

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 8

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Part 5

KAT Gets New Member

Mr.H.K.Shivananda, a retired IAS officer, has been appointed as an Administrative member of the Karnataka Administrative Tribunal. He will hold office for a period of three years.

New Office Bearers

In the Governing Council Meeting of the AAB held on 9-8-96 the following new office bearers were elected for the City Unit: Vice President: Mr. D.G.Chinnappa Gowda; Joint Secretary: Mr. V.S.Hegde; Sports Secretary: Mr. H. M. Manjunath; Chairman of the Canteen Committee Mr.L.S.Krishne Gowda.

Kechhu Foundation

Kechhu Foundation was formed on 23-8-96 at Bangalore. The Foundation is expected to deal with problems relating to environment, consumer protection, human rights, Civic amenities and oppose corrupt practices. Mr.G.R.Nataraj, Advocate, is the convener of the Foundation. Other founding members include Mr. P.G.C.Chengappa, Mr.Ravi varma Kumar, Mr. N.S.Satyanarayana Gupta, Mr.K.Suryanarayana Rao, Advocates and Mr.A.S. Udupa, Asst General Manager, Canara Bank.

Clarification

Our reader Mr. B.P. Puttasiddaiah has clarified that he has been appointed as the Standing Counsel for the BDA in Lower Courts and not as a Panel Advocate. This has reference to the news item under the caption Miscellany in our July 1996 edition.

Family Courts No Answer to Marital Disputes

— M.C.Nanaiah

Bangalore August,31 Minister for Law, Information and publicity Mr.M.C.Nanaiah said that Family Courts are no answer to marital disputes and aggrieved persons should approach the Courts as a last resort. Making a fervent appeal to women Lawyers to uphold the sanctity of marriage and act as catalysts to re-unite the spouses by helping them to overcome their strained relationship rather than demanding for removal of restitution of conjugal rights.

He pointed out that unlike the so called developed nations Indian marriages are sanctified and thus efforts should be to retain the family and not to destroy the same by resorting to legal recourse. He particularly felt that it will have adverse impact on the children and an average middle class family cannot allow such a situation to develop though it may be tolerated by the high society Mr.Nanaiah was delivering the presidential speech of the seminar on "Various Enactments concerning Women" jointly organised by Indian Federation of women Lawyers, Bangalore and the Karnataka Legal Aid Board.

Lauding the efforts of the organisers in holding such seminars Mr.Nanaiah urged that women Lawyers should hold more such seminars in various residential localities so as to educate the deprived sections of the women about their rights. He also assured the women Lawyers that he would favourably consider their demand to exempt from payment of Court Fee by women litigants in the case of marital disputes on the lines of the recent Maharashtra legislation. He hoped that such an exemption would not lead to increased litigation.

Earlier, inaugurating the seminar Chief Justice R.P.Sethi suggested that women Lawyers should take the responsibility of educating their deprived sisters about the existing laws even before demanding amendments to the laws concerning women Decrying the tendency to demand for representation of women Lawyers in judiciary based on gender they should come upto expectation where they should

have no difficulty in getting appointments on the strength of merit. He cited results of latest munsiff examination wherein women Lawyers have secured 30% results in their favour. On his part he assured that necessary instructions would be issued to expedite litigation concerning matrimonial cases and maintenance.

Participating in the seminar Smt.T.N.Manjula Devi wanted amendment to The Hindu Adoptions and Maintenance Act, 1956 so as to enable the women to independently adopt children of their choice. She also suggested suitable amendment to Section 497. IPC so as to encompass all kinds of adultery. Smt.Hemalatha Mahishi wanted amendment to sections 125 Cr.P.C so as to remove the ceiling of Rs.500/- maintenance which can be awarded by the Court or alternately to enhance the ceiling to Rs.300/- per month. She also suggested that all marriages should be made compulsorily registerable. Further she wanted that leprosy should not be a ground for seeking divorce as provided under section 13 of the Hindu Marriage Act. 1955. Renowned physician and social worker Dr.M.S.Neelakanta Rao, who also participated in the seminar, mentioned that all forms of leprosy are curable and there is nothing like virulent form of leprosy and therefore amendment to marriage law is required lest the law should not be termed as backward while medicine has advanced. Smt.Pramila Nesargi suggested that the Family Courts should be kept open on Sundays so as to enable the working people to attend the proceedings. Citing the latest case of conversion of religion by a male government officer for the purpose of taking a second wife she

suggested that drastic action be taken against such errant officers under the Conduct and Discipline Rules.

President of the IFWL Ms.Bharathi Nagesh welcomed the guests and explained the purpose of the seminar. Secretary Ms.Prabha Murthy submitted a report of the activities of the Federation of Secretary of KLA B, proposed vote of thanks.

Munsiffs Selected

The Karnataka High Court has released the list of candidates selected as suitable for appointment as munsiffs in the Judicial Department. They are: B.S.Bharathi, M.Bhagavathi, K.B.Geetha, K.B.Kalpana Roopa Shivappa Naik, Pushpanjali Devi, B.G.Rama, M.Shoba, Srimathi Krishna Tarimane, Shasikala, M.A.Urankar, Susheela Yadav, Vanamala, Anandrao, H.S.Suresha, K.Suresh, B.Muralidhara pai, N.M.Ravi, Ganesh Gangadharappa Kuruvatti, Bhairappa shivaling Naik, M.L.Ranghunath, S, Sridhara Lekkadappa Jambini, Mallikarjuna Gowda, Nataraj, Naik Ravi Manjappa, Shrikanth, Appa Saheb Kabburkar, Rajashekar Venkanagowa patil, Thyagaraja N.Inavalli, Sadashiva Siddappa Sultanpuri, J.N.Subramanya, Gopala, Basavaraj S. Chegaraddi, Mustafa Hussain Syed, Jinaralankar Bheemrao Lagamappa, Subhas Mallappa channappanavar, M.Rama Chandra, B.Nanda Kumar, K.Prakasha, S.Nanda Kumar, Basavarj, D.T.Devendran H.Hosamani Siddappa, M.Kanumaiah and Ashok Babu Banasode.

The main object of conciliation lies in reaching a solution.
- Confucius

Agitation is not the Answer

The demand for setting up of a Bench of the Karnataka High Court in North Karnataka has acquired a new twist in as much as different regions of the northern part of the State vigorously demanding that the proposed Bench should be set up in their respective regions. While there is a plea that Hubli-Dharwar be the natural destination where the proposed Bench should be set up there is equally vehement plea that it should be Gulbarga. It is a historical fact that the northern Karnataka is carved out by the inclusion of different geographical region each of such region being previously under the administrative control of different provinces. Apart from the cultural differences distance between each such region are also important factors influencing the demands made by each such region. No doubt there might be merits in each of such demands made by different regional groupings but when a decision will have to be made by the State Government a comparative analysis of all such claims would be taken into account before finalising the place where the Bench will have to be set up. Obviously the claim of one or the other region will have to be accepted since the demand of all regions cannot be conceded at a time. In the process the wisdom of the State Government should be accepted by all the concerned regions in the overall interest of the State.

The State Government has the responsibility to find a solution to the issue without allowing the matter to linger on indefinitely thereby giving scope for avoidable agitations by different

regional groupings. The demand for setting up of a Bench of the Karnataka High Court in northern part of the State has been there for a long time.

Reports of the Gulbarga District Bar Association launching agitation, constituting an action committee, disruption of rail traffic by Lawyers and consequent arrest of those Lawyers are serious enough to compel the State Government to shed inertia and resolve the issue without allowing the situation to go out of control. Though unfortunate Governments have given an impression that only violent agitations can yield result and it is time that the State Government shall not only erase this impression but also show its concern regarding this long outstanding problem. At the same time the Bar also must realise that agitations alone cannot bring in the desired result and in any case it should be the last resort. Sentiment and extreme regional approach may give rise to chauvenistic tendencies rather than solving the problem. A balanced approach based on reasoning is called for and all must try to shun confrontationist approach.

Lahari Foundation Appeal

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

- Trustee

COPY RIGHT

A. R. Srinivasa Rao, Advocate,

(continued from last issue)

So unless Copyright gets recognition in certain countries, it will be impossible to prevent piracy in such countries. To meet this problem, several countries joined together to form a convention for securing some minimum protection on a reciprocal basis. Thus the Berne Convention came into existence in 1886.

Since U.S.A. and U.S.S.R. and Latin American Countries were not members of Berne Convention, UNESCO took the initiative and called for a special conference at Geneva in 1952 and brought into existence Universal Copyright Convention. This convention suggested the use of letter 'C' surrounding by a circle on each of the works followed by the name of Copyright owner and the year of publication.

India is a member of both the said conventions. Under the conventions, each member state must accord the same protection to the copyright of the nationals of the other member states as it accords to its own nationals. Further, the copyright protection generally continued throughout the life of the author and fifty years thereafter.

There was a revision of the conventions at Paris in 1971. For copyright there are also other conventions like Roman Convention, Geneva Convention, and Brussels Convention.

In India, Copyright Act, 1914 was the first to be passed. It was modelled after the U.K. Act of 1911. Next the Copyright Act 1957, incorporating some of the U.K. Act of 1956 was passed. Thereafter the Act was amended by Copyright (Amendment) Acts of 1983, 1984, 1992 and lastly 1994.

By the Copyright (Amendment) Act, 1992, the term of copyright

which was fifty years was extended by a period of ten years. The Copyright (Amendment) Act, 1994, make far-reaching changes. It was the result of comprehensive review by the government of the earlier Act following technological developments and also experience gained by the Government in the implementation of the Copyright Act.

India has signed the General Agreement on Trade-related Aspects of Intellectual Property Rights, known as GATT-1994. Consequently India has to fulfill certain obligations under the Agreement, which is claimed to have been fulfilled under the Provisions of the India Copyright. The Indian Copyright Act has more or less provided for all those obligations, particularly in respect of protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting organisations, and protecting Computer Programme as Literary Work. The 1994 Amendment Act introduced certain special rights called Performer's Rights for the benefit of various kind of performers like Actors, Dancers, Musicians, Jugglers, Acrobats and so on. The Broadcast reproduction right and the Performer's right subsist for twenty five years.

By and large the Indian Copyright Law is world-class.

Term of Copyright: The term of copyright varies according to the nature of the work and whether the author is a natural person or a legal person, or whether the work is anonymous or pseudonymous.

(1) In the case of literary, dramatic, musical or artistic work (other than photography), when published during the lifetime of the author, copyright subsists during the lifetime of the author plus sixty years.

Delightful Kathak Recital

It was a sheer delight to watch exposition of Kathak by Nandini.K.Mehta at her best at the Gayana Samaja, Bangalore, on Saturday the 10th August 1996. The select audience which had a fair share of foreign nationals enjoyed the programme. The feelings of audience was best summarised by the Chief Guest Smt. Vimala Rangachar that the future of Indian Art which is sustained through generations is safe in the hands of performing artists and Nandini Mehta is one among them. Interestingly Nandini is the daughter of Mr.K.C.Mehta and sister of Mr.Bharat Kumar Mehta both Advocates of Bangalore.

The programme began with the rendition of Saraswathi Vandana. Later the Artist switched on to That and Thukras, both in Lakhnavi and Jaipur Gharanas. Later two Thumris and Chaturang were at their best. The programme ended with Tarannum.

Humour in Courts

Two litigants were conversing in the corridor of the Bangalore City Civil Court Complex. Obviously one of them was a newcomer. The conversation was overheard:

I Litigant: Where is the toilet here?

II Litigant: How is it you don't know? The stinking place in each of the floors is the toilet. I hope you can find out!

Judge: How is it you always ask for short adjournment?

Lawyer: Then your Honour may give a longer adjournment!

Himachal Gets New CJ

Justice Madhavachari Srinivasan has been appointed as the new Chief Justice of High Court of Himachal Pradesh. Justice Srinivasan was previously functioning as a Judge of the Madras High Court.

Retirement

Justice J.Eswar Prasad retired as a Judge of the Karnataka High Court on 3-8-96. On the eve of his retirement a farewell address was read by Mr.S.S.Patil, Chairman of KSBC in a gathering in Court Hall No.1 on 2-8-96. Later AAB had arranged a farewell function in the High Court premises which was presided over by the Chief Justice R.P.Sethi. Sri. S.Vijayashankar, Advocate General was the Chief Guest at the function.

Misappropriation of Huge sums Reporeted

There has been reports of misappropriation of Rs.4.5 lakhs in the offices of Chief Metropolitan Magistrate, Bangalore, involving the office staff. It is estimated that the reported loss may go even upon Rs. 7 lakhs. Large sums of money and valuables expected to be in the Court are reported to be missing.

OBITUARY

On 28.7.96 G.Narasimha Murthy, Advocate passed away at Bangalore.

On 5.8.96 former District and Sessions Judge S.Narayana Murthy (76) passed away at Bangalore.

On 6.8.96 Siddagangappa, Advocate, passed away at Bangalore.

In Defense of Judicial Activism

Dr. N.R.Madhava Menon

(continued from last issue)

But deciding the age of retirement and service conditions of judges or developing schemes for professional college admissions are too complex a job which the judiciary can accomplish only with the active involvement of the executive. This is where PIL is characterized by the Supreme Court as participatory rather than adversary in character. If judicial activism can be matched with executive or legislative activism in these matters there is no problem; otherwise confrontationist situations develop and courts are forced to invoke contempt jurisdiction too often causing discomfiture all around

In short, judicial activism is part of judicial function. It is part of the power of judicial review for which the Indian Constitution has endowed special authority on the High Courts and the Supreme Court. However, the limits of this authority are not spelt out either in the Constitution or in judicial process. Hence there are legitimate apprehensions in public mind whenever border line cases are taken up by courts and directions are given to be obeyed within prescribed time periods. After all Constitution envisages complementarity of executive, legislative and judicial institutions for achieving democratic governance and public perception in this regard is as important as legitimacy of government actions. Power in a democracy is essentially political in nature and judicial process has to tread cautiously while adjudicating issues affecting the Constitutionally assigned division of State power.

Judicial activism today has some unexpected but beneficial fallouts. Firstly even common

citizens seem to have been awakened by it and involved in the debate on the role of the Court in good governance. Secondly, Courts have enlarged the scope for access to justice on the part of disadvantaged sections of society and thereby created a new hope for democratic survival of the polity. Thirdly, there is a sudden sense of accountability injected into the system and all those exercising public power seem to have realized that if some instrumentalities of accountability fail, others in the system can become operational and courts would ensure the final success of rule of law. Finally, it is slowly being realized that an informed though critical debate would help to keep the judiciary within limits by recognising and institutionalizing the parameters of judicial activism itself.

(concluded)

Foreign Tours

Mr.K.S.Ramdas, Advocate returned to Bangalore on 13.7.96 after his 13 weeks tour of the U.S.

Mr.K.R.Srinivasa Rao, Advocate returned to Bangalore on 1.8.96 after 12 weeks tour of the U.S.

Mr.A.V.Albal, Advocate, returned to Bangalore on 7.8.96 after 2 weeks tour of England and few West European countries.

Mr.N.S.Srinivasan, Advocate, returned to Bangalore on 24.7.96 after 7 weeks tour of the U.S.

Mr.L.S.Venkatakrisna, Advocate, left Bangalore on 14.8.96 on 8 weeks tour of U.K, U.K and West European countries.

Mr.S.Nanjundaswamy, Advocate, returned to Bangalore on 10.8.96 after 8 weeks tour of U.S, Canada and Bahamas.

Elected to Tribunal

Mr .P.C.Rao, the Union Law Secretary has been elected as a member of the International Tribunal of the Law on Seas.

News Focus

On 21-7-96 a 'Sports Meet' was organised by the Indian Federation of Women Lawyers (Karnataka Branch) at Bangalore. About 75 Women lawyers participated in the various sports events.

On 26-7-96 Chief Justice R.P.Sethi and Advocate General Mr.S.Vijaya shankar addressed the members of AAB, City Unit.

On 14-8-96 Mr.Rajesh Pilot, the former Union Minister addressed the members of AAB, High Court Unit on the topic 'Criminalization of Politics.' Mr.K.N.Subba Reddy President, AAB presided.

On 14-8-96 Chief Justice R.P.Sethi, addressed the members of Judicial Department Employees Association.

On 15-8-96 50th Independence Day was celebrated jointly under the auspices of AAB, BLPCS and Literary Union. Chief Justice R.P.Sethi unfurled the National Flag and addressed the gathering. Mr.K.N.Subba Reddy, President, AAB graced the occasion, Swaralahari presented a musical programme on the occasion.

On 18-8-96 34th Annual General Body Meeting of the Bangalore Legal Practitioners Co-operative Society was held in the City Auditorium.

On 19-9-96 Bangalore District Civil Judges Court was shifted to Annexe Building.

On 21-9-96 Chief Justice R.P.Sethi addressed the members of AAB, Magistrate Court unit on the topic "Speedy Disposal of Criminal Cases." Mr. K.N.Subba Reddy, President, AAB presided over the function.

MISCELLANY

In a resolution adopted by the Advocates' Association, Hirekerur [Dharwar District] in its emergent meeting on 24-7-96, the indecent and unwarranted action of the Secretary of Hirekerur Village panchayat towards Advocate Kumar V. Nagvand on 23-7-96 was condemned. It was further resolved to call upon the higher authorities to take suitable action against the concerned official.

On 18-8-96 Mr. Reddy Nagendra Kumar, Advocate, opened his chamber at No.65 and 66, opposite 14th Cross, Cubbonpet, Bangalore-2

Literary union

On 24th 25th and 26th July 96 Sri .Bannanje Govindacharya spoke on "Sri Bagavad Geetha".

On 28th and 29th July 96 an excursion had been organised to Biligirirangana Hills, Bandipura, Rangana Tittu, Nanjangud and Mysore.

Lahari

On 2-8-96 Mr. Yoganarasimha, Advocate, delivered a lecture on the topic pre-trial proceedings.

On 12-8-96 Mr .S.Viswanath, Central Bank of India, BTM Layout, Bangalore, delivered a lecture with slides on the topic "Enchanting Himalaya"

On 16-8-96 Mr. H.L. Narasimhamurthy, Advocate, delivered a lecture on the topic "Suit against Public Charities".

On 16-8-96 Lahari had organised a get together.

On 23-8-96 Mr. S.P.Shankar, Advocate, delivered a lecture on the "Salient Features of the Motor Vehicles Act, 1988".

Vacancy Available

Newly enrolled Advocate, preferably a lady, wanting to join the Senior's office may apply to:

K.K.Paulose,

Advocate,

478, 5th Block.

KHB Colony, Koramangala,

Bangalore-560 034.

Ph.No.5531456.

LETTERS TO THE EDITOR

The entry into the profession, as years pass, is a rising flood. The law degrees in their hands, the young enthusiasts have only to stitch a wear-apparel, and once in robes get to engage in all the tricks of the trade. What in reality they have studied in the law college is a dreary topic, unassisted by competent lecturers, but ably lead by cheap guides and question answer serials. The result is that judges and seniors in the profession are witness to an agnoising spectacles of babble, misquotes from law, solecisms in language, impervious to decorum, inattentive to professionalism and the mercenary target as the be-all and end-all of the otherwise age-old wearhouse of nobility. The Bar Council of India, therefore, rightly felt that a period of askesis to the entrants is a desideratum. Training Rules, 1966 are the product of such prognosis to prevent a further leap to decadence. So far, so good.

Rule 2 proclaims that no person shall be entitled to be enrolled as an Advocate unless he has undergone a training. For this training he has to seek a guide to be approved by the Bar Council. The one year training includes:

i) regular attendance to the chamber or office of the guide; ii) study of case papers, correspondence, draft pleadings, attend court; iii) maintenance of two diaries, one recording the work done in the office and the other the work done in courts of attending cases, the arguments, the case law cited and the result.

Every one of these is what normally a junior does attend to with his senior. But, what the trainee is deprived of is his right of representation in court. He is a mute second fiddle; a dumb follower of the professional happenings. This is what the Rules are blind about. To see these trainees run around with badges on the lapels of their coats, actively doing nothing, but passively exchange gazes with hope of enrolment a year hence is a poor purchase as long as the training lasts. They are only a neo-class of double degree clerks at the foot tails of the flowing

gowns of the fifteen year older guides. In a way they are worse than parties. A party can represent his own case in person. The trainee has to run for the Guide soon after a case is called in court and fetch him from elsewhere where he is on his feet. To the court he is invisible. The right of representation is the soul of advocacy. To cheat a trainee of this is to set a doll wound up and perambulate, sans voice, sans thought and sans independence.

My personal experience proves that there is pride and a sense of achievement in oral representation in court. That was my first appearance in the appellate court, in less than two months of enrolment. I started narrating the gist of the pleadings, the issues, the evidence and the findings of the trial court. An hour and a half passed. I noticed the judge once mildly yawn. I looked back at the court clock. It was ten minutes past lunch time. I apologised and the court rose. As I sauntered outside the court I overheard two senior advocates talk about the novice doing the harangue and the silent judge listening to clap-trap. After the court resumed I implored the Judge.

"Pardon me, your Honour" I said. "By the comments of some brother advocate-seniors I feel that I have taken an unduly great length of time of the court. This is the first appeal I am arguing."

"Sastry" the judge addressed the bench clerk and said, "adjourn the rest of the cases, I say," and turning towards me he said pleasingly, "Mr.S..do not mind the comments of others. Go on in your own way. Take your own time." He relaxed in his seat and patently heard me for the rest of the day. I gained real training. From then I have lost no words to face a situation. It was a b-o-o-st to my training.

The training can be as dreary as the class room, with the difference that the trainees are trotting up and down the six floors of the Bangalore City Civil Court Complex with exercise to the heels but, nevertheless, cooling the heels of the intellect!

— C.B. Srinivasan, Advocate