

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 5

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Part 3

## Computerise Legal Information -Justice M.N. Venkatachalaiah

Report by : Shanmukha Sampige, Advocate

Bangalore, June 5th : Justice M. N. Venkatachalaiah, the Chief Justice of India, stressed the need to computerise & ledgerise legal information. In his speech after inaugurating the Air Conditioned Law Library, established by the Bangalore Law Practitioners' Co-operative Society at the City Unit of AAB, Justice Venkatachalaiah informed that Computer Terminals will be established in all the High Courts and the country will soon have National Information Network for the speedy and effective judicial administration. He also told that this will help the litigants and lawyers to know the stage and other details of their cases in Supreme Court at these Computer Terminals. He also suggested the legal fraternity to have a common-wealth law reporting system for consulting leading journals of the Commonwealth Countries.

Mr. H.R. Bharadwaj, Union Minister of State for Law, Justice & Company Affairs, who presided over the function, assured his Ministry's co-operation and called upon the Bar Councils, Bar Associations and members of the legal profession to co-operate in Justice M N V's effort of computerising the legal information. Admiring the BLPs' Co-op. Society in its venture of establishing a well equipped and Air Conditioned Law Library Mr. Bharadwaj also called upon such

societies elsewhere in the country to follow the example set by the society.

Justice K. A. Swami, the Acting Chief Justice of the High Court of Karnataka, in his address said that the state government has sanctioned Rs. 23 lakhs to start a Legal Service Centre which would be first of its kind in the country. He also said that foundation will be laid soon for constructing a five storey well equipped complex with chambers for Advocates, Auditorium & other facilities, for the Bangalore Bar Association.

Justice N. Venkatachala, Judge, Supreme Court, also spoke on the occasion. Mr. K.N. Subba Reddy, President of the AAB, was also present.

The Society also felicitated the Advocates who have completed 50 years of standing in the Bar and several other members who have helped in the upbringing of the society.

The colourful function, interrupted by light showers for a while, was started with the melodious invocation by Mr. Shimoga Subbanna. Mr. M. Lokesh, President of the BLPs' Co-op. Society, welcomed the guests. Mr. K N. Puttegowda, Secretary of the society, read the report. The programme was neatly compered by Mr. B. K. Sampath Kumar, Advocate. Mr. C. Nagarajulu Naidu, Treasurer of the society, proposed vote of thanks.

## ಪ್ರಕಟಣೆ

ಕರ್ನಾಟಕ ಕಾನೂನು ನೆರವು ಮಂಡಲಿ ವತಿಯಿಂದ ಅಪರ ಕಾರ್ಯದರ್ಶಿಗಳಾದ ಐ. ಎಸ್. ಅಂಬೇಡ್ಕರ್ ರವರು ದಿನಾಂಕ 1ನೇ ಜೂನ್, 1993 ರಂದು ಈ ಕೆಳಕಂಡ ಸಾರ್ವಜನಿಕ ಪ್ರಕಟಣೆಯನ್ನು ನೀಡಿರುತ್ತಾರೆ:

ಕಾನೂನು ವಿದ್ಯಾ ಪ್ರಸಾರ ಯೋಜನೆಯ ಅಡಿಯಲ್ಲಿ ಹಲವಾರು ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಕರ್ನಾಟಕ ಕಾನೂನು ನೆರವು ಮಂಡಲಿಯು ಹಮ್ಮಿಕೊಂಡಿರುವುದು ತಮಗೆ ತಿಳಿದಿದೆ. ಮದುವೆಯಾಗ ಬಯಸುವ ಗಂಡು, ಹೆಣ್ಣುಗಳು, ಕಾನೂನು ಸಲಹೆಗಾಗಿ ಹೋದಾಗ ಪ್ರಮಾಣ ಪತ್ರದ ಮೂಲಕವಾಗಿ ಅವರು ಕಾನೂನುಬದ್ಧವಾಗಿ ಮದುವೆಯಾಗಬಹುದು ಎಂಬ ಸಲಹೆಯನ್ನು ಕೆಲವು ವ್ಯಕ್ತಿಗಳು ನೀಡಿ ಅದರಂತೆ, ಹಲವಾರು ಜನ ಪ್ರಮಾಣ ಪತ್ರಗಳ ಮೂಲಕ ತಮ್ಮ ಮದುವೆ ಎಂಬ ಕ್ರಿಯೆಯನ್ನು ನಡೆಸಿರುವುದು ಗಮನಕ್ಕೆ ಬಂದಿದೆ. ಈ ರೀತಿಯ ಮದುವೆ ಕಾನೂನು ಬಾಹಿರ. ರಾಜ್ಯದ ಹಲವಾರು ಕಡೆ ಇಂತಹ ಒಂದು ಪದ್ಧತಿ ಜಾರಿಯಲ್ಲಿರುವ ಕಾರಣದಿಂದ, ಇದನ್ನು ತಡೆಗಟ್ಟುವ ಸಲುವಾಗಿ ಮತ್ತು ಜನಜಾಗೃತಿ ಉಂಟುಮಾಡುವ ಸಲುವಾಗಿ, ಕಾನೂನು ನೆರವು ಮಂಡಲಿಯು, ಬೆಂಗಳೂರು ಆಕಾಶ-ವಾಣಿಯ ಮೂಲಕವಾಗಿ ಒಂದು ಕಾರ್ಯಕ್ರಮವನ್ನು ರೂಪಿಸಿದೆ. ಇದರಲ್ಲಿ, ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸನ್ಮಾನ್ಯ ನ್ಯಾಯ-ಮೂರ್ತಿ ಶ್ರೀ ಎನ್. ವೈ. ಹನುಮಂತಪ್ಪ, ಕರ್ನಾಟಕ ರಾಜ್ಯ ಬಾರ್ ಕೌನ್ಸಿಲ್‌ನ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಕೆ. ಎನ್. ರಾಜಶೇಖರ್, ಮಂಡಲಿಯ ಮಾಜಿ ಸದಸ್ಯ ಮತ್ತು ಸಮಾಜ-ಸೇವಕರಾದ ಶ್ರೀಮತಿ ಸುಭದ್ರಾ ವೆಂಕಟಪ್ಪ ಮತ್ತು ಕಾನೂನು ನೆರವು ಮಂಡಲಿಯ ಕಾರ್ಯದರ್ಶಿಯವರಾದ ಶ್ರೀ ಕೆ. ವಿ. ವಾಸುದೇವ ಮೂರ್ತಿಯವರು ಭಾಗವಹಿಸಿದ್ದಾರೆ. ಈ ಕಾರ್ಯಕ್ರಮವು ದಿನಾಂಕ 4-6-93 ರಂದು ರಾತ್ರಿ 9-30 ಕ್ಕೆ ಆಕಾಶವಾಣಿಯ ಮೂಲಕ ಪ್ರಸಾರಗೊಳ್ಳಲಿದೆ.

## New Experiment

After the summer vacations the Civil Court and Small Causes Court in Bangalore have adopted a new procedure under which the first hearing matters are dealt by the Registrars. It is learnt that this is done on an experimental basis for two months.

## Congratulations



An young and upcoming Lawyer, Faculty Member of B.M.S. Law College, ICWAI, Mr M. G. Srinivas deserves congratulations on his latest achievement. He presented a paper on the topic "Government Control of Business, objects, Pattern and Prospect for Economic Liberalisation, Perspectives and Plans" in the recently concluded Commonwealth Legal Education Association Conference on Economic policies, Human Rights and the Legal Order in Bangalore. While this Conference is held for the first time in India it is heartening to know that Mr. M.G. Srinivas is the lone Advocate and Faculty Member to have presented the paper to the International Conference of this nature.

## Annual Elections

The Annual General Body meeting of the Advocates Association, Bangalore and the election of its office bearers for the years 1993-94 is scheduled to be held on 10.7.93 at the City Unit.

## Book Released

On 10-6-93 Mr. Justice N. Venkatachala, Judge, Supreme Court of India, released the second edition of "Code of Civil Procedure, 1908" compiled by Prof. V. Narayana Swamy in AAB Auditorium.



*Discretion in speech is more than eloquence*  
—Francis Bacon

## Unacceptable Vacillation

There may be two views on the question of desirability of voting or opposing in favour of a motion proposing to impeach Justice V. Ramaswamy. However, the stand of the ruling party at the centre on this issue is quiet reprehensible considering the fact that this party claims to be more than a century old. It is apparent that ostensibly the party had no definite stand on the issue. But looking from the hindsight it is clear that the party had a gameplan of its own though it was held to be a guarded secret till the last moment. Initially the party took the stand that its MPs will vote according to their conscience which was later converted into a case of issuing in oral whip to abstain from voting on the motion. The resulting damage caused to the institution of Parliament and democratic policy is incalculable.

At the close of the recent Parliament session Mr. V.C. Shukla, the Union Cabinet Minister for Water Resources and Parliamentary Affairs, in his briefing asserted that the party was right in abstaining from voting so as to avoid split in the parliamentary wing of the party as also the motion of impeachment was politically motivated. In substance the ruling party abstained from voting on the grounds of political expedience. If that is a fact, as officially stated, the role of the ruling party on the issue affecting the national mainstream is totally unworthy.

How voting on the motion could have resulted in a split in the ruling national party is unexplained. However, it is no longer a secret that the son of Justice V. Ramaswamy is a Cong(I) MLA

in Tamilnadu. Moreover, if one distinctly consider the role of Cong(I) MPs from Tamilnadu it was apparent they were parochial and chauvinist even while they claim to represent a national party. Nobody in their senses could have supported or opposed the move merely because the concerned Judge hails from South India.

Hints were thrown by the party MPs that after all Justice V. Ramaswamy was indicted by the Enquiry Committee for the alleged financial irregularities but not on account of corruption charges. For a moment they forgot that there is only a thin line between the two concept and the finding of the Enquiry Committee regarding the financial irregularities in respect of a member affects Judiciary was in itself a sufficient ground for impeaching the concerned judge. In the guise of this hair splitting argument in respect of the integrity of a highest judge is concerned it has been condoned by the ruling party giving signal to all the concerned (particularly the members of judiciary) that they may indulge in future all kinds of financial or other irregularities by having the support of the ruling party. Considering the attitude of the ruling party on a larger question of corruption and its political philosophy it is no quiet strange that the party behaved in this particular form.

The other reason of the ruling party to abstain from voting viz. that the motion was politically motivated is nothing but a bald statement in the absence of any satisfactory explanation. By implication if the ruling party means that the motion was moved

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## Winding up of Companies

Udaya Holla, Advocate

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company. On such appointment all the powers of the Board of directors of the company, its secretaries, etc. shall cease. In case a vacancy occurs the same may be filled up.

When a declaration of solvency is not made and filed as required under Section 488 of the Companies Act the voluntary winding up becomes creditors voluntary winding up and the company is required to convene a meeting of the creditors the day after general body meeting at which the resolution to voluntarily wind up the company is proposed. Both members as well as the creditors at their meeting shall appoint a liquidator and in case the liquidator appointed by the creditors is different from the person appointed by the members the person appointed by the creditors shall be the liquidator of the company. The creditors shall also appoint either at their meeting or at the subsequent meeting a committee of inspection consisting of not more than 5 persons. The liquidator so appointed shall convene the meeting of the creditors as well as the members every year and as soon as the company fully wound up the liquidator shall make a report on the winding up and showing how the winding up has been conducted and property disposed of and convene a general meeting of the members of the company as well as creditors of the company for purpose of laying the accounts. Thereafter the Official Liquidator shall scrutinise the books and papers of the company and make a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members or to the public. From the date of submission

of such report the company shall be deemed to have been dissolved.

At any time after the winding up order is passed the Court may make an order that the voluntary winding up of the company shall continue subject to supervision of the Court (Section 522). In such an event the court shall have the power to appoint or remove the liquidator.

Section 529 of the Companies Act specifies that Insolvency Rules shall be applicable to winding up of the company with regard to debts provable, value of annuities, contingencies, liabilities and rates and secured and unsecured creditors. Section 529A provides for preferential payments. It specifies that the workers' dues and the debts due to the secured creditors shall rank *pari passu* and shall be paid in priority over all other debts. Section 530 specifies that subject to Section 529A revenues, taxes, cesses etc. due and payable within 12 months next before the date of winding up, all wages, salaries to workmen accrued for a period not exceeding 4 months, gratuity, PF etc. shall be paid in priority to other debts.

A perusal of these two sections would make it clear that secured creditors and the workers dues shall be payable in preference to all other debts and unsecured creditors even if they are the persons who have filed the petition for winding up.

Section 531 specifies that any transfer of property within 6 months before the commencement of the winding up would be deemed to be fraudulent transfer as against its creditors and shall be invalid. Similarly any transfer of property 3 months prior to presentation of an insolvency

(to be continued)



## Supreme Court

□ On The Minority Educational Institutions : By a Judgment dated 25-5-93 (reasons to be given later) the Supreme Court upheld the validity of the two orders of the Tamilnadu Government dated 17-5-89 & 12-6-91 inter alia laying down conditions to the effect that the maximum strength of admission can be made by each Teachers Training Institute in the first & second years as 40 & other conditions apart from prescribing qualifications to the staff etc. A large number of Minority Institutions had appealed against the order of the Madras High Court which had upheld these conditions. The Institutions had contended that the Government had no right to prescribe such conditions since they are run by religious/ linguistic minorities. The Court also refused to direct the grant of Diplomas in respect of the students who had passed the examinations by appearing through these Institutes.

□ On Wakf Act: By a Judgment dated 13.5.93 the Supreme Court held that the full and part time Imams throughout the country had a fundamental right to life under the Constitution and accordingly were entitled to a minimum remuneration to enable them to carry out religious activities. Justice K. Ramaswamy and Justice R.M. Sahai held in their judgment that the financial constraints of Wakf Board were no grounds to deny this right and it is the duty of the Wakf Board to raise resources to pay the Imams who perform the most important duty of leading the community to prayer in a Mosque.

Granting the prayer of the All India Imams Association the judges directed the Central Wakf Board to frame a scheme for payment of remuneration to full time as well as part time Imams and implement it within 6 months from December

1, 1993. It also further directed that the scheme framed by the Central Board should be implemented by State Wakf Boards after ascertaining the income of each Mosque and other details.

□ On Hindu Minority and Guardianship Act: In a Judgment delivered during the second week of May 1993 the Supreme Court held that the sale of a Hindu Minor's immoveable property by the mother of minor when the father is alive and taking interest in the family affairs is void. Justice M.M. Punchhi and Justice S.P. Bharucha, in their judgment held that Section 8 of the Hindu Minority and Guardianship Act, 1956 empowered only the natural guardian to alienate a minor's immoveable property provided it was for the legal necessity or benefit of minor or his estate. The Court dismissed an Appeal challenging the P & H High Court's refusal to grant legitimacy to a contract of sale entered into by the mother of two minor children with the Appellant which was attested by the father.

### Hefty Compensation to T.T. Player

In a recent Judgment of the Madras High Court Justice S. Pratap Singh directed payment of damages of 17.35 Lakhs to Mr. V. Chandrasekar, an international Table Tennis player from Madras, by Apollo Hospitals & two Doctors, H. Ranganathan & Monica (anaesthetist), on the grounds of negligence while performing a minor surgery on the patient. The learned Judge held that if a patient suffered injury due to negligence of the Doctors employed by a Hospital or by Doctors who worked on some arrangement the Hospital will also equally be liable for payment of damages on the principle of vicarious liability.

## Nawaz Sharif is back

By a historical Judgment dated 26-5-93 the Supreme Court of Pakistan (10 : 1) declared that the act of the President of Pakistan in dismissing the Nawaz Sharif government was unconstitutional and that he is entitled to continue as the Prime Minister of Pakistan. The Court allowed the petition filed by the deposed Prime Minister and held that the petitioner is entitled to all consequential reliefs. After a lapse of 38 days of his removal Mr. Nawaz Sharif took over once again as the Prime Minister of Pakistan on 26-5-93.

### News Spectrum

□ Kapil Sibal became the first lawyer to appear before the Bar of Lok Sabha on behalf of his client Justice V. Ramaswamy in connection with the deliberations of the impeachment motion recently took up by the House.

□ Recently an Appellate Court in US directed the Hollywood actress Kim Basinger to pay a sum of 7.4 million dollars as damages to M/s. Mainline Pictures Inc. for backing out of the lead role in the film "Boxing Helena" besides paying the Court costs of 7 lakh dollars. Infact the damages granted by the trial court was 8.9 million dollars.

### Unacceptable Vacillation

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by the opposition and not by the ruling party & therefore it was justified in abstaining from voting the logic is totally unhealthy for the democratic policy and the institutions concerned. Even if the allegation is proved the ruling party should have had the courage of voting against the motion. On the other hand there was no ostensible justification for abstaining from voting. Vacillation and indecisiveness on an unprecedented national issue by the ruling party is an unacceptable behaviour and requires strong condemnation.

## Is a City Law College involved in attendance racket?

R. Shanmugham, an employee of Madras High Court has recently filed a Writ Petition in the same High Court seeking investigation into the manner in which law degrees are obtained by some of his colleagues from Seshadripuram Law College, Bangalore, by falsely getting attendance certificates from the said college even while physically working in the Madras High Court. The writ petitioner has alleged that about 11 of his colleagues who are working in Madras High Court have obtained false certificates from the said college to the effect that they have attended the college for more than 120 days during the academic year and on the basis of LLB Degrees on those attendance certificates have been promoted as Assistant Registrars in the Madras High Court.

### Conference on Law Education

Between 4th & 6th June 1993 Commonwealth Law Education Conference was held at Whitefield near Bangalore. Justice M.N. Venkatachalaiah the Chief Justice of India inaugurated the Conference on the 4th instant. M. Veerappa Moily, the Chief Minister of Karnataka was the Chief Guest. Harnahalli Ramaswamy, the State Law Minister, Dr Madhva Menon, Director of NLSIU, several Supreme Court and High Court Judges including some former Judges participated in the Conference. Delegates from Commonwealth countries attended the Conference.

### Humour in Courts

Young Lady : I want to divorce my husband.

Judge : But why ?

Young Lady : Because he is not faithful to me.

Judge : How do you say that ?

Young Lady : Not a single child resembles him, Your Honour !



## Unitary Nature of our Constitution

R. B. Guttal, Advocate

Constitution is the law of laws. All the laws of the country derive their origin from the Constitution. The State legislatures and the Union legislature are given powers to enact laws on various subjects mentioned in the three lists attached to the seventh schedule to the Constitution. The Union list enumerates the items in respect of which the parliament can make laws exclusively. The State legislature is given exclusive power to make laws in respect of those items mentioned in the State list. The Concurrent list consist of certain items in respect of which both the legislatures can make laws. In making such laws as enumerated in the concurrent list the legislatures are expected to follow the principles enunciated in chapter I of part XI of the Constitution of India. Articles 245 to 255 contain the provisions expressing the relations between the Union and State legislatures. Article 248 confers the residuary power of legislation on parliament. Further in the interest of the Nation Parliament can assume powers to make laws even in respect of those matters mentioned in the state list as per article 249 of the Constitution of India. As already stated the laws made by the state legislatures must be in conformity with the laws made by parliament. In case of any inconsistency or repugnancy between the laws of parliament and state legislature considering all aspects and the theme behind this arrangement one can safely conclude that the Constitution of India is more a unitary constitution than a federal constitution.

The administrative relations between the Union Government and the State Govern-

ments are stated in chapter II of part XI of the Constitution of India. These are Articles from 256 to 263. A cursory reading of these Articles make it clear that the executive power of the state must be so exercised as not to impede or prejudice the exercise of the executive power of the Union. The Union Government can give directions to the State Governments in respect of the maintenance of National Highways and Railways. The powers of the Union Government are vast and it can even adjudicate the disputes with respect to the distribution of waters of inter-state rivers. The executive power of the Union or the executive power of the State must be in conformity with law. This is the basic principle on which the Constitution is framed.

The very concept of democracy is based on the rule of law. Keeping this in view it is stated in Article 54, 162 & Article 256 that the executive power of the Union and the States is subject to the laws made by parliament and state legislatures respectively. Considering the provisions relating to administrative relations between the Union and the States one can draw the inference that it is a weak federation with moderate powers of administration given to the State Government. The Union is all powerful and it exercises jurisdiction even outside the territories of India with the consent of the Government of that territory. Article 263 provides for the establishment of an inter-state council for enquiring and advising upon disputes which may have arise between states. Thus the provisions relating to administrative relation go to

(to be continued)

## Supreme Court

□ On Labour Law : The Supreme Court declared that the livelihood of a workman could not be taken away by an employer without following a "fair, just and reasonable" procedure. Hence under no standing order could the employer claim the right to automatically terminate the services of a workman who went on leave without prior sanction or stayed away beyond the period of sanctioned leave. The employer, consistent with the employee's fundamental right to a livelihood, must give him an opportunity to put up his case against termination of service on the ground of unauthorised leave or over stay. When the employer does not do this then the termination of service amounts to retrenchment under the Industrial Disputes Act and the employee is entitled to reinstatement and backwages.

The Division Bench consisting of Justices K. Ramaswami, Kuldeep Singh and V. Ramaswamy declared that the court had the power to "lift the veil" of an employers action and "gauge its effects to find whether it has the foundation to impose punishment or is only a motive". The Court held that before taking any action to put an end to the service of an employee even under a standing order which states that for unauthorised leave for 8 days or more termination of service shall be automatic. Fairplay requires that a reasonable opportunity should be given to the employee to put forth his case in a domestic inquiry.

The court in its Judgment and Order set aside the award of the Labour Court, Faridabad (Haryana), dated 19-4-1982 upholding the contention of the employer that under its certified standing order 13 (2) (iv) the employee will lose his lien on his

## Miscellany

□ On 16.5.93 S.G. Prabhakar and D.R. Chandrappa, Advocates, opened their law chamber at premises bearing No. 5 & 6, (1st Floor), Periyanna Lane, SJP Road Cross, Bangalore-560 002.

□ On 30.5.93 Ramesh P. Kulkarni, Advocate, opened his law chamber at Room No. 42, Ratan Mahal, Malleswar-am Circle, Bangalore-560 003.

□ With effect from 14-4-93 Mr. V. Vijaya Kumar, Advocate, shifted his chamber to G-7, Ground Floor, Brigade Links, 1st Main Road, Sheshadripuram, Bangalore-20.

## News Focus

□ On 26.4.93 a Medical Centre was opened at the Bangalore City Civil Court Complex for the benefit of all those who visit the Court Complex.

□ With effect from 31-5-93 Rural Courts functioning in Bangalore at KHB Complex is shifted to Bangalore City Civil Court Complex.

□ On 1.6.93 a obituary reference was made at Court Hall No.1 of the High Court condoling the demise of S.G. Doddakalegowda and A.K. Laxmeswar former judges of the High Court.

## Obituary

□ On 29.4.93 Kadkol, an Advocate of Mayo Hall Unit, passed away at Bangalore.

□ On 17.5.93 G.R. Doreswamy, Advocate & Retd. Public Prosecutor, expired at Bangalore.

□ On 18.5.93 A.K. Laxmeswar a former Judge of the High Court of Karnataka, passed away in Bangalore.

employment for unauthorised leave unless he comes back within 8 days and offers satisfactory explanation.

D. K. Yadav Vs. M/s JMA Industries Ltd DD. 7-6-93