



Lahari

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 9

June 1997

Part 3

Judges Appointed

In a simple ceremony held on June 11, 1997 Mr. H. Rangavittalachar, Mr. S. R. Bannurmah and Mr. V.Gopala Gowda took oath as Additional Judges of the Karnataka High Court.

Born in 1942 at Mulbagal, Kolar District Mr. H. Rangavittalachar obtained a Science degree from Vijaya College, Bangalore. He obtained Law degree from the Government Law College, Bangalore and enrolled as an Advocate in 1966. In the chamber of late N.S.Narayana Rao he got good guidance. He was a faculty member of V.V.Puram Law College. Before joining judiciary Mr. Rangavittalachar ably served as the High Court Government Advocate.

Born in 1948 at Dharwad Mr. S.R.Bannurmah obtained his graduation from Belgaum. After his enrollment as an Advocate he joined the chamber of Mr. K.A.Swamy, who later retired as the Chief Justice of High Court of Madras. In 1991 Mr. Bannurmah was appointed as Additional State Public Prosecutor and later Additional Government Advocate. At the time of his appointment Mr. Bannurmah was serving as the State Public Prosecutor.

Born in 1951 in an agricultural family at Chintamani at Kolar District, Mr. V.Gopala Gowda graduated at Kolar obtained Law College at degree from SJR Law College, Bangalore. Since 1975 he has been an Advocate. Acquired teaching experience by serving in University Law College and V.V.Puram Law College, Bangalore. With a trade union background Mr. Gopala Gowda had established himself as an eminent Advocate in Labour and Service matters. Recently he had toured China.

Judiciary Not Active Enough-Kuldip Singh

In a significant comment Justice Kuldip Singh, Former Judge of the Supreme Court, said that the country's judiciary is not active enough. Speaking at the installation ceremony of the new District Governor of Rotary Club in Bangalore on June 30, 97, Justice Singh said that judicial activism was well within the ambit of the Constitution.

Justice Singh said that the rights of the people pass through the Legislature, Executive and Judiciary. But if one of the channels gets clogged the other gets overburdened. He also said that while the role of each organ was defined in water tight compartments, Courts had the power of judicial review and consequently every citizen had a guaranteed right to approach the judiciary.

Pointing out that bulk of the society is illiterate, the citizens have to fight against hunger and often the individual rights are affected by State intervention Justice Singh said that in such a situation anybody can move courts through public interest litigation.

Justice Kuldip Singh said that barring the last four years judiciary in India had not been subjected to criticism of the present kind. Thanks to some of the important cases taken up by the Apex Court the term judicial activism had become controversial. The cases which broke the traditional role of the judiciary were concerned with corruption, environment, child, welfare, human rights and the like that concerned society at large. Politicians are blaming the judiciary to coverup their misdeeds. There was no concerted efforts to protect the rights of the people. Judiciary alone cannot bring about social welfare but it cannot also sit quietly. In this background judicial

activism has to be pursued vigorously, Justice Singh remarked.

Don't Tarnish Judiciary's Image

Chief Justice of Karnataka High Court Justice R. P.Sethi warned media that tarnishing the image of the judiciary could lead the people to loose faith in the institution. In case of deficiency on the part of judiciary the media should confirm the facts before publishing the news item. Investigative journalism should not be used as an excuse to malign anyone. An insult on the judiciary was insult on the people which may warrant initiation of contempt proceedings against the media, he said.

Justice R.P.Sethi was speaking at a two day Seminar on "Media ethics and professional standards" at Bangalore on June 21, 97. The Seminar was organised jointly by the Indian Institute of Mass Communication, The Friedrich Ebert Foundation and the State Government.

News Panorama

◆ In a very recent judgment the US Supreme Court has ruled that the practice of mercy killings by the medical practitioners of the terminally ill patients is illegal.

◆ The outgoing British Colonial Administration of Hong Kong had proposed to get a Bill passed through the Legislative Council known as the Dogs and Cats (Amendment) Act which seeks to make the muzzling of vicious pets mandatory.

Around the Courts

© Sec.73 of Crl.Procedure Code, issue of warrant when charge sheet has not been filed:

In a recent judgment a Division Bench of the Supreme Court comprising Justice M.K.Mukherjee, Justice G.T.Nanavati and Justice B.N.Kripal has ruled that the Magistrate can issue arrest warrants against persons who are accused of non-bailable offences and are evading arrest even though charge sheets have not been filed against them. This judgment overrules the Bombay High Court judgment which had said that the power conferred on the Magistrate under Section 73 Cr.P.C. can be exercised in the course of trial only. The CBI had filed this Appeal before the Apex Court challenging the ruling of the Bombay High Court.

Observing that a Magistrate quite frequently plays a vital role during investigation when he holds test identification parade, records confession of the Accused persons or statement of witnesses or takes their specimen writings. Thus there was no bar for issuing a warrant for arrest in aid of investigation if an Accused was evading arrest and was required to be arrested for the purpose of investigation by the Agency, the court said.

Foreign Tours

→ During April, May 97, Mr. Anant Mandgi and Ms. Ujjwala Mandgi, Advocates, toured US and Canada.

→ Mr. B.P. Kumar, an Advocate from Bangalore, visited Singapore between 17th and 28th May 1997.

→ On 17-6-97 Mr. B.T. Partasarathy, Advocate, left Bangalore to USA.

*Any man who says he is impartial about any
Subject on which he speaks is either ignorant or a liar.*
— Oliver Wendell Holmes

Disaffiliation of Law Colleges

Bar Council of India has discontinued affiliations to the following Law Colleges in the State from 1997-98 :

Bangalore : Babu Jagjeevan Ram Law College; Indira Priyadarshini Law College; K.H.Patel Law College; Prithvi Education Trust's Law College; M.S.Ramaiah Law College.
Kolar : KGF Law College,
Oorgam. Belgaum : Sri Laxman Rao Jharkiholi Law College, Gokak.
Uttara Kannada : MRE Law College, Honnavar; Bapuji Grameena Vikas Law College, Sadashivagad.
Dakshina Kannada : YMS Law College, Kundapua.

Munsiff Arrested

Nazarbad police arrested Mr.Chandraiah, Addl. Munsiff, Mysore on 25.6.97 for allegedly attempting to murder his brother-in-law Jwala Kumar. According to the Mysore City Police Commissioner Mr.Kempaiah, Mr.Chandraiah was transferred to Mysore recently and within a weeks time after his joining duty in Mysore he was suspended. Mr.Chandraiah and his family were residing in the house of Jwala Kumar. A dispute over immovable property seems to be the bone of contention between Mr.Chandraiah and Jwala Kumar. It is reported that after setting fire to a motor cycle belonging to Jwala Kumar Mr.Chandraiah attempted to set fire to Jwala Kumar. The latter was saved by others.

News Focus

¶ On 13-6-97 a Kannada drama titled 'Varabhrashta Ravana' was enacted in AAB High Court premises by Advocates D.H.Mokhashi and others.

¶ On 27-6-97 AAB had organised a farewell function to bid farewell to Justice P.Krishna Moorthy who retired as a Judge of the Karnataka High Court. In the function organised at the High Court Unit Mr.K.N.Subba Reddy, President of the Association, presented a memento to the retiring Judge.

Appointments

The following new appointments have been made to the establishment of the Advocatel General: Mr. R.I.D'sa, Government Advocate; Mr. B.R.Nanjundaiah, State Public Prosecutor; Mr.S.S.Koti, Addl. State Public Prosecutor; Mr. P.G.C.Chengappa, Mr. H.Billappa, Mr.B.E.Kotiyam, Mr.G.Papi Reddy, Mr. N.K.Ramesh, Mr. K.Vishwanath, Mr. B.Prakash, Mr. S.N.Aswathanarayana and Ms. Bharathi Nagesh, all Addl. Government Advocates.

Humour in Courts

☞ Judge : "Have you ever been married ?"

Witness : "Yes sir, once."

Judge : "Whom did you marry ?"

Witness : "A woman, sir."

Judge : "of Course, Did you ever hear of anyone marrying a man ?"

Witness : "Yes, sir. My sister did."

Courtesy : K.R.Dinakar.

☞ The Government Advocate was addressing arguments in a Writ Appeal which was listed for final hearing.

Bench: We never knew that the Government would prefer such frivolous Appeals.

G.A.: Unfortunately this very Bench has admitted this Writ Appeal!

Lahari Foundation An Appeal

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

— Trustee

The Ultimate Saving Factor

Shri D.B.Thengadi

From the last issue

So far as orderly course of procedure is concerned, he explains that it does not require a Court to strictly weigh the evidence but it does require it to examine the entire records to ascertain the issues, to discover whether there are facts not reported and to see whether or not the law has been correctly applied to facts. The view expressed by other writers is practically the same as that expressed by Prof. Willis, though some of them do not expressly refer to the fourth element, viz., orderly course of procedure. The real point however is that four elements are really different aspects of the same right, viz., the right to be heard before one is condemned. So far as this right is concerned, judicial opinion in England appears to be the same as that in America. In England, it would shock one to be told that a man can be deprived of his personal liberty without a fair trial or hearing. Such a case can happen only if the Parliament expressly takes away the right in question in an emergency as the British Parliament did during the last two World Wars, in a limited number of cases. I will refer here to a few cases which show that the fundamental principles that a person whose right is affected must be heard has been observed not only in cases involving personal liberty but also in proceedings affecting other rights, even though they may have come before administrative or quasi-judicial tribunals.

Commenting upon a case (i.e. Lapointe VgL. Association etc.) which is generally regarded as an extreme case, Mr. Gravin Simonds, who afterwards became a member of the House of Lords observes. "I think you would agree that if the subject matter of such proceedings as are here indicated was the liberty of the subject, or indeed his life, you would regard such a judicial procedure as outrageous" (See S. K.Allen's "Law & Orders", page 167).

I have particularly referred to cases which were therefore administrative tribunals, because

I have to deal in this case with preventive detention which is said to be an executive act and because I wish to point out that even before executive authorities and administrative tribunals an order cannot generally be passed affecting one's rights without giving one such hearing as may be appropriate to the circumstances of the case. I have only to add that Halsbury after enumerating the most important liberties which are recognised in England, such as right of personal freedom, right to freedom of speech, right of public meeting, etc., adds: "It seems to me that there should be added to this list the following rights which appear to have become well-established - the right of the subject to have any case affecting him tried in accordance with the principles of natural justice, particularly the principles that a man not be a judge in his own cause, and that no party ought to be condemned unheard, or to have a decision given against him unless he has been given a reasonable opportunity of putting forward his case....." (Halsbury's Laws of England, 2nd Edition, volume 6, page 392)...." In conclusion Justice Fazl Ali says:

"That the word "Law" used in article 21 does not mean only State-made law is clear from the fact that though there is no statute laying down the complete procedure to be adopted in contempt of Court cases, when the contempt is not within the view of the Court, yet such procedure as now prevails in these cases is part of our law. The Statute-law which regulates the procedure of trials and enquiries in criminal cases does not specifically provide for arguments in certain cases, but it has always been held that no decision should be pronounced without hearing arguments. In a number of cases, it has been held that though there may be no specific provision for notice in statute, the provision must be read into the law. I am aware that some Judges have expressed a strong dislike for the expression "natural justice" on the ground that it is too vague and

see page 3

The Ultimate Saving Factor

Shri D.B.Thengadi

From page 2

-elastic, but where there are well known principles with no vagueness about them, which all systems of law have respected and recognized, they cannot be discarded merely because they are in the ultimate analysis found to be based on natural justice. That the expression "natural justice" is not unknown to our law is apparent from that it shall exercise its power of interference with the course of criminal justice of this country when there has been a breach of principles of natural justice.

Regarding independence of judiciary. In C. Ravichandra Iyer Vs. Justice A. M. Bhattacharjee it was observed that "independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz, fearlessness for other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong. Independent judiciary is, therefore, most essential when liberty of citizens is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived), undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own.

The aim of the Constitution of India pregnant form its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice - social, economic and political to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The judge cannot retain his earlier passive

judicial role when he administers the law under the Constitution to give effect to the constitutional ideals. In this ongoing complex adjudicatory process, the role of the judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario, to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the judge is required to take judicial notice of the social and economic ramifications, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine. The judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of his will not lead to his own downfall. The independence is not assured for the judge but to the judged. Independence to the judge, therefore, would be both essential and proper. Considered judgment of the court would guarantee the constitutional liberties which would thrive only in an atmosphere of judicial independence. Every endeavor should be made to preserve independent judiciary as a citadel of public justice and public security to fulfill the constitutional role assigned to the judges.

The Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. Articles 124(4) and 121 would put the nail squarely on the projections, prosecutions or attempts by any other forum of group of individuals or associations statutory or otherwise, either to investigate or inquire into or discuss the conduct of a judge or the performance of his duties and on/off court behavior except as per the procedure provided under Articles 124(4) and (5) of the Constitution, the Judges (Inquiry) Act and the Rules.

The behavior of the judges is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law. Judicial office is essentially a

See page 4

Limit to Judicial Sympathy

Expansive of Judicial mood of mistaken and misplaced compassion at the expense of legitimacy will denude judicial proceedings of its dignity, authority, predictability and responsibility.

Justice MNVenkatachalaiah.

Warning

People filing public interest petition on validity of constitutional matters should refrain from drafting pleas in a casual and cavalier fashion. They must desist from plunging into areas in which they are not well versed and such knight errants can not be allowed by court to roam at will.

Justice A. M. Ahamadi.

Courtesy : C. Srinivasa Iyengar, Advocate.

Miscellany

☆ On 23-5-97 Mr. R.Yateesh Kumar, Advocate, opened his Law Chamber at # 2, 5th Floor, Maurya Mansion (behind Labour Court), B.B.Naidu Road, Gandhinagar, Bangalore-560 009. Phone(R): 8461895.

☆ Recently M's. BFL Software awarded certificate of merit to Mr. M.S.Vijendra for his contribution in one of their projects. Mr.Vijendra is an Engineer by profession and he is the son of Mr. M.V.Shamanna, Advocates.

☆ On 29-6-97 Mr. S.N. Prashanth Chandra, Advocate, shifted his Law Chamber to No.22/4, I Floor, 3rd Cross, Malleswaram, Bangalore-560 003.

☆ On 29-6-97 Mr.G.S. Mahadevappa, Advocate, opened his Law Chamber at No.165/5, Ground Floor, R.T.Street, Bangalore-560 053.

Literary Union

On 24-6-97 a function was organised to distribute prizes to the Advocates who won various competitions recently conducted by the Union. Dr. N.Chidananda Murthy, President, Kannada Shakthi Kendra, was the Chief Guest, Mr. C.H. Hanumantharaya, President of the Union presided. The function ended with a cultural programme.

Lahari Foundation

The following persons have been the donors to the foundation:

Mr. G.D.Aswathanarayana Rs.5,000/-, an Advocate Rs. 5,000/-, Mr.S.V.Raghavachar Rs.5,000/-.

Lahari Advocates Forum

○ On 20-6-97 Prof. L.S.Venkata Krishna, Advocate, delivered a lecture on the topic "Consumer Protection."

Communique Centurion Contest

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The Ultimate Saving Factor

Shri D.B.Thengadi

From page 3

public trust. Society is, therefore, entitled to expect that a judge must be man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. It is, therefore, a basic requirement that a judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standards of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety and not seek shelter from the fallen standards in the society. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guideline for judicial conduct.

The court must, therefore, harmonise constitutional values of free criticism and the need for a fearless trial process and its presiding functionary, the judge. If freedom of expression subserves "The Public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considers it as attract on the judge or judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and straws. The power to punish the contemner is, therefore, granted to the court not because judges need the protection but because the citizens need an impartial and strong judiciary."

Regarding reasonableness and intelligibility of "Classification", Justice A.C.Gupta observes in R.K.Garg Vs. GOI: "If the basis of classification is on the face of it arbitrary in the sense that is palpably unreasonable, I do not think it is possible to call the differential intelligible. The

following passage from the judgement of Bose J. in Anwar Ali Sarkar's case illustrates the point: "I can conceive of cases where there is the utmost good faith and where the classification is scientific and rational and yet which would offend this law. Let us take an imaginary case in which a State legislature considers that all accused persons whose skull measurements are below certain standard, whatever the offense, on the ground that the less complicated the trial the fairer it is to their sub-standard of intelligence. Hence this classification. It is scientific and systematic. The intention and motive are good. There is no question of favoritism, and yet I can hardly believe that such a law would be allowed to stand. But what would be the true basis of the decision? Surely simple that the judges would not consider that fair and proper".

Bhagwati J. reiterates in Maneka Gandhi Vs. Union of India what he had said in Royappa's case and adds: "The Principles of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.."

Gupta J. remarks: "The decisions of this court insist that the differential must be intelligible and the nexus rational, and observations quoted above would seem to be appropriate only if we attach some significance to the words 'intelligible' and 'rational'. The question however remains: when is one justified in describing something as arbitrary or unreasonable? Terms like 'reasonable', 'just' or 'fair' derive their significance from the existing social conditions. W.Friedmann in his "Legal Theory" (5th Ed. page 80) points out that expressions like "a reasonable and fair price" or a "fair and equitable" restitution means nothing, except in conjunction with the social conditions of the time." Brandies J. in his opinion in "Quaker City Cab Co. Vs Commonwealth of Pennsylvania" explains when a classification shall be reasonable: "We call that action reasonable which an informed, intelligent,

See column 4

Created All Judicial Service

Judiciary is finding it difficult to attract the best talent from the Bar. While it is lucrative to be a member of the Bar the same cannot be said about the person who propose to join judiciary. In the process best talent cannot be attracted to judiciary, said Justice J.S.Verma, the Chief Justice of India. After inaugurating a Seminar in Jaipur on 28-6-97 Justice J.S.Verma said that creation of an All India Judicial Cadre with attractive pay scales could be a solution for this. His Lordship also said that coupled with the creation of the National Judicial Cadre the members of judicial service should be given periodical training and also opportunities to update their knowledge. This would go a long way in making the judiciary more effective, Justice Verma said.

Retired

On 27-6-97 Justice P.Krishna Moorthy retired as a Judge of the Karnataka High Court. A farewell function was held in Court Hall No.1 of the High Court in the afternoon.

Obituary

On 30.6.97 Former Judge of the Karnataka High Court Justice K.B. Navadgi(64) passed away at Bangalore.

Communique Classifieds

A Law Firm in Bangalore needs the services of a Lawyer. Advocates with ten years of completed practice experienced in scrutiny of title deeds, drafting of documents and other related matters may apply with Bio-data to Mr N.Satyanarayana Gupta No.2980, "Laxmideep," 17th Cross, BSK II Stage, Bangalore-560 070. Selected Candidate will be suitably remunerated.

The Ultimate Saving Factor

From Column 2

just-minded, civilized man could rationally favour" Bose J. in Anwar Ali Sarkar's case says much the same."

"The Act has been criticised as immoral and unethical. Any law that rewards law-breakers and tax-dodgers is bound to invite such criticism. Should the court concern itself with questions of morality and ethics in considering the constitutional validity of an Act? Of course, no law can be struck down only on the ground that it is unethical. However as Friedmann is his "Legal Theory" says: "There cannot be - and there never has been - a complete separation of law and morality. Historical and ideological difference concern the extent to which the norms of the social order are absorbed into the legal order." It has been held by this Court in "Royappa" and "Maneka Gandhi" that the principle of reasonableness does not exclude notions of morality and ethics. I do not see how it can be disputed that in the circumstances of a given case considerations of morality and ethics may have a bearing on the reasonableness of the law in question."

The judgment of Chief Justice Chandrachud regarding the natural rights of a detainee in 'A. K. Roy Vs Union of India' touches yet another aspect of this issue. Obviously, the observations quoted above are only illustrative. It should be noted that Constitution, Law or Courts have their own limitations in this respect. These must be properly understood. Sir Andre Eetel, the editor of "Equality and Inequality: Theory & Practice," opines that "The law cannot make up the deficiency of public education... Whether Indians can make effective the ideals of equality or not, will depend on the firmness with which they are able to apply themselves to the building of institutions." Galanter asserts that "Courts can avert the worst dangers by maintaining a precarious balance between competing commitments to formal equality and compensatory justice, but they may be less capable of addressing to problems of costs and ineffectiveness that plague such policies." see next issue