

**Volume 10**

**August 1998**

**Part 5**

## Government assures the Apex Court

The union government assured the nine judge constitution bench, on August 10, 1998, that all those names which had been cleared by the Chief Justice of India for appointments as judges of the High Courts about whom there was no controversy would be appointed in due course. This assurance was given by Attorney General Mr. Soli J. Sorabjee during the preliminary hearing of a public interest petition filed by the committee on judicial accountability.

## Contempt Notices to Lawyers

The Karnataka High Court has directed issue of contempt notice to Mr. C.N. Shirur, an Advocate from Belgaum, to appear before it on August 31st for answering the charges of contempt of court. On the basis of a letter received from the Belgaum Family Court Judge Mr. H.S. Bheemaraddiavar the proceedings have been initiated. The allegation against Mr. Shirur is that he made derogatory remarks against the judge when the latter dismissed an IA under section 13 of the Family Court Act in a C.Misc. case on the ground that there was no complicated question of law involved wherein the petitioner had only claimed arrears of maintenance from the husband.

In yet another case the High Court has issued contempt notice to Mr. M. Madangopal, Advocate, Bangalore. The proceedings are initiated on the basis of a report received from Mr. D.R. Sundaresha, Chief Judge, Court of Small Cases, Bangalore. In which it is alleged that the Advocate shouted loudly even when he was asked not to do so.

## Apex Court Judges must possess clean background

-Justice J.S. Verma

The choice of the Chief Justice of India should be made at the time of initial appointment to the Apex Court to ensure that only person having flawless background occupy the high position, Mr. Justice J.S. Verma, former Chief Justice of India, said in an interview to PTI on 28, August 1998. He further said that if a person appointed a judge is known to have infirmities in his character and becomes a Chief Justice at a later stage by virtue of seniority it will be very bad for judicial system. He was of the view that those in the line for Chief Justiceship should be definitely above average and preferably outstanding.

Mr. Justice Verma did not agree with the suggestion that a Chief Justice should have too long a tenure to prove his mettle. He said "I don't think this is advisable. The only thing is that it should also not be too short and care should be taken at the time of making the initial appointment to see that the tenure is at least two years." Interestingly the present Chief Justice Mr. Justice M.M. Punchhi had recently suggested a longer tenure for those holding the office of the Chief Justice.

Mr. Justice Verma said that the age limit of 55 years for being considered for elevation to the Apex Court was good enough and there was no reason to reduce it except in rare cases of men of outstanding ability as had been done in the case of Mr. Hidayatullah, Mr. P.N. Bhagwati, Mr. Y.V. Chandrachud and Mr. R.S. Pathak. "It will be a travesty to cite these examples to pick out a person below 55 years of age who is not even considered to be average by the people in the profession itself," Mr. Verma said.

Mr. Justice Verma, who headed the bench that monitored the Jain Hawala case said investigating agencies had not done a satisfactory job in probing the case. Otherwise, it would not have been possible for all the chargesheets to end up in a fiasco, Justice Verma pointed out. He also lamented that "the Hawala case is one in which the court had granted complete insulation to the investigating agencies from extraneous circumstances. We even relieved them the power of supervision by the highest authority in the executive [the Prime Minister] and yet they could not perform. This proved that mere insulation was not enough."

## Seminar on Article 356

Speakers in a seminar organised by the All India Lawyers Union [AILU] in Bangalore on August 8, 1998 expressed their strong resentment about the possible misuse of Article 356 of the Constitution by the Union Government and also the factual misuse under Article 355 of the Constitution. The seminar on the topic "centre-state relations-Articles 355 and 356-judiciary" was presided over by Mr. Justice V. Gopala Gowda, Judge, High Court of Karnataka. The speakers included Mr. S. Vijayashankar, Advocate General, Prof. Babu Mathew of the NLSIU and Mr. G.N. Nagaraj, President of Karnataka Agricultural Workers Union.

## Around the Courts

☐ **Prevention of Corruption Act, 1947-Section 6-Whether previous sanction is required to take cognisance of the alleged offence against a retired public servant?**

By a judgment of August 13, 1998 the Supreme Court has ruled that the Magistrate could take cognisance of corruption charges against a public servant without prior sanction from the government if he retires during the pendency of the case. The bench comprising Chief Justice M.M. Punchhi and Justice K.T. Thomas, held that "the public servant, who committed the offence while he was a public servant, is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution. He can be prosecuted with the sanction if he continues to be a public servant when the court takes cognisance of the offence. But if he ceases to be a public servant by the time the court takes cognisance of offence he can be prosecuted without any such sanction. There is no indication in the Act that an offence committed by a public servant under the Act would vanish or it absolves the penal liability of the public servant the moment he demits his office."

A retired Orissa Superintendent of Police had filed an appeal before the Orissa High Court against the order of the Magistrate taking cognisance of the chargesheet presented by the State Vigilance Department against him on September 30, 1992 without the prior sanction of the state government when he had already retired on December 30, 1990. The High Court had refused to intervene in the matter and as a result the Appellant Kalicharan Mahapatra preferred an appeal before the Apex Court and by this judgment the appeal came to be dismissed.

☐ **Misconduct by a public servant, whether pensionary benefits can be denied?**

In a recent judgement the Supreme Court has held that the Gov-

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Communique**



## Kolar Diary

□ The Bar Association of Kolar, KGF, Chintamani, Malur, Srinivasapur, Mulabagal and other places of the district have reportedly passed resolutions deploring the desecration of Dr. Ambedkar's statue in Bangarpet and also the incident of 6-8-98 in the KGF Court where the bandh supporters threatened the Advocates and presiding officer demanding stoppage of court work. The Advocates from Kolar and Chintamani Bar took out precession condemning the incident of 6-8-98.

□ The Second District Level Advocates Conference of Kolar District is being held on 27th of September, 1998 at Kolar by the Kolar District Bar Association under the auspices of the Karnataka State Bar Council. Justice S. Rajendra Babu, Judge Supreme Court of India, is expected to participate in the conference.

## Orissa AG resigns

Orissa Advocate General Mr. Indrajit Roy resigned his post on August 6, 1998 following the CBI chargesheet against him in a case of attempted rape. The government accepted the resignation immediately.

## Clarification

Due to an inadvertent error in the July part of Communique the name of S.V. Jagannath is shown in the obituary column. The correct name of the deceased is S.K. Jagannath.

## Attention Please

Karnataka Co-operative Societies [Amendment] Act, 1998 [Act no. 25 of 98] has come into force with effect from 15.8.98.

## Read Communique

## Views and Vignettes

□ Mr. A.L. Lamba Advocate has suggested that with a view to enforce the judgment passed in PIL retired persons from banking, public sector undertakings, army air force and navy should be designated as "Civilian Wardens" who wish to assist the law enforcing agencies by enacting appropriate legislation and or by administrative measures.

□ Mr. T.H. Chikka Venkate Gowda, Advocate, wants the authorities to ensure that certified copies are issued promptly and regularly by the rural courts functioning in Bangalore. He has pointed out to the fact that the issue of certified copies are delayed on the ground that the xerox machine is out of order and or the stationery is not supplied and this position is prevailing for almost two years.

## No PIL before Tribunals

In a significant ruling a three judge bench of the Supreme Court comprising Justice S.C. Agrawal, Justice S. Saghir Ahmed and Justice M. Srinivasan has held that Service Administrative Tribunal cannot entertain public interest litigation at the instance of a total stranger. The case before the Supreme Court arose in respect of the order passed by the Central Administrative Tribunal, Bhubaneswar in S.C.B. Medical College, Cuttack case on the basis of PIL.

## Appointments

□ The president has appointed Mr. Justice B.S. Sreenivasa Rao, Mr. Justice Patri G. Basavana Goud and Mr. Justice S.R. Venkatesha Murthy as Judges of the Karnataka High Court with effect from August 11, 98. Prior to these appointments they were working as addl. Judges of the High Court.

□ Former judge of the Supreme Court Mr. Justice P.B. Sawant has been reappointed as the chairman of the Press Council of India.

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ernment was within its rights to withhold pensionary benefits payable to the government employee if he had committed misconduct while he was in service. A twelve page judgment delivered by a division bench comprising Justice Sujata V. Manohar and Justice S. Rajendra Babu set aside the judgment and order of the Central Administrative Tribunal (CAT), Delhi. A former officer in the Ministry of External Affairs [MEA] Mr. B. Dev had approached the CAT challenging the validity of the government's decision to deny pension to him on the ground that he had wilfully disobeyed orders to relinquish charge at London High Commission and join duty in India.

□ **Disciplinary proceedings, whether the delinquent official is entitled to an opportunity when the disciplinary authority reverse findings of the inquiry report?**

In a recent judgment the Supreme Court has held that a disciplinary authority cannot unilaterally reverse findings of an authority instituted against an employee without giving him an opportunity to defend himself. The bench comprising Justice S.C. Agrawal, Justice S.P. Bharucha and Justice B.N. Kirpal said that principles of natural justice required the authority to give an opportunity to the delinquent officer to file a representation before recording its findings on the charges framed against the officer. The judgment clarified that whenever the disciplinary authority disagrees with the inquiry authority when before it records its own findings, it must record its tentative reasons for such disagreements, furnish a copy of such tentative reasons alongwith the copy of the inquiry officer's report and seek a representation from the delinquent officer before passing the final order.

An officer of the Punjab National Bank [PNB] Branch at Lucknow had been chargesheeted in connection with the shortage of currency notes of rupees one lakh. The inquiry officer had exonerated the officer. However the Bank's Regional Manager did not agree with the inquiry report and unilaterally ordered proportionate deduction of the loss to the Bank from the officer's provident fund deposits. When the matter reached the Apex Court the court gave the above ruling.

□ **Writ of Quo Warranto against the continuance in office by a High Court Judge-whether maintainable?**

In a recent judgment a division bench of the Madras High Court comprising Mr. Justice Shivaraj Patil and Mr. Justice N.V. Balasubramaniam, dismissed a writ petition

filed by one Mr. M.S. Shivakumar wherein he had sought for the issue of a writ of quo warranto questioning the authority of Mr. Justice Y. Venkatachalam in functioning as a judge of the court. The petitioner had alleged that in a letter written to the Chief Justice of the Court Mr. Justice M.S. Liberhan, Mr. Justice Y. Venkatachalam had confessed that all judges including himself were corrupt. The division bench ruled that a High Court Judge can only be dealt with by impeachment proceedings under Article 124(4) r/w Article 218. No other forum has jurisdiction to go into the conduct of the judge.

The bench said that while the statements made in the affidavit did not show that Mr. Justice Y. Venkatachalam was holding the post without any authority of law or was ineligible to hold the post, a perusal of the alleged letter also disclosed that it was not signed by the judge.

□ **Sec. 138 and Sec. 142 of the Negotiable Instruments Act, 1881-Whether the Magistrate is obliged to take cognisance of the complaint when the instrument is presented to the bank more than once?**

In a recent judgment a division bench of the Supreme Court comprising Justice M.K. Mukherjee and Justice D.P. Wadhwa, has ruled that though a cheque could be presented to the bank a number of times during its validity period the prosecution of the drawer can be resorted to only once. The court held that a combined reading of sections 138 and 142 leaves no room for doubt that causes of action arises- and can arise- only once.

One M. Sunil Kumar had issued a cheque for Rs. 30,000/- to one S. Bhadrar. The cheque was not honoured due to insufficiency of funds. Bhadrar's counsel issued a legal notice to Sunil Kumar. In response Sunil Kumar sought for more time for payment which was conceded by Bhadrar. Since no Payment was received within the extended time Bhadrar presented the cheque for the second time. Since it was dishonoured, a second legal notice was caused by Bhadrar. Even then Sunil Kumar failed to make payment. Bhadrar filed the complaint before the Magistrate on the basis of the second notice. The Magistrate did not take cognisance of the offence on the ground that there could not be two causes of action in one case. In revision the Kerala High Court upheld the said view. In the present judgment the Supreme Court affirmed the view taken by the Kerala Court.



## Plea against divorce referred of Const. bench

In a significant development a writ petition filed by a divorcee wife challenging the judgment of the same court granting divorce to the husband charged with bigamy using its power under Article 142 of the Constitution was referred to the Constitution bench. In their order dated August 5, 98 a bench comprising Mr. Justice S.C. Agarwal, Mr. Justice S. Saghir Ahmad and Mr. Justice M. Srinivasan said that there are important constitutional aspects to be decided by the court. Arguing for the petitioner the Senior Counsel Mr. Shanti Bhushan contended that Article 142 cannot be used by the court to defeat the statutory law.

A wealthy diamond merchant of Ahmadabad Ashok Hurra and his wife Roopa filed a divorce petition by mutual consent in 1984 before the City Civil Court, Ahmadabad. During the pendency of the divorce petition, on August 18, 1985 Ashok Hurra married one Sonia a leading lawyer of Ahmadabad. In March 1986 Roopa withdrew her consent to the divorce petition. Subsequently the court dismissed the divorce petition. On appeal a single judge of the Gujarat High Court upheld the dismissal order. On a letter patent appeal the division bench of the High Court granted the decree of divorce. Roopa filed an appeal before the Supreme Court. On March 10, 1997 Mr. Justice M.M. Punchhi and Mr. Justice K.S. Paripoornan [since retired] held that though Ashok's conduct was blameworthy the matter could not be blown out of proportion or viewed in isolation. After taking this view the judges confirmed the order of the High Court subject to payment of Rs. 10,00,000/- to Roopa. Curiously the court also ordered for dropping charge of bigamy against Hurra.

Roopa has now challenged this order by filing a writ petition on various grounds including the contention that the impugned order suffered from the vice of defeating the statutory law.

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## Campus Watch

- Reliance Industries Ltd., [RIL] Bombay, has decided to institute a chair for corporate laws and governance at the National Law School of India, University, Bangalore. The chair will co-ordinate and manage studies, academic courses, training, curriculum development, publication, dissemination of information and documentation of corporate laws and governance.
- The National Human Rights Commission [NHRC] will set up an institute for human rights education research and documentation at the National Law School of India University, Bangalore. The proposed institute will help the NHRC to discharge some of its important statutory functions. For this purpose the NHRC will provide one time contribution of Rs. 30 lakhs.
- Vice President Krishnakant delivered the Sixth Annual Convocation Address of the NLSIU, Bangalore on 30-8-1998. Chief Justice of India Mr. Justice M.M. Punchhi, Chairman of the National Human Rights Commission, Mr. Justice M.N. Venkatachaliah, the Chief Justice of the Karnataka High Court Mr. Justice R.P. Sethi and the Director of NLSIU Dr. N.L. Mitra were present at the convocation.

## Man strips in Court

In a bizarre incident on August 14, 1998 a 35 year old man Narayana Swamy of Malur Hobli in Kolar District, entered the court of Mr. R.V. Reveendran during the hearing of a case demanding justice. Claiming that his children and wife were beating him he removed his cloths to reveal the wounds on his person. The police immediately took him outside the Court hall and arrested him. He has been charged with contempt of Court. It is learnt that he had been previously imprisoned for one and half years on the charge of attempt to murder his wife.

## Quotable Quotes

- A lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge.

-Samuel Johnson

- Lawyers have a duty not to use their skills to impede the search for truth.

-Kenneth Starr

## News Focus

- On 3-8-1998 Mr. K. Sreedhar Rao, Principal Judge, Bangalore City Civil and Sessions Court, addressed the members of City Unit on the subject "new procedure adopted in the City Civil and Sessions Courts for ensuring speedy disposal of cases".
- On 4-8-1998 the former international Cricketer Mr. Roger Binny addressed the members of AAB, City Unit and later planted tree saplings in front of the City Civil Court Complex Annexe.
- On 5-8-1998 Mr. Justice B.N. Mallikarjuna unveiled the portrait of late C.V. Subba Rao, Advocate, in the Magistrate Court Unit of AAB.
- On 8-8-1998 a seminar on "Centre State Relationship Art. 355 & 356- Judiciary" was held at Bangalore under the auspices of the All India Lawyers Union [Karnataka Unit]. The speakers included Mr. S. Vijayashankar, Advocate General, Mr. Babu Methew, Addl. Professor, National Law School and Mr. G.N. Nagaraj, President, Karnataka Agricultural Workers Union. The seminar was presided over by Hon'ble Mr. Justice V. Gopala Gowda.
- On 9-8-1998 the Karnataka State Bar Council had organised a function to felicitate Advocate freedom fighters in the High Court Unit of AAB. The function was presided over by Hon'ble Mr. Justice R.P. Sethi, Chief Justice of Karnataka High Court, Hon'ble Mr. Justice Nittur Srinivasa Rao, Former Chief Justice, Karnataka High Court, was the chief guest.
- On 10-8-1998 Raksha Bandhan was observed under the auspices of AAB in the City Unit. Sri D.G. Lakshman, Editor, Hosa Digantha, Kannada daily, addressed the members on the occasion.
- On 11-8-1998 blind children from Adhi Chunchanagiri Mutt, Ramanagar gave a musical programme in the AAB, High Court Unit.
- On 15-8-98 Independence Day was celebrated in the High Court premises under the joint auspices of the Advocates Association,

Bangalore, the Bangalore Advocates' Co-operative Society Ltd and the Bangalore Literary Union. The programme concluded with singing of patriotic and other songs by Advocates.

- On 19-8-1998 Mr. K.P. Pande, Commissioner, Bangalore Mahanagara Palike, addressed a meeting convened by the Federation of Bar Associations of Karnataka at the High Court Unit. Mr. Justice M.F. Saldanha also spoke on the occasion. Mr. K.N. Subba Reddy President of FOBA presided over the meeting.
- On 26-8-1998 a group dance was organised in the AAB Auditorium under the joint auspices of the department of Kannada and Culture, Government of Karnataka and the AAB.

## Miscellany

- On 15-8-98 Mr. M.V. Channakeshava Reddy, Advocate, opened his law chamber at no. 26, Cottonpet, Bangalore-53.
- On 27-8-1998 Mr. P. Mahalinga Bhat, Advocate, opened his law chamber at No. 26/1, Raghu Ram Lodge, J.C. Road, Near Minerva Circle, Bangalore-560 002.
- On 27-8-98 Mr. M.M. Cariappa, Advocate, opened his law chamber at No. 586, Kanakapura Road, 7th Block, West Jayanagar, Bangalore-560 082.
- On 30-8-1998 Mr. T.K. Nagesh Kumar, Advocate, opened his law chamber at No. 117, "Ammal Nilaya", II Floor, II Main Road, Seshadripuram, Bangalore-20.
- The Government of Karnataka has nominated Mr. Shimoga Subbanna, renowned singer and Notary Public as a member of the Committee appointed to select best Kannada films produced during 1997-98 for conferring awards. Mr. B.V. Karanth, renowned theatre personality is the Chairman of the Committee.
- Mr. M.S. Padmarajaiah, Advocate, attended an international conference on labour relations and law reforms held at Kandy [Srilanka] from July 30th 98 to August 4, 98. The conference was held under the auspices of the International Human Rights Commission, Hongkong





Mr. Justice C.N. Aswathanarayana Rao inaugurating Lahari Advocate Forum's orientation course for Civil Judge [Jr. Dn.] examinees.

### Sundar steers to victory

A fine batting display by C.G. Sundar, captain of the Bangalore Advocates Association Cricket Team ensured victory for his team against Mysore Advocates Association Cricket Team played on August 8, 98 at Maharaja College Grounds, Mysore. Out of 171 runs scored by the Bangalore outfit [in 32.5 overs] Sundar's contribution was 75. The Mysore Team was able to score only 162 runs in 37 overs. For the visitors S. Vijay Kumar took 4 wickets. Sri Narahari Addl. District and Sessions Judge, Mysore, inaugurated the match.

### Survive landslide

Mr. B.N. Maheswara, Advocate, S/o Mr. B.R. Nanjundaiah, State Public Prosecutor and Mr. S. Rajesh Joshi, Advocate, S/o Mr. Suresh Joshi, Advocate, who were part of the ninth batch of pilgrims on their way to Mount Kailash and Manasarovar, survived the heavy landslide occurred during August 1998 which claimed more than two hundred lives in Malpa Village of Pithoragarh District in U.P. Both of them were stranded in Gunji before they were air lifted by the I.A.F. helicopters.

### Literary Union

- On 1-8-1998 Sri Yeshwant Halbandi and his troop gave a musical performance in the Auditorium of AAB.
- Under the joint auspices of Bangalore Literary Union and the Directorate of Kannada and Culture, Government of Karnataka *Suvarna Samskriti 98* was celebrated. On 10-8-1998 a programme of *Sugam Sangeeth* by Smt. Archana Bhat and *Karnatak Classical Music* by Smt. T.S. Vasundara had been organised in the City Unit of AAB. On 11-8-98 *Sugam Sangeeth* programme was provided by Sri Narayana Rao Mane. On 12-8-1998 *Sugam Sangeeth* programme by Sri Puttur Narasimha Nayak and *Hindustani Classical Music* by Smt. Geetha Hegde was organised. The programmes on 11-8-1998 and 12-8-1998 had been organised in AAB Magistrate Court Unit. On 13-8-1998 *Sugam Sangeeth* programme by Smt. B.R. Manjula followed by *Sitar recital* by Sri Rajashekar had been organised in AAB, City Unit. On 14-8-1998 *Sugam Sangeeth* programme by "Ninaada" [Smt. Hariniyamma and party] had been organised in AAB, City Unit.

### Ganesh Utsav

- As usual Ganesh Utsav was celebrated in the High Court under the leadership of Mr. Mahantesh S. Hosmath from 25-8-1998 to 29-8-1998. A large number of judges and advocates participated in the Utsav.
- High Court Advocates Clerks' Association also celebrated Ganesh Utsav with religious fervour and gaiety from 25-8-1998 to 29-8-1998.
- Advocates' Clerks' Association in the trial court celebrated Ganesh Utsav in the City Unity from 25-8-1998.

### Lahari Advocates Forum

On 7-8-1998 Mr. Justice C.N. Aswathanarayana Rao, Judge, High Court of Karnataka inaugurated the orientation course for the Civil Judge [Junior Division] examinees at the AAB Auditorium in Bangalore. The course attended by 53 Advocates ended on 23-9-1998. On the valedictory function held on 16-8-1998 Mr. K. Sreedhar Rao, Principal Judge, Bangalore City Civil and Sessions Court was the chief guest. Mr. K.N. Subba Reddy, President, AAB, was the guest of honour.

### Obituary

On 4-8-1998 S. Narayan [42] Advocate, passed away at Bangalore.

## Read Communique

### Vacancy Available

Two smart young Advocates are required by an Advocate. Interested persons may apply forthwith. Applications will be considered on merit and suitability.

**Mr. A.K. Bhat, Advocate,**

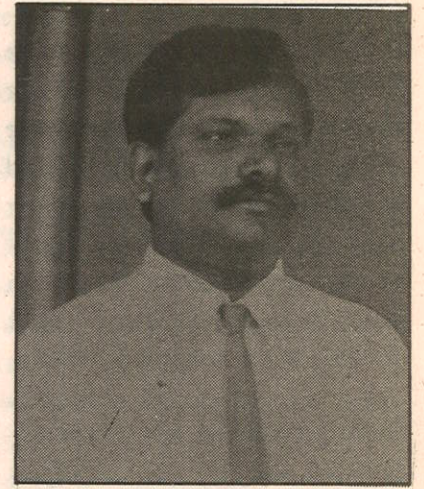
No. 1554, 39 'F' Cross,

'T' Block, Jayanagar,

Bangalore-560 041.

Phone: 6643050 / 642459

### Re-elected



In the election held on 19-7-1998 to elect the office bearers of Nayandahalli Credit Co-operative Society Ltd., Bangalore-39, Mr. C. Ramakrishna, Advocate, has been re-elected as the President for the third consecutive term.

### For sale

A lawyers's Library consisting of ILR, AIR, manuals and other books for over twenty years is available for sale at reasonable price. Contact 2253307.

### Lahari Foundation

The Foundation received Rs. 2,000/- as donation from Mr. N. Jaiprakash Rao, Advocate.

### State Level Conference

Sri V.T. Raya Raddi, Chairman of the Legal Cell of the Karnataka Pradesh Janata Dal, has issued a press release to the effect that a State Level Conference of the legal cell will be held at Mysore on 19th and 20th September 1998.