

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 8

July 1996

Part 4

Justice Sethi Appointed C J

On 29.6.1996 Justice Ramaprakash Sethi was sworn in as the Chief Justice of High Court of Karnataka by the Governor of Karnataka Mr. K. S. Yashwanth in a simple ceremony held at Raj Bhavan, Bangalore. Previously his Lordship was functioning as the Chief Justice of Punjab and Haryana High Court.

Born on 7th July 1937 at Mirpur of Jammu and Kashmir (presently in occupation of Pakistan) graduated from Kashmir University in 1959 passed law degree in 1961 from Aligarh University. Having practiced at the High Court and Trial Courts in Jammu later became Special Public Prosecutor. Having a short stint as Addl. Advocate General became Senior standing counsel for Union of India. On 30th May 1986 elevated as an Addl. Judge of the J & K High Court was later made a permanent Judge of the same High Court on 5th August 1987. Subsequently transferred to P & H High Court on 18th October 1993.

Journalism attracted Justice Sethi very early. Apart from being Regional Editor of about 12 law magazines has also authored a book on the Hindu Marriage Act. Being well versed in Urdu functioned as a Editor of Urdu weekly "Shagaf". Taught law apart from authoring several papers on law. His Lordship has travelled about 30 countries to make an indepth comparative study of law. His Lordship is married to Ms. Raj Dulhari.

Attorney General Appointed

Mr. Ashok M. Desai has been appointed as the new Attorney General of India for a period of three years. Mr. Desai assumed charge of his office on 9.7.1996. During the period 1986-90 he had served as the Chairman, Committee on Administrative Law of International Bar Association. Mr. Desai had also served as the Solicitor General of India during 1989-90.

Mere law is not sufficient to protect women-Justice Sethi

Obscenity being a sensitive issue cannot be considered in isolation. From being head of the family and the tribe in the primitive society women has been relegated to the role of a slave in medieval period. In the modern times women are treated like commodity. Fifty years of independence has not found solution to effectively tackle obscenity declared Justice R.P. Sethi, the chief Justice of Karnataka High Court. He was inaugurating a seminar at Bangalore on 6-7-96 "Obscenity and Law" jointly organised by the Women Lawyers Forum and the Karnataka Legal Aid Board.

The laws in India for the protection of the Women's rights were unparallel to the legal systems of other countries giving an impression that India was most advanced in this sphere. Though the position of women has improved to a certain extent through legislation the discrimination still continues. If humanity has to progress women should not be deprived of their share and they should become aware of their rights, Justice Sethi said. He called upon the participants to find ways and means of defining and codifying law on obscenity and send their conclusions to the notice of the government and other organs of the state.

Presiding over the seminar Justice S. Rajendra Babu pointed out that the concept of obscenity varied from place to place and context to context. While pointing out that with the advancement in information and technology children had access to pornographic material on information highways and there is immediate need to check this menace. He also called upon the participants to deliberate on the difference between obscenity and advertisement so that the former may not go as advertisement and seek Constitutional protection. He also pointed out the beauty pageants portraying women as commodities in the guise of beauties.

Delivering the key-note address in the seminar Justice Harinath Tilhari lamented that the Indian society which inherited a glorious culture where women were considered equal partners has given way to a situation providing for discrimination against women under the influence of the foreign invaders and their imported culture. He called upon to revive the ethos of our great culture where women are held in high esteem.

NEW FAMILY COURT

With effect from 27.6.1996 II Addl. Family Court has been established in Bangalore. Mr. A. Mohan Ram has taken over as the Presiding Judge. Mr. Seetharamaiah has been posted as the I Addl. Judge of Family Court vice Mr. Vittal Sheregar who retired recently.

Officebearers Elected

In the recent election held to the Kunigal Bar Association the following office bearers were elected: President: Mr. Mumtaz Ahmed; Secretary: Mr. K.H. Dayananda and Treasurer: Mr. Krishna Raj.



Dr. Singhvi Honoured

At a glittering ceremony recently held at Leicester varsity (U.K.) the Indian High Commissioner to the United Kingdom Dr. L.M. Singhvi and the British Lord High Chancellor Lord Mackay of Clashfern were conferred with special law degrees of LL.D Honours causa for their outstanding achievements. The citation in respect of Dr. Singhvi mentions that "He is a lawyer by profession, a professor by temperament, a politician by compulsion, a parliamentarian by choice, a researcher by habit and humanist by nature".

Campus Watch

The students team from the National Law School of India University, Bangalore, comprising Vikram Raghavan, N.S. Nigam and Menaka Guruswamy received third prize at the 36th Philip Jessup International Law Moot Competition recently held at Washington DC. (U.S.A.).

Lawyers Suspended

The State Bar Council has suspended the Sanad of Mr. M.S. Ramachandra Rao, an Advocate from Bangalore for a period of three years and Mr. Prabhakar Shenoy an Advocate from Mangalore for a period of five years. It has also reprimanded Mr. S.S. Ichangi, an Advocate from Dharwar. These decisions were taken on the basis of the findings of the disciplinary committees of the Bar Council which had found these Advocates having committed professional misconduct.

Khalap The New Law Minister

Mr. Ramakant D. Khalap has taken over as the new Union Law Minister who also holds other departments of Justice and Company Affairs. He is the Minister with a cabinet rank representing the Union Territory of Goa having been elected on the Maharashtra Gomanthak Party ticket.

It is not to be imagined that the king will be guilty of vexatious delays.

- Sir Dudley Ryder

Revamping of the Copying Section is needed

Even after months applications are made certified copies are not furnished to the lawyers/litigants in the High Court. Several thousand applications are pending. Not much importance is given to solve this problem and the situation has become worse, who is responsible for this state of affairs and whether there are any chances of remedy?

Entry of lawyers, clerks and litigants seeking information about the fate of their applications has been regulated perhaps with the avowed objective of avoiding disturbance in the working of copying section. This has not brought about the desired result but surprisingly provided an opportunity to the official in the copying branch to behave rudely with the information seekers.

Quality of the certified copies furnished is also not that good. Moreover, Re.1 is prescribed as the copying charges for each page whereas the private copiers are collecting paise 30 per page for xeroxing purpose. The best quality copies could be obtained by paying paise 75 per page in the open market. Sometimes the copying branch is also affixing more stamps than required on the certified copies on the ground that smaller denomination stamps are not available. In the process the applicants lose extra money.

Change of older copying machines apart from increasing their number may be one solution. Conditional entrustment of copying work [xeroxing] to authorised

private agencies preferably with the requirement of having copiers installed in the court premises may be another solution. Thirdly changing of all or substantial number of officials working in the copying branch with a view to increase the efficiency may be another solution.

Delay in disposal of cases in itself result in denial of justice to the litigants is any number of cases. Further delay in supplying the certified copies would only result in prolonged agony for the litigants. As such it becomes essential that the time taken for the certified copies be minimised. We hope the new Chief Justice would bestow his attention to this problem and find solution at the earliest.

Welwishes

✦ Lahari wishes all the best to Mr.G.V.Shamanna, Advocate, on the occasion of completion of his five decades of professional service.

✦ Lahari wishes speedy recovery to Mr. K.N.Subba Reddy, President of AAB from his illness the earliest.

Lahari Foundation Appeal

Lahari Foundation, Bangalore, Seeks donations for augmenting its financial base. This foundation is providing assistance to lawyers for health reasons.

-Trustee

In Defense of Judicial Activism

Dr. N.R.Madhava Menon

(Continued from last issue)

Another significant jurisdiction in which Supreme Court as well as several High Courts have been active in recent times is in the matter of environmental degradation through non-enforcement of pollution and civic laws by a number of agencies of the Central, State and local governments. Closing down of industries giving employment to several persons and adding to the economic prosperity of the nation is not a pleasant task; but in the face of pollution control legislation and declaration of policies on sustainable development, it is incumbent on courts even to take suo moto action to discipline polluting industries as the consequence of not doing so is silent death for generations to come. The greatest of industrial tragedies which took place in the Union Carbide Plant in Bhopal should at least remind the enforcement agencies of the consequences of the neglect of environment. Activism in this sphere deserve to continue given the marketisation process under way.

The third important area of judicial activism came about in giving meaning and content to the guarantee of right to life. Having declared that the right involves "life with dignity" and not mere animal existence, the Court adopted an expansive jurisdiction invoking "due process" interpretation into the phrase "procedure established by law" in Article 21 of the Constitution. Today the right under Article 21 has produced a number of related rights such as right to legal aid, right to education, right to speedy trial, right to livelihood, right to a clean environment, etc. In the application of these rights to specific situation, courts might have stepped into executive or legislative territory in significant ways. In fact, it is this approach of the Supreme Court which led to the doctrine of non-

amendability of the basic structure of the Constitution. Judicial review indeed is a powerful weapon in a written Constitution and certainly, the Constitution-makers intended it that way. The scheme of the Constitution and the unique status given to the judiciary under it demonstrates that intention in ample measure.

Be that as it may. The problem is to know the limits of activism and to ensure that it is confined to such limits. The Constitution does not countenance unlimited or uncharted power in any institution of government including the judiciary. The judges by training and experience are people who naturally act with restraint, keeping in mind the demands of judicial discipline and oath of office. Nevertheless, the citizens should know the parameters of judicial power and should have reasonable certainty of law irrespective of the judge handling the situation. If activism is left to the choice of individual judges, there are possibilities of abuse even with the best of Judges. Furthermore, it is one thing to restrain the Executive from doing an illegal act or doing a legal act in an illegal way. It is part of judicial function. Courts can well strike down executive or legislative actions which violate the Constitution. When it is vigorously and frequently done it may appear activist. But using the power of judicial review to command the executive or the legislature to do things involving policy issues and budgetary allocations is questionable in many ways. Ofcourse, compelling obedience to law through mandamus is not unknown to the Constitutional Court. But when accountability fail, others in the system can become operational and Courts would ensure the final success of rule of law.

(to be continued)

News in Brief

□ On 10-7-96 three persons were killed and one injured in an armed shootout between two groups of criminals in the court premises of the Addl. Sessions Judge, Bhopal. At the time of the incident evidence of Munne Painter [leader of one of the gangs] was being recorded in respect of a case of firing upon him by Mukhta Malik. According to the official report country made pistols, swords and Knives were freely used in the clash.

□ On 5-7-96 an accused in a murder case was hacked to death in the presence of the X Metropolitan Magistrate's Court, Egmore, Madras by a ten member gang which later escaped after hurling country bombs. The accused was waiting in the court after being remanded to custody when the gang attacked him with sickles.

□ On 26-6-96 the defence lawyers representing the accused Premananda before the pudukottai[TN] Principal District and Sessions Judge stayed away from the Court proceedings after their plea for adjournment of the hearing of their cases by a couple of days was turned down. Noted lawyer Ram Jethmalani was expected to appear on behalf of the accused and reportedly the lawyer had gone abroad. After refusing to adjourn the case the Sessions Judge asked one of the lawyers from the State Free Legal Aid Board to appear on behalf of the accused as the regular defence lawyers decided to abstain from further proceedings.

□ Rajajinagar police arrested three youths-Gopi, Subramani and Regal and recovered gold jewellery and a wrist watch which they had allegedly robbed from lawyer Sharathchandra while he was walking near Rajajinagar IV Block on June 17, 1996.

Crime Beat

It is reported that there is no phenomenal rise in the crime rate in Bangalore City. According to the police the offences committed under 19 categories [from murder to cattle theft] have been stagnant with an average 1,000 reported cases every month for the last 3 years. In 1993 the FIRs registered under these categories was 10,434; in 1994 it was 12,410; in 1995 it was 11,821 and it was 4,243 till the end of May 1996.

However, according to the statistics available with the City Crime Records Bureau [CCRB] there has been steady increase of the incidents of rape, molestation and the dowry harassment cases. The incidents of rape reported in 1991 was 30; in 1992 it was 34; in 1993 it was 48; 1994 it was 61. In 1995 the number came down to 42. The most rape victims are reported to be minor girls. The molestation cases reported during 1991 were 90; in 1992 it was 104; in 1993 it was 129 and in 1994 it rose to 190. The cases registered under the Dowry prohibition Act were 61; in 1995 it rose to 178 and till the end of May 1996, 72 cases were registered.

Humour in Courts

"There's good news and bad news," the divorce lawyer told his client.

"I could sure use some good news," sighed the Client. "what is it?"

"Your wife is not demanding that your future inheritances be included in the settlement."

"And the bad news?"

"After the divorce she is marrying your father".

- K.R.Dinakar, Advocate

COPY RIGHT

A. R. Srinivasa Rao, Advocate,

Copyright is classified as intellectual property along with Trade Mark and Patent. Intellectual properties are the burning issues of to-day. Works in which Copyright subsists are (a) Original Literary (including computer programme). Dramatic. Musical and Artistic Work; (b) Cinematograph films; and (c) Sound Recordings. The object of Copyright Law is to encourage authors, composers and artists to create original works by rewarding them with the exclusive right for a limited period to produce the works for the benefit of the public.

Copyright means the exclusive right to do or authorise to do the following Acts in respects of a "work" or any substantial part thereof:-

(a) In the case of Literary, Dramatic or Musical Work, not being Computer Programme-

(i) to reproduce in any material form;

(ii) to perform the work in public, or communicate it to the public;

(iii) to make any Cinematograph film or Sound Recording in respect of the work;

(iv) to make any translation of the work; and

(v) to make any adaptation of the work.

(b) In the case of Computer Programme-

to sell or give on hire, or offer for sale or hire, any copy of the Computer Programme;

(c) In the case of Artistic Work-

(i) to reproduce the work in any material form;

(ii) to communicate the work to the public;

(iii) to include the work in any

cinematograph film; and

(iv) to make any adaptation of the work.

(d) In the case of Cinematograph Film-

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film;

(iii) to communicate the film to the public.

(e) In the case of Sound Recording-

(i) to make any other Sound Recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the Sound Recording;

(iii) to communicate the Sound Recording to the public.

To secure Copyright Protection, the author must have bestowed upon the work sufficient judgment skill and labour or capital. If a person is employed to do a job of work and paid for his services, as a contract of service, the produce of his labour subject to any agreement to the contrary belongs to the employer.

Although there is provision for registration of Copyright under the Act, it is not necessary for the creation or enforcement of Copyright. Copyright Protection is not granted where the work is grossly immoral, illegal, defamatory, blasphemous, seditious or contrary to public policy. A libellous poem, for instance cannot claim Copyright, nor can an obscene picture.

Copyright works are easily pirated and plagiarised in other countries. Technological progress has made copying of Copyright material easy and simple.

(to be continued)

News Focus

- On 1.7.1996 a simple ceremony was held in the High Court of Karnataka to welcome Justice R.P. Sethi, the new Chief Justice. In his welcome address the Chairman of the State Bar Council Mr. S.S. Patil assured the Chief Justice of co-operation of the Bar in the administration of Justice. Justice Sethi, in his brief address on the occasion, said that the judiciary has a vital role to play in preserving the democratic system as declared by the Constitution.
- On 12.7.1996 Mr.V.Gopala Gowda, Advocate, addressed the members of AAB City Unity, on the topic "My impressions of China". Mr. Gowda recently visited China, Honkong and Thailand for two weeks as a member of the State delegation headed by Mr. D.D. Kalmankar, Chairman of the Karnataka Legislative Council along with three other Lawyers.
- On 18.7.1996 Chief Justice R.P. Sethi, inaugurated a Dispensary in the High Court premises. The Dispensary will provide out-patient facilities to Judges, Lawyers and Court Staff.
- On 20.7.1996 a blood donation programme was held in AAB, City Unit under the joint auspices of the AAB and the Rotary club of Orchards.
- Recently the Advocates' Association of Allahabad High Court headed by the former Solicitor General of India, A.D.Giri has sent a letter to the Bar Associations throughout the country calling upon them to oppose the attempt of the present Chief Justice of India to annual the transfer policy regarding High Court Judges adopted during his predecessor's time. Referring to the letter dated April 24, 1996 of the CJI to all the Chief Justices of the High Courts seeking their views regarding the review of the transfer policy the Association's letter calls for a more transparent judiciary instead of secret attempts being made in this regard.

Legal Cell
Memorandum
to the PM

During the visit of Sri. H.D. Devegowda, the Prime Minister, to Bangalore the Karnataka State Janata Dal Legal Cell submitted a Memorandum dated 27th June 1996 requesting his attention and action on the following issues viz. establishment of a bench of the Supreme Court in Bangalore; establishment of a Bench of the High Court in North Karnataka and inclusion of the names of Advocates from Karnataka on the panel of Central Government Corporations and Boards etc.

Providing an International Airport to Bangalore, linking of Bijapur, Belgaum, Gulbarga, Hassan, and Hubli-Dharwad by Air conversion of Hassan-Mangalore and Gadag-Sholapur to broad gauge; setting up of additional LPT relay stations in the state; linking of Ganga-Cauvery rivers and formulation of the national water policy as envisaged under Article 262 of the Constitution are the other demands contained in the memorandum.

Office Bearers
Elected

In the election held on 30.6.1996 to the Sub-ordinate Court Employees Co-operative Society Ltd., Bangalore, the following office bearers have been elected for a period of three years.

President: V.M. Shankar; Vice President: M. Murali; Auditor: L.V. Krishnamurthy; Directors: S.N. Shivashankar; K. Vijayakumar, B.S. Prabhakar Prasad, M. Muninarayana, K. Govindaraju, M.G. Channaganagaiah, M.R. Rangaswamy, Ms. D.V. Geetha Devi, K. Vijayan, and K.V. Rama Murthy.

Miscellany

- ➔ In the Janatha Nyayalaya recently conducted at Thirthahalli 100 cases came to be settled / compromised. The Taluk Legal Aid Committee and the Local Bar Association had jointly organised the programme.
- ➔ In the election held on 28.6.1996 to the Bangalore Golf Club Mr. M. Ramakrishna, Advocate, has been elected to the Executive Committee for the third successive term.
- ➔ On 4.7.1996 Legal Cell of the Karnataka Pradesh Janata Dal had organised a function to felicitate Mr. D.L. Jagadish on his being elected as an M.L.C.
- ➔ On 14.7.1996 Mr. G.V. Shamanna, Advocate hosted a luncheon on the occasion of completion of his 50 years service in the profession.
- ➔ With effect from 11.7.1996 Mr. B.P. Puttasiddaiah has been appointed as a BDA Panel Advocate.

Point Blank

➔ The Supreme Court decision is final because it is the final court and not because it is infallible.

-Sri. Ramesh Kumar, Speaker of the Legislative Assembly while intervening in a recent discussion of allotment of quarters to High Court Judges.

➔ In many cases, the report of the Commission becomes infructuous by the time the reports are submitted

-Chief Minister J.H. Patel while appealing to the MLAs to re-think on the advisability of demanding judicial probe.

Literary Union

- * On 27.6.1996 Smt. Vageswari Sastri, addressed the members of Literary Union on the topic "Women and the Society".
- * On 29.6.1996 Sri.Dattatreya Aralikatti, and his troop members gave "Thogalugombe Show" on the theme Girija Kalyana.
- * On 30.6.1996 an excursion to Viduraswatha, Lepakshi, Yellodu, and Ghati Subramanya had been organised.
- * On 9.7.1996 Dr. Sataya Prasad addressed the members of Literary Union on the topic "Pain relief without consuming drugs".

Lahari

- ☉ On 28.6.1996 Mr. K. Suryanarayana Rao, Advocate, delivered a lecture on the topic "Few Concepts in the Civil Procedure Code".a
- ☉ On 4.7.1996 Mr.M.Shivappa, Advocate, delivered a lecture on the topic "The European Experience". Mr. Shivappa recently returned from his ten weeks tour of West European Countries.
- ☉ On 5.7.1996 Mr.Jagadeesh Mundaragi, Advocate, delivered a lecture on the topic "Bounced Cheque".
- ☉ On 19.7.1996 Mr. M.M. Rehman, Advocate, delivered a lecture on the topic "Sources of Mohammedan Law".

Obituary

- ☐ On 5.7.1996 H.S. Ramachandra, Advocate, passed away at Bangalore after brief illness.
- ☐ On 17.7.1996 S.G. Sundaraswamy (72). Former Advocate General and Senior Advocate, passed away at Bangalore.
- ☐ On 19.7.1996 M.Pandian, Advocate, Passed away at Bangalore.