutional determination. Every Constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore fail to be political. Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one however highly placed and no authority however lofty can claim that it shall be the sole judge of the extent of its under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This court is the ultimate interpreter of the Constitution and to this court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for this court to uphold the Constitutional values and to enforce the Constitutional limitations. That is the essence of the rule of law.

In the case of **MINERVA MILLS Vs. UNION OF INDIA (A. I. R. 1980 S. C. 1825)**

(to be continued)

Judicial Transfers

The Karnataka High Court has effected the transfers of the following District & Sessions Judges, Civil Judges and Munsiffs to the places shown against their names. So far as the Munsiffs are concerned the changes will take effect from May 30th.

District & Sessions Judges

H. S. Naik, Kolar; S. R. Venkatesha Murthy, Mangalore; J. Chandrashekaraiah, Tumkur; Manjula Chellur, Chief Judge, Court of Small Causes, Bangalore; G. Nanda Kumar, Mysore (I Addl.); Syed Nissar Ahmed, Chikkamagalur; V. N. Kulkarni, Labour Court, Mysore; P. Seetharamaiah, State Transport Appellate Tribunal, Bangalore; Y. S. Venkata Rao, Bangalore (VI Additional); Krishna Naik, Gulbarga (I Addl.); K. L. Anantharaman, Bangalore (VII Addl.); V. P. Kedilaya, Additional Registrar, Lokayukta, Bangalore; H. G. Ghaliyavar, Member, Karnataka Appellate Tribunal, Bangalore; S. Rama Murthy, Bangalore (XVIII Addl.); C. K. Balakrishna, Mandya (Addl.) and P. V. Hogade, Member, Karnataka Appellate Tribunal, Bangalore.

Civil Judges

D. A. Lathe, Haveri; K. R. Bhat Udupi; Basavantharaya Patil, Dharwad (Principal); S. Shankara, Administrative Officer, Advocate General's Office, Bangalore; R. H. Reddy, Sirsi; S. T. Kudasomannavar, Dharwad (I Addl.); A. K. Adapannavar, CJM, Bangalore Rural; D. Krishnappa, Shimoga (Principal); V. G. Charatai, Yadgir; G. T. Veerabhadrappe, Deputy Secretary, Law Department; S. Siddalingesh, Shimoga (Addl.); M. M. Khan, Hospet; K. R. Holla, Bangalore (III Addl. CMM); J. C. Neeralagi, Chitradurga; A. L. Pujar, Madhugiri; H. R. Sudheer, Nanjangud; K. M. Murari Mouni, Deputy Secretary, Law Department; T. Rajasekharaiah

Mangalore (Principal); F. N. Guddakar, Dharwad (II Addl.); B. M. Angadi, VIII Addl. Judge, Court of Small Causes, Bangalore; Srinivas, Basavakalyan; B. S. Totad, Tarikere; H. R. Deshpande, Athani; M. T. Ananda Shetty, Chinthamani; M. Biradar, Tumkur (Addl.); M. N. Moole, Deputy Secretary, Law Department; G. K. Boregowda, Deputy Secretary, Law Department; S. N. Naik, Mangalore (I Addl.);

The following Munsiffs have been temporarily transferred to officiate as Civil Judges and posted to the charges noted against their names :

N. S. Kulkarni, Mangalore (II Addl.); R. F. Dowad, XVI Additional Judge, Court of Small Causes, Bangalore,

Munsiffs

Chandraiah, Aland; S. Nagesh, Gubbi; K. Shivaram, Doddaballapur (Principal); P. B. S. Kathare, Madikeri (Principal); B. Shivalinge Gowda, Srinivasapur; S. H. Mittalkod, Jewargi; R. M. Vaidya, Bijapur (Principal); Lingamma Patil, Afzalpur; A. T. Hanumappa, Belgaum (I Addl.); C. N. Shivapuji, Shimoga (Principal); M. K. Prahlad, Ron; A. N. Hakeem, Shorapur; P. A. Shivaprasad Naik, Virajpet (Principal); C. R. Jaweed Pasha, Principal II Munsiff, Bangalore; S. B. Patil, Yadgir; J. R. R. Kulkarni, Banhatti; V. G. Bopaiah, Mysore I Addl.

V. H. Ramachandra, Honavar (Principal); R. R. Bhairana padmath, Karkala (Addl.); S. M. Patil, Belgaum (II Addl.); H. M. Shivakumara Swamy, Channapatna; A. N. Solapurkar, Haveri; B. M. Mallikarjunaiah, Hadagali; D. Jamadar, Bhalki; A. R. A. K. Shingoti, Davanagere; H. Y. Vasantha Kumar, Coondapur (Addl.); S. S. Kogilgeri,

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Judges Sworn In

□ On 28.4.94 Justice J. E. Prasad (from A.P. High Court) and Justice P. Krishna Moorthy (from Kerala High Court) were sworn in as the Judges of the Karnataka High Court.

□ On 11-5-94 Justice H. N. Tilhari (from Allahabad High Court), Justice K. S. Bhaktavatsalam (from Madras High Court) and Justice G. C. Bharuka (from Patna High Court) on transfer were sworn in as the Judges of the High Court of Karnataka.

Unjust Criticism

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this contention smacks of Parochialism rather than advancing the cause of justice. If the same logic is adopted even the Supreme Court Judges cannot effectively adjudicate on the cases coming up before them since they do not know all the languages of India. It is to be seen that the official language of the Supreme Court as well as High Courts is English & invariably English translations of such of the documents, orders and Judgments are furnished as and when such documents, orders and Judgments are in Vernacular. The Judges have not found any difficulty in rendering decisions in those cases by Properly appreciating the Vernacular documents along with their translations.

Therefore we must learn to accept the transfer of Judges as a point of fact and incidence of their service conditions rather than creating fuss about such transfers. Otherwise we will be doing greater injustice to the cause of justice & the litigants.

**Read Communique
for
Latest News**

NEWS FOCUS

□ On 19.4.94 Mr. B. K. Chandrashekar, former M.L.C., addressed the members of AAB, City Unit, on "Dunkel Proposals".

□ On 20.4.94 Mr. Jagmohan, M. P. & former Governor of J & K, addressed the members of AAB, High Court Unit, on "Centre's J & K Policy."

□ On 27.4.94 Justice S. B. Majumdar, Chief Justice of the High Court of Karnataka, laid the foundation stone of the Proposed new building of the Hassan Bar Association. Justice A. J. Sadashiva and Sri Harenahalli Ramaswamy, the State Law Minister, graced the occasion.

Judicial Transfers

(from page 3)

Chamarajanagar; K. S. Bilagi, Under Secretary, Law Department; Somaraju, Addl II Munsiff, Bangalore; H.B. Muktha, Magadi; M. P. Tonne, Mudhol (Addl); B.R. Shankar Rao, Bagepalli; D. Sudhakar, Savanur; M.A. Sindhanur, Deputy Registrar, City Civil Court, Bangalore; B. V. Patil, Anekal; S.H. Fakirappa, JMFC II Court, Belgaum; C. R. Raja Somashekhar, Honnali; B.N.S. Manjunatha Swamy, Mangalore, (I Addl); K.B.M. Patel, Hangal;

T. G. Channabasappa, KGF (Principal); L.R. Deshi, Lakshmeswar; Sridevi, Mangalore (II Addl); P.S. Balikai, Srirangapatna (Principal); A.M. Nagaswamy, Madikeri (Addl); Srikanth Shimpi, Halayal; I.F. Bidari, Yellapur; G. B. Mudigoudar, Mangalore (III Addl); M.N. Yelavatti, Ramdurga; V. H. Sambrani, Hukkeri (Addl); U. I. Bhalekundri, Indi; A. N. Pattan, T. Narasipur;

Miscellany

□ On 13-5-94 S. B. Pavin, P. M. Nawaz & Rajasubramanya Bhat, Advocates, opened their new chamber at No. 618, Rajeswari Market, Avenue Road, Bangalore-2.

Readers Suggest

□ A reader has suggested that with a view to give priority to Orders and Admission matters hearing cases may not be the posted in the High Court during the week prior to the commencement of Court vacations.

Book Released

Under the auspices of AAB Justice M. Ramakrishna released the Book "Ocean of Bliss (Narayaneeyam)" written by Barrister C. K. Jaisimha Rao On 21.4.94.

Around the Courts

(continued from page 1)

ordered the State of Rajasthan to give Rs. 50,000 as relief to the kin of all those persons killed in police custody; provide employment to one dependant of every such killed person and in case the dependant is not eligible or does not want the job the family should be provided with agricultural land. The Court directed the State Government to constitute Seven member committee to identify and compile the cases of custodial deaths apart from formation of committees at District and Police Station level to examine and monitor complaints relating to the treatment meted out to persons in custody.

Justice Meghraj Kalla held that the State Govt. should be held responsible for custodial deaths caused by the police tortures. Justice Kalla was allowing a public interest writ petition filed in 1990 by the noted Civil Rights Lawyer Sunita Satyarthi on the basis of 24 custodial deaths. It is interesting to note that during the pendency of writ petitions Seven more custodial deaths occurred.

Concerns of a Judge and the Lawyer

A Lawyer from Gujarat used to graphically describe the concerns of the Judge & the Lawyer in the following terms:

On appointment as a Judge he is concerned about his PAY: after sometime he will be concerned about his PROMOTION. In the end obviously he is concerned about his PENSION.

Whereas, the Lawyer gets TENSION as soon as he sees the cause list in the morning. He rushes to the Court and makes MENTION seeking adjournment. When his request is rejected perforce he has to draw the ATTENTION of the Judge with regard to his client's contentions.

Courtesy:

Justice S. B. Majumdar.

Obituary

□ Mir Iqbal Hussain passed away at Bangalore on 3.5.94. He was a Judge of the Mysore High Court from 1958 to 63.

ಲಿಟರರಿ ಯೂನಿಯನ್

ತಾರೀಖು 21.4.94 ರಂದು ಬೆಂಗಳೂರು ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ಹಾಲಿ ವರ್ಷದ ಕಾರ್ಯಜಟಿವನಟಿಕೆಗಳನ್ನು ವಿಜ್ಞಾತ ಕವಿ ಶ್ರೀ ಪು. ತಿ. ನರಸಿಂಹಚಾರ್ ರವರು ಉದ್ಘಾಟಿಸಿದರು. ಪಂಜಾಬ್ ಮತ್ತು ಹರಾಜದ ಮಾಜಿಮುಖ್ಯ ನ್ಯಾಯಾಧೀಶ ನ್ಯಾಯಮೂರ್ತಿ ಎಂ. ರಾಮಾಜೋಯಿಸ್ ರವರು ಕಾರ್ಯಕ್ರಮದ ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು. ಪ್ರಾರಂಭದಲ್ಲಿ ಯೂನಿಯನ್ನಿನ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಎಸ್. ಶ್ರೀನಿವಾಸಮೂರ್ತಿಯವರು ಅತಿಥಿಗಳಿಗೆ ಸ್ವಾಗತ ಬಯಸಿದರು. ಕಾರ್ಯಕ್ರಮದ ಕೊನೆ ಯಲ್ಲಿ ಯೂನಿಯನ್ನಿನ ಕಾರ್ಯದರ್ಶಿಗಳಾದ ಸಿ. ಶ್ರೀಕಾಶ್ ರವರು ವಂದನಾರ್ಪಣೆ ಮಾಡಿದರು.

ರಾಮೋತ್ಸವ

ತಾ. 20.4.94 ರಂದು ಎಎಬಿ, ಸಿಟಿ ಯೂನಿಟ್‌ನಲ್ಲಿ ರಾಮನವಮಿ ಮಹೋತ್ಸವವನ್ನು ವಿಜೃಂಭಣೆಯಿಂದ ಆಚರಿಸಲಾಯಿತು. ನ್ಯಾ. ಎನ್. ವೈ. ಹನುಮಂತಪ್ಪನವರು ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿ ಭಾಗವಹಿಸಿದ್ದರು. ಮಾತನಾಡಿದವರಲ್ಲಿ ಎಎಬಿ, ಮೇಯೋ ಹಾಲ್ ಯೂನಿಟ್‌ನಲ್ಲಿಯೂ ಸಹ ರಾಮನವಮಿ ಮಹೋತ್ಸವವನ್ನು ಆಚರಿಸಲಾಯಿತು.