

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 8

June 1996

Part 3

## VijayaShankar the New AG

Senior Advocate Mr.S. Vijaya Shankar has taken over as the new Advocate General of Karnataka. The government appointed him as the Advocate general consequent upon the vacancy arising out of the resignation of Mr. M.R.Janardana.

## Green Bench For Environment Cases

Following the directive of the Supreme Court in Hawrah Municipal Corporation Case a special Bench for dealing with environment and Pollution Control cases has started functioning in Calcutta High Court from 3-6-96. Similar Benches are likely to be established in other High Courts.

## Justice Hakeem Appointed Lokayuktha

Justice S.A.Hakeem has been appointed as the Lokayuktha in Karnataka. He assumed charge of the office on 3-6-96.

## S. S. Patil Elected Chairman

Mr. S.S. Patil, Advocate from Bangalore has been unanimously elected as the Chairman of the Karnataka State Bar Council. Mr. Patil is the successor to Mr. Mohan Shantanagowdar. Mr. Someshekar, Advocate from Mandya has been elected as the Vice-chairman.

## Retirements

□ Mr. Vittal Sheregar, retired as a Judge of the Family Court, Bangalore, on 20-4-1996.

□ Justice A.B. Murgod, retired as a Judge of the Karnataka High Court on 9-6-1996.

## Training In UK For Indian judges

Ten members of higher judiciary from India are exposed to class room teaching in England's Warwick University. The training programme, the first in a series of three, is entirely sponsored by the British Government and jointly organised by the British Council along with National Judicial Academy of India. Within the course of next two years two more batches of ten Judges will undergo similar training in England. In turn on return to India they are expected to train other Judges on the lines of their British experience.

The specially designed training programme centres around the topic "Women and the Law". Dr. Anne Stewart, the leader of the teaching faculty, said that the lectures are followed by discussions on topics "Gender Awareness, Justice and Judicial Independence". Workshops are also held for the trainees under the guidance Ms. Joanna Liddle from the Law faculty of the University who is also a training consultant of the crash course. Practical training is also afforded which include witnessing family proceedings over custody of a child, proceedings of a rape suit in the police station.

## Elected to Leg. Council

Prof. A. Lakshmisagar and Mr. D.L. Jagadish, Advocate from Bangalore, have been elected to the Karnataka Legislative Council unopposed from the Legislative Assembly Constituency.

Senior Vice President of Janata Dal Legal cell Mr. V.T. Rayareddy, in a press note has congratulated Mr. D.L. Jagadish in this connection.

## Fiat to build Association building

The Karnataka High Court on Tuesday the 11, June 1996 directed the State Government to construct a new building for the Advocates' Association, Bangalore after demolishing the old structure in Bangalore City Civil Courts Complex. While disposing of the writ petition filed by the Association Justice P. Viswanatha Shetty directed the Government to begin work on the building within three months from the date of the judgement and complete the three floor building with a basement floor within three years from the commencement of the work.

The Association had contended that even while the Government was convinced about the project and sent a proposal in 1993 estimated to cost Rs.4.75 crores the same is not pursued on one pretext or the other. It was also further contended that the existing building is more than 100 years old and the available accommodation is highly insufficient to cater to the needs of the large number of Advocates.

## POINT BLANK

I am a Retired Judge. But not a tired Judge.

Justice .H.Suresh

## Humour In Courts

◆ The Client had lost an important case and he had come to the chamber of his counsel.

Client : *Sir, I had never thought that I will lose the case. I do not know what to do?*

Lawyer : *Don't worry, we will file on Appeal. I will fight your case to the last drop of your blood !*

◆ The Judge had only five working days before his retirement. A Lawyer was addressing lengthy arguments. In this background the following discussion took place :

Judge : *Mr. Counsel, do you want to play a five days test match or the one day international.*

Lawyer : *No my lord ! I prefer to play the one day international as playing a test match may not produce any result !*

◆ Two students of Law were chatting:

I Student : *It is better we have the Uniform Civil Code.*

II Student : *But why?*

I Student : *We don't have to study so many personal laws like the Hindu Law, Muslim Law, etc!*

**READ  
Communique**



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*A Precedent embalms a principle*  
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— Sir. William Scott.  
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## President and the Precedent

The political scenarios as reflected in the eleventh Loksabha is such that no single party or pre-poll alliance partners could form a government which could enjoy the confidence of the House of the people. Therefore the President had to exercise his discretion in appointing the Prime Minister. Article 75(1) of the Constitution only states that the President shall appoint the Prime Minister and appoint other Ministers on the advise of the Prime Minister. Article 75(3) states that the Council of Ministers shall be collectively responsible to the House of the People. An objective reading of these provisions show that while the President need not exercise his subjective or objective satisfaction as regards the possibility of such Ministry to be appointed by him enjoying the confidence of the House of the People it is made incumbent for such Ministry to be collectively responsible to the House of the People [an euphemism for enjoying majority in Loksabha].

This is not the first time that a situation like this arose when the President had to exercise his Constitutional prerogative of appointing the Prime Minister. As early as in 1989 Rajiv Gandhi was called upon to form the Government at the centre by the then President R.Venkataraman. When the former declined to accept the invitation the President exercised his alternative option of inviting V.P.Singh to form the Government. Again in 1991 P.V.Narasimha Rao was invited by the then President R.Venkataraman to form a minority Government at the centre. It is a noticeable feature that on both occasions President R.Venkataraman followed the principles of inviting the leader of the single largest party in loksabha to form the Government at the first instance. In this sense President R.Venkataraman evolved a principle and

consistently followed it. In this background it was too much to expect that President Shankar Dayal Sharma to follow a different method

It may be possible to argue that the principle adopted by President R.Venkataraman on previous occasions may not be sound. However it was not realistic to expect that the precedent laid down by his predecessor in office is not binding on President Shankar Dayal Sharma, particularly when the antagonists of the President are unable to show that it was perverse and or repugnant to the Constitutional provision. Besides the President would have been subjected to criticism on the ground of inconsistency and ignoring the precedent. The observations of Roberts J.Owen in this regard "The tendency to disregard precedents has become so strong as to shake confidence in the consistency of decision and leave the courts below on an uncharted sea of doubt and difficulty without any confidence that what was said yesterday will hold good tomorrow" is pertinent.

It may also be open to argue that precedent cannot replace the law. However, to sustain this argument it is incumbent to show that all the precedents in vogue are unlawful. In the absence of any such blemish the President will be just in following the precedent political expediency cannot be a guiding factor nor the highest Constitutional functionary in such matter as inviting a person to be the Prime Minister of the biggest democracy of the world viz. India i.e. *Bharath*.

Criticism of the president for following the precedent, howsoever bonafide, is unwarranted. Decency and decorum requires that being the highest arbiter of the democratic polity the president should not be criticized in our anxiety to achieve an objective. By doing so we will be causing a harm to the democratic system.

## In Defense of Judicial Activism

.....  
 Dr. N.R. Madhava Menon  
 .....

Activism involves vigorous and sustained action towards a desired goal. In the context of the judiciary, it means slight departure from conventional style of adjudication in terms of jurisdiction, processes and remedies on matters of public importance. For an institution which is precedent-bound and reacts only when approached with legal disputes, activism is a typical of judicial function. Ofcourse, in Common Law there are many examples of what may be called activist interpretations, whereby new principles of liability have been evolved particularly in tort and the law of obligations. However, it is after the adoption of the Indian Constitution with a guaranteed bill of rights that the higher courts really got on the job of judicial governance through writ jurisdiction and the exercise of the power of judicial review. What is new today is the sustained use of activist exercise of judicial power in a vast variety of situation resulting some times in public criticism of what is called "judicial excesses", "jurisdiction grabbing", or "government by the judiciary". Despite criticisms from some quarters, the general public seem to have welcomed judicial activism by inviting judicial intervention in more and more cases of executive misfeasance and malfeasance.

The liberalisation of the doctrine of locus standi in entertaining public interest litigation on matters affecting fundamental rights opened up new avenues for judicial activism in recent times. The increase in governmental inaction and indifference in discharging legal obligations provided several occasions for taking public grievances to court. The inability of the political and legislative institutions to extract executive accountability further contributed to the drift towards judicial remedies even in matters which

normally should have been resolved at the political level. Indeed the judiciary is being overused today because of the shortcoming of the other two wings of government which is perhaps not good for democracy in the long run. In this regard, the observations of the Chief Justice of India that judicial activism is a temporary phenomenon is to be welcomed. Meanwhile it is necessary to find strategies for institutionalising activism in the judicial process so that it will be revived when occasion demands and will be contained within constitutionally acceptable limits in the spirit of democracy and rule of law.

In recent times judicial activism manifested in three important areas, namely, political corruption, environmental pollution and issues involving right to life and liberty. Corruption, no doubt, is the major public enemy today and it is growing with criminalisation of politics. The Vohra Committee Report has given the dimensions of the problem and the potential threat it poses to the integrity and stability of the country. With the executive controlling investigation and prosecution, there is virtual impunity for corrupt elements in high places even where police records disclosed evidence of culpability. Besides endangering the right of law abiding citizens, executive inaction in this regard contain the potentials for jeopardising the capacity of criminal justice system to maintain democracy and rule of law. This was one type of situation in which the Supreme Court became activist at the instance of public spirited individuals, encroached what in normal times is the domain of the executive, and directed the investigating agencies to ensure that the law takes its course irrespective of the consequences.

[To be continued]



## News Spectrum

□ All Ceylon *Jammeeyathul Ulama* [Council of Islamic Theologians of Srilanka] recently withdrew a *fatwa* declaring a *sufi* author an outcast from the religion issued about seven years ago. The *fatwa* was issued against the author M.S.M.Abdullah for his tamil book entitled "Are you aware of the reality of faith ? "[English translation of the title]. This withdrawal came in the light of a court proceeding initiated by the author in the Colombo District Court challenging the validity of the *fatwa*.

□ A twenty one year old Pakistani student Salma Waheed is resisting a habeas corpus petition filed by her father Abdul Waheed Ropri before the Lahore High Court on the ground that her marriage with Arshad Ahmed, a Lecturer in Government College on February 26, 1996 is valid and that she has a right to stay with her husband against the wishes of her fundamentalist father, who is a member of *Ahle Hadith*, a militant Sunni Muslim Sect. Ms.Salma is a student of Business Administration in Lahore.

Mr.Ropri, father of the lady student who has filed the habeas corpus petition has contended that the secret marriage took place without a *wali* [guardian] that too without his consent. Therefore, according to him the marriage is void-ub-initio and his daughter has no right to stay separately with her alleged husband. Ms.Salma is represented by the noted Pakistani Secular Human Rights Activist Ms.Jahangir.

This case has assumed a lot of public attention in Pakistan in view of the ramifications the

judgment may have vis-a-vis the Islamic law. Justice Qayyum Malik, one of the two High Court Judges hearing Salma's case, remarked during the court hearing on May 8, 1996 that "We are here to decide whether, under Islamic laws and principles a women who has reached the age of majority wants to leave home and live independently there is anything in Islam to stop her ?"

□ Recently the Italian Supreme Court ruled that the father has no right of corporal punishment [like slapping, kicking and beating with a belt] against his children on the ground that the child is not showing due interest in education. Rejecting an appeal filed by the father challenging the conviction and sentence of the Milan Appellate Court's order the Apex Court held that he has no right to discipline his daughter by resorting to corporal punishment. The court further held that corporal punishment are "culturally anachronistic and legally unjustified today."

□ By a judgment of March 20, 1996 the Pakistan Supreme Court declared that 1/3 of the 56 appointments made to the superior courts by the Bhutto Government is invalid. Piqued by this judgment the Pakistani President Farooq Ahmad Leghari has sought the opinion of the Supreme Court by way of a reference arising out of this judgment. Presently the matter has been pending before the Full Court comprising all the 14 Judges of the court.

Most of the Judges appointed by Bhutto's Government included active leaders of the ruling Pakistan.

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## A Newcomer On Curtailing Litigation Time

*Harikishore, Advocate*

The degree of importance accorded to this seemingly laborious chore may be gauged by the practice of Courts omitting to call out these cases, even though they are listed for the day. Promptly dealt with, this area could yet provide the Court with the most visible demonstration of it's business like approach and intent to dispose cases in that shortest duration possible.

Judicial Activism being the buzzword lately, the time might be ripe for the implications of such a disposition to percolate to the Lower Courts as well. More frequent interjections to ensure that proceedings are brief and to the point would not be unwelcome. In cross-examinations, for instance, the conducting Advocate is allowed free rein to pose mundane and banal questions, oftentimes, quite unrelated to the case on hand and clueless as to the line of enquiry. A classic example, though by no means the only one, is the suggestion made to the witness that he or she is deposing falsely. In the history of Indian Judiciary (or for that matter any other), it is wholly unlikely that any witness would have admitted to concocted testimony, yet in nearly all cases, the insinuation is routinely made in such a purposeful and expectant tone that one would almost expect the witness to blurt out that he has indeed been lying, the oath to 'Speak the truth, the whole truth and nothing but the truth 'be damned! Preposterous as it is, instances abound wherein the question is asked more than once and the expected answer dutifully recorded. Except when Counsel for the witness protests- and

forcefully at that- Courts by and large appear content in disinterestedly chronicling proceedings, rambling as they may be. In this age of Dictation Software, which facilitates conversion of the spoken word into print at a rate faster than any stenographer could type, Courts could never do enough (subject of course to the stated objectives of Law), in eliminating impediments to enhance productivity within the limits of the antiquated system we are now crippled with.

Similarly, when arguments in Courts become circuitous and repetitive, a well-meaning and judicious remark about the point having been made and the imperative to move on to the next would endear rather than distance the Court from parties before it and the ends of Justice would be none the poorer for it. The day may then not be far off when Trial Courts, following the lead set by the Supreme Courts will be able to dispose cases at a rate which will ensure that pendency level is pegged down at zero, where it should be.

Clearly then, a more active and participatory Judiciary is the need of the hour. The role of the supporting cast will no doubt augment the agenda, but unless the Machinery is able to bestir itself into assertion, such support will only be ineffectual at best. It may not be out of place to recall Sir.M.Visveswaraya,".... Destiny is not a passive agent which lies in the lap of the Gods, but is an active instrument that lies in the hands of men to shape themselves as they will...." [concluded]



## Miscellany

➤ On 23-5-1996 A.Ananda Shetty and N. Rajashekar, Advocates, opened their new Law Chamber at No. S-1, Swastik Manadi Arcade, S.C.Road, Bangalore-560 020.

➤ In the election held during the last week of April 1996 Mr. F.S. Nariman, Senior Advocate, has been elected as the President of Bar Association of India. Mr. N.D.B.Raju, Advocate has been elected to the Executive Committee and placed in charge of Karnataka Affairs.

➤ Recently Mr.K.Suman, Advocate, shifted his chamber to No.94, 1 Floor, East Park Road, 10th Cross, [Near Post Office], Malleswaram, Bangalore-560 003. Phone-3365580.

➤ Recently Mr.K.Narasimha Murthy, Advocate, shifted his chamber to 172/24, Kilari Road, Bangalore-560 053.

➤ Former Oath Commissioner Mr.K.M. Basavaraju, an Advocate from Bangalore has created a history of sorts. Between 1988-96 he has visited Thirupati Sri Lord Venkateshwara Temple 102 times being the ardent devotee of the Lord.

➤ Ms.SandhyaVenugopalD/o Mr.N.S.Venugopal, Retired District Judge and presently Advocate in Bangalore, secured 39th Rank in the IAS examination held during 1994. Presently she is functioning as the Assistant Collector and Sub-Divisional Magistrate, Madurai [Tamil Nadu].

➤ On 13-6-96 a Bajaj 150 scooter belonging to Mr.V.B.Ganachari, Advocate, was stolen from the parking place in front of the High Court Building.

➤ Prof.H.S.NarayanAdvocate, has been re-elected as the President of the Senior Citizen's Forum, Indira Nagar, Bangalore, for a period of two years.

## Around the Courts

❑ Section 23 of the Hindu Succession Act, 1956, benefit available only if the male heir is in possession of the dwelling house.

In a recent judgment a three judge Bench of the Apex Court comprising Justice Kuldip Singh, Justice M.M. Punchhi and Justice K.Ramaswamy have held that the male heir who succeeds to deceased father's property dying intestate cannot get the advantage of Section 23 of the Hindu Succession Act if he creates third party rights by renting out the dwelling house. This provision which recognises the special right of the male heir prohibits the female heir from claiming partition of the dwelling house wholly occupied by members of the joint family until the male heirs choose to divide their respective shares therein. Their Lordships held that what is meant to be covered under Section 23 is dwelling house of houses fully occupied by the intestate's property and not a house or houses let out to tenants since such house or houses would not be dwelling houses but can be classified as residential houses.

❑ The Consumer Protection Act, 1986, Lawyers are governed under the Act.

In a significant ruling recently tendered by the Karnataka State Commission for Consumer Grievances Redressal it has been held that the Advocates are covered by the Provisions of the Act and the Consumers (litigants) can file complaints against Advocates. This ruling came to be made in V.V.Chachappan Vs P.K.Vijay wherein the litigant has claimed compensation of Rs.8,10,000/- for deficient service on the part of his Advocate which had caused mental agony, financial loss and injury. Overruling the objection of the Respondent the State Forum held that it has jurisdiction to consider the application of Mr.V.V.Chachappan.

## Former Minister Remanded to JC

Madras police arrested Mr. S.D.Somasundaram, the Tamil Nadu Revenue Minister during Jayalalitha regime on 12-6-96 in connection with the assault on Madras Lawyer Mr.Vijayan about two years ago. The Metropolitan Magistrate remanded him to Judicial Custody for a fortnight. It is relevant to note that Mr.Vijayan was assaulted in the background of his assailing in the Court the reservation Policy of the then Tamil Nadu Government.

## Literary Union

On 12-6-96 Sri. Jaggu Narayana delivered a lecture on the uses of coir and coconut shell as art materials. An exhibition of his artistic works created out of the coconut shell and coir was also organised on the occasion.

## Obituary

○ On 8-5-1996 G.C. Keshava Reddy, Advocate, passed away at Bangalore.

○ On 22-5-1996 Basavaraj Patil, Civil Judge, Hassan, Passed away at Bangalore.

○ On 4-6-1996 G.H. Ranganatha Rao[59], Advocate, passed away at Bangalore.

## Congrat's



*Nikhil Kolar, a student of MES College, Bangalore, secured Fourth Rank in II Year PUC Examination [Science]. Nikhil is the son of Mr. Jayavittal Rao Kolar and Ms. Keertida Kolar, Advocates*

## News Spectrum

(Contd from Page 3)

People's Party. The Chief Justice was not consulted before those appointments were made. Surprisingly the Supreme Court has held that political affiliation was not a disqualification for appointment of a person as a Judge.

## Lahari

○ On 21-6-1996 Mr.H.Billappa, Advocate, delivered a lecture on the topic "Jail or Bail" in the AAB Auditorium.

## Colleague Needed

Those in need of Senior may apply to the undersigned with Bio-data. Law graduate [5 years course] is preferred.

**Mr. D. Vijayakumar,**  
(Advocate)

# 339, 1 Floor,  
[Near Balepet Circle]  
Chickpet, BANGALORE-560 053.  
PHONE : 2874647.