

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

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PART 5

## Symposium on Uniform Tax Structure

A State level symposium on the need for "Uniform Sales Tax Structure and Merging of Entry Tax" was inaugurated by Sri K.N. Subba Reddy, President, AAB, at Bangalore on 30th July 1992. In the beginning Sri S.K. Nahar, President of the Karnataka Tax Consultants Association, Bangalore, sponsors of the symposium, welcomed the guests and the participants. S/S S Narayana and E.R. Indra Kumar, Advocates, opened the debate by their useful analysis. Smt. R. Manjula, the Deputy Mayor of BCC, called for the abolition of the Entry tax and reintroduction of the Octroi with a view to augment the financial resources of the Local Bodies. This was opposed by the representatives of the various trade organisations who favoured the levy of surcharge on sales tax rather than the continuation of the entry tax or the reintroduction of octroi. However Sri N. Nagaraju, the Joint Commissioner of commercial Taxes (legal) in Karnataka attempted to justify the continuation of the sales tax at the present level and that the entry tax cannot be merged with the sales tax since both of them fall under different charging provisions. In the end justice S. Rajendra Babu, who presided over the deliberations, expressed the view that the entry tax and sales tax could be merged since both of them levied on the goods. He also stressed the need for simplifying the taxation procedures so as to make it easily understandable by the assessee.

At the end Sri T.P. Gandhi,  
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## Promotions & Transfers

By a notification dated 27-7-92 of the High court of Karnataka, the following judicial officers working in the cadre of Civil Judges are promoted and appointed to officiate as District Judges with immediate effect:

T.S. Palanethra, CJ & JMFC, Chickballapur as IV Addl. CC & SJ, Bangalore City; B.S. Shambu, III Addl. Judge, CSC, Bangalore as 9th Addl. CC & SJ, Bangalore City; Kulkarni Rama Rao, I Addl. Judge, CSC, Bangalore as Addl. Dist. & SJ, Chitradurga; L.M. Ladhkan, CJ & JMFC, Haveri as XI Addl. CC & SJ, Bangalore; K.H. Rajasekhara, Prl. CJ & CJM, Gulbarga, as P.O. Labour Court, Gulbarga; V.K. Dwarakanath, CJ as XII Addl. CC & SJ, Bangalore; B.P. Paraddi, I Addl. CJ, Belgaum as P.O. Labour Court, Hubli; S. Ramamurthy, XV Addl. Judge, CSC, Bangalore as XII Addl. CC & SJ, Bangalore; C.K. Balakrishna, Prl. CJ & CJM, Mysore as P.O., Labour Court, Mysore; B.S. Jaiparameshwar Dy. Registrar, Lokayuktha, Bangalore as Chief Law officer, KSRTC, Bangalore; R.K. Balasundar, Dy. Secretary, to Govt. Dept. of Law & Parly Affairs, Bangalore as P.O., I Addl. Labour Court, Bangalore; T. Santhanam, Dy. Director of Prosecutions, Bangalore as Addl. Registrar, Kar. Lokayuktha, Bangalore; A. Mohan Ram, X Addl. Judge, CSC, Bangalore as XIV Addl. CC & SJ, Bangalore; C.Y. Bharamagoudar, CJ & JMFC, Ranebennur as Addl. Dist. & SJ, Bellary; S. Indudhara, Addl. Secretary, Kar. Legal Aid Board, Bangalore as XV Addl. CC & SJ, Bangalore; M.N. Shankar Bhat, Prl.

CJ, Bangalore Rural Dist. as XVII Addl. CC & SJ, Bangalore; B.N. Balakrishna, VIII Addl. Judge, CSC, Bangalore as P.O., Addl. Labour Court, Hubli; K. Rajasekhar, Judge, CSC, Mysore as P.O., Labour Court, Chickmagalore; Rama Rao Kulkarni, Prl. CJ & CJM, Belgaum as P.O., III Addl. Labour Court, Bangalore.

### Transfers & Postings

V.G. Mahajan, P.O., Labour Court, Hubli as P.O., Industrial Tribunal, Hubli; S.M. Bagali, P.O., Labour Court, Gulbarga as II Addl. Dist. & SJ, Belgaum; K. Krishna Naik, Addl. Registrar, Kar. Lokayuktha, Bangalore as Member, KAT, Bangalore.

### Retirement

On 31-7-92 Shri K. Iswara Bhat, Addl. Judge, Bangalore City Civil Court retired from service on reaching the age of superannuation.

### AAB Office Bearers

Following members of the Association are elected as office bearers for the year 1992-93  
President: K.N. Subba Reddy;  
General Secretary: G. Vijayakumar;  
Treasurer: M.B. Prabhakar.

High Court Unit: Vice President: H.C. Shivaramu; Joint Secretary: Smt. L.R.S. Hiremath  
City Unit: Vice President: H.R. Vishwanath; Joint Secretary: V. Manjunath;

Mayohall Unit: Vice President: D. Vishwanatha Naidu; Joint Secretary: V. Prabhakar;

Magistrate Court Unit: Vice President: T. Subramanya; Joint Secretary: S. Murthynath.

## Appointments

□ A Notification dated 4-7-92 the Government has made the following appointments for a period of three years; K. Srinivasa Gowda, Additional Government Advocate; B. Manohar, L. Krishna Murthy, K. Viswanath, Pradeep Rai, Smt. K. Premavathy and Smt. Vijayalakshmi Vishukumar as Government pleaders in the High Court.

□ On 7-7-92 the Governor of Karnataka appointed the following as Munsiffs / Magistrates:

P.M. Desai, Ms. Manjula, Aswathanarayana, K.B.M. Patel, Mulla Abdul Saheb, Neelopanth Arun Lakshmanarao, Balappa Karabasappa, K. Palakshappa, P.M. Siddamallappa, D.S. Ramagopala, Patil Paragouda Mahadevappa, Chidambara Srinivasarao, Prakash L. Nadi-ger, T.G. Channabasappa, Mallanagowda Shankaragowda Patil, Rajiv Gurunath Joshi, Vidya Annaji Venkatesh, Lakshminikanth Ramappa, A. Gurumurthy, Ms. Sridevi S. Angadi, Rajasekhara Balavanthappa Darasangi, Kalatkar Kishendut, Gangiah Sangiah Chickveera-mutt, Narayana Venkataraman, Chittur Guttappa Hanumanthappa, Kemparaj, Eswarappa Shankarappa Jalsi, Sudhir Hanumanthappa Koratti, Pradeep S. Balekai, Rajamohan, Srivatsav, Ravji Maruthi, Hadagaliramu, K. Gokhale Kalappa and Ms. H.G. Nagarathna.

□ By a notification dated 27-7-92 the Government has appointed Mr. K. Vittal Shergar, Retd. Dist Judge as the Additional Judge of Family Court, Bangalore.



*There are three places for gambling in our Country. They are the Race course, Share market and our Courts.* — A Mehta, President, Forbes Industries

## Policing The Police

Irrespective of the form of Government every state requires a disciplined police intended to be used as the instrument of state for the purpose of maintenance of Law and Public order. But in a democratic society the police are always responsible to the people. The same need not be the case in a monarchic or autocratic state. While the police enforce the law of the land nobody can have a grouse against them. However in the guise of the enforcement of law and order if the police arrogate themselves certain powers then loses the popular support and at best it becomes an oppressive force.

In all societies the individual will have to subjugate his interest to that of the collective interest. In any orderly society the individual interest may clash with the collective interest as represented by the Law of the land. In other words the individual will have to face the might of the state. Needless to state that as against the state individual will have several disadvantages in the sense that the state is mightier than the individual. In such circumstances the meek and the feeble individual requires the assistance of another individual who is well versed in law. It is in this sense a lawyer comes in aid of the individual.

A lawyer being an officer of the court is always expected to assist the due process of law and to uphold the authority and dignity of the court. Even while a lawyer represents a client still he will be instrumental in the enforcement of the law in his own way. In this sense the lawyer has a special status. Therefore the police should have the necessary understanding that the lawyer is not acting against the law but he is only trying to protect the interest of his client

within the frame work of law. Any view other than this will have no legs to stand upon.

In the discharge of their professional obligations the lawyers may have to visit the scene of occurrence of any crime the police station, the prison, face an authority and argue the case of his client before the court of law. In all such instances the lawyer will only be acting for his client and he may not have any personal interest. Therefore he must get due regards in all such places. It is to be mentioned here whenever individual police officers try to exceed in their brief and act in an illegal manner a lawyer can not be a silent observer and he has every right to protest in a lawful manner.

One might recall that in a number of police stations a plaque with the inscription 'We respect those who respect law'. But the question is as to how far this motto of the Police Department is observed in the letter and the spirit. It is the experience of the many lawyers in Karnataka that let alone their getting respect from the policeman on duty in the station as and when he has to visit the same on behalf of his client, the lawyer is illtreated by the policeman. Partly lawyers may be responsible for this state of affairs.

Unfortunately the trend has worsened and today's policeman has the temerity to assault, abuse, illtreat, murder the Advocate (though in a rare case) and assault and abuse a prosecution witness. In the recent times starting with the Rashid murder case whether it be Attibele, Bangalore, Belur, Hoskote, Holenarasipur the police have exceeded their limit in attacking the lawyers.

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## LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

(from the last issue)

exercise. This public expectation from the judiciary in this field is yet unrequited.

The considerations relevant to the imposition of duty of care are the foreseeability of damage, the proximity of the relationship or 'neighbourhood' and the reasonableness or otherwise of imposing liability. The difficulties of articulating any comprehensive single general principle have always been recognised. The trilogy of cases, *Donoghue V. Stevenson*: ([1932] AC 562); *Hedley Byrne & Co. Ltd. V. Heller & Partners Ltd.*: [1964] AC 465; *Anns V. Merton London Borough*: [1978] AC 728 seem to establish that that in order to establish the duty of care it is not necessary to bring the facts of that situation within those of the previous situations in which a duty of care had been held as to exist. We may here notice a more recent decision of the House of Lords in *Caparo Industries Plc V. Dickman* (Caparo): 1990 (1) All ER 568 (573-4).

In that case, 'Caparo' purchased Shares of a company on the strength of the figures in the balance-sheet and alleging that those figures in the balance-sheet were faulty, sued the auditors of the company for damages on the ground of breach of their duty to the investors and potential investors. Negating a duty of care in such a situation, the House of Lords said: "But since Ann's case a series of decisions of the Privy Council and of your Lordships' House, notably in judgments and speeches delivered by Lord Keith, have emphasised the inability of any single general principle to provide a practical test which can be applied to every situation to determine whether a duty of care is owed and, if so,

what is its scope.....What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other..... We must now, I think, recognise the wisdom of the words of Brennan J. in the High Court of Australia in *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 at 43.44 where he said: 'It is preferable in my view, that the law should develop novel categories of negligence incrementally and by analogy with established categories, rather than by a massive extension of a prima facie duty of care restrained only by indefinable "considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed".'

The development of law in India could be traced to the provisions of Section 65 of the Government of India Act 1858, Section 32 of the Government of India Act, 1915, Section 176 (1), Government of India Act, 1935 and Article 300 (1) of the Constitution. The common law doctrine "King can do no wrong" was not applicable. In *Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India* the liability of Government for tort was upheld. Chief Justice Peacock, however, made a reservation that acts of public servants in exercising sovereign powers delegated to them could not create any liability in

(to be continued)



## AROUND THE COURTS

□ **Karnataka Civil Rules of Practice, 1967, Rule 100 (a) r/w 100 (d) (i).**

The Decree Holder is entitled to claim Advocate's fee at the scale prescribed in the Rules on the amount specified in the Execution claim (which includes subsequent interest) and not on the decretal amount.

**Indian Bank Vs Court of Small Causes Bangalore and another 1992 (2) Kar. L. J. 42.**

□ **Specific Relief Act, 1963 (Central Act No. 47 of 1963)-Section 20** - Where agreement provides option to vendors to repay money advanced or sell property, not just & appropriate to grant decree for specific performance, taking away right to pay off amount & save property.

In a case, where the agreement itself gives an option, in other words, when the parties themselves agree to the effect that it would be open to the Vendors either to repay the money advanced under the agreement or to sell the suit property, and the parties have understood the Agreement in that manner and conducted themselves in conformity with such option, whether it would be just and proper for the court to exercise its equity jurisdiction in favour of the plaintiff and direct the Vendors to execute a sale deed. In such a case, it would not be just and appropriate to grant a decree for specific performance as it would be contrary to the terms of the agreement and it would take away the right of the prospective vendor to exercise his option and pay off the amount and thereby save the property.

**B. R. Mulani V/s Dr. A. B. Aswathanarayana : I. L. R. 1992 KAR 2224.**

□ **Sec. 132(5) of the Income tax Act, 1961 :**

A warrant to authorisation was issued under Sec. 132 of the Income Tax Act to conduct a search of the premises of the firms of which the petitioner was

partner. Another warrant was also issued suspecting that the firms have kept books, money, bullion, ect. in the common residence of some of the partners of the firms. A search took place in the residential premises of the petitioner on the basis of the authorisations and certain unaccounted assets were found. A writ petition was filed seeking quashing of the order passed under Sec. 132(5) against the petitioner.

The warrant of authorisation is in respect of income or property which is not likely to be disclosed and belonged to firms of which the petitioner is a partner. The firms and its partners are different entities under the Act. When the legal title might have been with the person whose income or property is sought to be taxed and physical possession was with other person, it is in respect of such person's premises a warrant should have been issued. When search was to be effected in the residential premises of the petitioner, warrant of authorisation should have enabled the search of the residential premises of the petitioner. But on the otherhand, the warrant of authorisation stated only that the petitioner's firms have not produced books or other documents which will be useful or relevant to proceedings under the Act and or not likely to be produced or are in the possession of money, bullion, etc. There is no reference at all in the warrant of authorisation that such documents or money etc, is in possession of the petitioner in his individual capacity. The mere mention of the residential premises does not enable the Department to effect seizure of gold etc.,. The warrant of authorisation issued in the name of the firms does not enable the Department to conduct search of the residential premises of the petitioner-partner or effect seizure of any property belonging to him found therein. Order under Sec. 132 (5) is liable to be

quashed. -Nenmal Shankarla parmer V/s C.I.T. (1992) 102 C.T.R. (Kar) 64.

### BOOKS RELEASED

□ Under the auspices of the Indian Institute of Legal Literacy, Bangalore, Justice E.S. Venkataramaiah, the former Chief Justice of India, released a book titled "Marriage or A Mirage" written by Prof. B.N. Sampath of Banaras Hindu University. The function held on 2.7.1992 at the City Civil Court Complex was presided over by Justice M. Rajendra Babu. Mr. K. M. Anees-Ul-Haq, Director, Bangalore Doordarshan and Prof. N.R. Madhava Menon, Director, NLSIU, Bangalore were the guests of honour.

On 17-7-92 Justice E.S. Venkataramaiah, former Chief Justice of India, released the first volume of the book titled "Lahari Law Lectures". Sri K.N. Subba Reddy, President AAB, presided over the function organised in this connection.

### FORUM of X'ian Advocates

In the Annual General Body Meeting of the above Forum held on 11-7-1992 the following were elected to the Managing Committee : President: Mr. Kora Chandy; Vice Presidents : Mr. R. C. Castelino & Mr. R. I. D'sa; Secretary: Prof. Patrick D'souza Joint Secretary : Mr. Andrew Lobo; Treasurer : Mr. George da Costa; Committee Members : Mr. Sowriraju, Miss Nimm Swamy, Ms Beryal Cardoza, Mr. L.P.E. Rego, Mr. Moses S. C.S., Mr. Noel Gonsalves.

### LAW LECTURE

On 18-7-92 Sri K. R. D. Karanth, Advocate, delivered the nineteenth lecture of the Lahari Law Lecture Series. The topic of the Lecture was "the Minority Education Institutions". Sri L. G. Havanoor, former Law Minister and Advocate, presided over the function.

## Humour in Courts

Enquiring the woman found guilty, her Lawyer asked, "Did you poison your husband's food?"

"Yes".

"Then what happened?"

"He sat at the dinner table and chewed his food silently".

"Didn't your conscience prick?"

"Yes, it did - when he asked for more".

Collected by: K.R. Dinakar

### LAW MADE EASY

Q : Whether the issuance of notice under Section -56 of the Wakf Act, 1954 before filing the suit against the wakf board is mandatory ?

A : Yes. Sec ILR 1991 Kar 1586 and 1625.

Q : Can a tenant in respect of wakf property seek for registration of occupancy rights under the provisions of the Karnataka Land Reforms Act, 1961 ?

A : Yes. With the enactment of Karnataka Act-1 of 1974 the tenant can do so.

Q : Whether the Mutawalli cultivating the land belonging to the mosque is entitled to claim the grant of occupancy rights ?

A : Yes. Under Section-4 of the KLR Act, 1961 he becomes a deemed tenant of the land and as such he can claim the occupancy rights.

### Policing the Police

(continued from page 2)

There is one more angle to this in as much as the attack on a prosecution witness by the police tantamounts to interference in the functioning of the judiciary and committing contempt of Court. However there appears to be no concerted action on the part of the state to stem the trend before it becomes irretrievable. As such the various opinion groups, including the lawyers, should exert pressure on the authorities to exercise their hold on the police. Allowing the police and the lawyers to constantly clash in the state is not a healthy trend. The time has come for policing the police.



### News Focus

- On 3.7.92 Justice K. A. Swami, the acting Chief Justice of Karnataka High Court, released the Lawyer's directory, brought out by the AAB.
- Between 9th & 11th July 1992, few members of the AAB observed hunger strike demanding action against the two police officers connected with the recent episode of assault on prosecution witness.
- As per the resolution of the AAB on 9th & 10th July 1992, Advocates boycotted the first court of the Karnataka Administrative Tribunal protesting against the contempt of court proceedings initiated against H. Subramanya Jois.
- On 14-7-92 B. Basavalingappa, Minister for Environment, addressed the members of AAB on the topic "the relationship between the police and public". He also presented mementos to such Advocates who recently under took hunger strike protesting against the Government's inaction.
- On 25-7-92 Justice K. A. Swami, Acting Chief Justice, High Court of Karnataka inaugurated one month training course for newly recruited Munsiff / Magistrates. 31 candidates are undergoing training in this course.
- On 29-7-92 Lions & Lioness clubs of Bangalore - Rajajinagar, Indian Red Cross Society, Bangalore and the Advocates Association, Bangalore, organised Free health check up, Blood grouping and Blood donation camp at the AAB auditorium, Bangalore City.

### WORKSHOP

Shortly Lahari proposes to hold a workshop on submitting a Model Draft Legislation on the Karnataka Rent Control Act to be submitted to the Government. All interested Participants may contact the project co-ordinator Mr. P.G.C. Chengappa, Advocate, C/o Lahari, the Forum of Advocates for Socio Cultural Activities, Advocates Association premises, Bangalore - 560 009

### Acting Chief Justice

During first week of July 1992 Justice K.A. Swami, took over as the Acting Chief Justice of the High Court of Karnataka.

### Lawyers Suspended

It has been reported the Karnataka State Bar Council has suspended Mr. A. Anantha Padamanabha Rao, Advocate from Bangalore and Mr. S. S. Patil, Advocate from Sankeshwar (Belgaum District) for a period of two years for professional misconduct.

### Cricket Tournament

On 8 - 8 - 92 the Karnataka State Judicial Department Employees Association organised a Tennis Ball Cricket Tournament at Bangalore.

### Miscellany

- With effect from 30-6-92 M/s Divakar Associates, Advocates & Tax Consultants, shifted their chamber to 658, 1st Floor, Main Road, New Thippasandra, Bangalore - 75. Phone No : 58 13 50.
- On 8 - 7 - 92 Mr. P. R. Ramesh, Advocate, opened his new law chamber at No. 311, Kurubara Sangha Building, 1st Main, Gandhinagar, Bangalore-560 009.
- During July 1992 the Karnataka State Bar Council elected Mr. M. Lokesh, Advocate, as its representative in the All India Bar Council.

### OBITUARY

- On 12-7-92 M. V. Balasubramanyam, Advocate, died at Bangalore at the age of 39 years.
- On 7 - 8 - 92 P.L. Kumara Swamy, Retd. Dist. & Sessions Judge and Advocate died at Nimhans, Bangalore, as a result of a ghastly motor vehicle accident.

### Symposium on Uniform Tax Structure

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secretary of the Association, proposed vote of thanks. The symposium which was largely attended was able to generate constructive debate.

## Periscope

### □ Repentance for not joining the hunger strike :

It was not known when few lawyers went on hunger strike the Association will felicitate them and present mementos. Having learnt about the honouring of the lawyers who went on hunger strike it was seen that some other lawyers were repenting for not joining the hunger strike.

□ **Cost of a complaint :** Recently when a lawyer complained to the Association about the illtreatment by a judge and attended the General Body Meeting to explain his case the President announced that the member will pay Rs 10,000/- to the Association to meet the expenses of the ongoing agitation. Next time when you want to lodge a complaint be ready with the donation, remarked a spectator.

□ **Law and liquor :** While presenting a case concerning an excise matter the lawyer was confronted by a question from the Bench as to how many millilitres of liquor constituted a peg. Confronted with this question the lawyer started blinking. Therefore, according to the president of AAB a lawyer should know what is meant by a "small peg", "a large peg" and "seconds" etc., in order to effectively present such cases. However the speaker did not suggest as to how a lawyer can acquire such information perhaps by visiting a nearest pub on the next occasion.

□ **Horse sense of justice :** In a convention of the horses an opinion was expressed by one of the participants that while the Governor, Chief Minister, Mahareja and the like have donated a cup in their designations it was not understandable as to how the Chief Justice could not think of donating a cup to the Bangalore Turf Club. The horses felt humiliated on account of this. Then a committee was setup to persuade the chief justice also to join the rank of other dignitaries. That is how a Chief Justice's Cup came to be donated by the chief justice to the Bangalore Turf Club for annually conducting a race in the name of his office.

—Insider

### Read

### Read

1. Consumer Protection Judgment (CPJ) (Most widely cited and circulated monthly journal on consumer law)
2. Consumer Protection Digest (1986-92)
3. Current Criminal Report (CCR) (most prompt journal in India on criminal law)
4. Other journals of repute
  - Banking Cases
  - Divorce & Matrimonial Cases
  - Accident & Compensation Cases
  - Current Service Journal

Write for Details :

### Indian Law Agency

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