

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

SEPTEMBER 1992

PART 6

## Supreme Court Indicts Justice Chawla

□ In a unique Judgment delivered almost a year ago the Supreme Court had set aside the suo moto notice issued to the CBI by Justice M. K. Chawla of the Delhi High Court (since retired) in connection with the Bofors case in which Mr. Vinod Chadda is an accused. On 28-8-92 the Supreme Court Bench consisting of Justice S. R. Pandian and Justice K. J. Reddy gave the detailed reasoning (92 pages) and virtually indicted Justice N. K. Chawla. The judges declared that its "judicial conscience is shocked" and in their considered view he had overstepped his jurisdiction and made the statement which was totally unwarranted and uncalled for. The statement of Justice Chawla which attracted the attention of the Supreme Court read "On the face of it the CBI FIR in the Bofors case makes out no offence".

The judges pointed out that the inherent power under the criminal procedure code is given to the high courts to give effect to any order passed under the code, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Justice Chawla's order did not fall under any of these three categories and he had no justification whatsoever to exercise suo moto power.

□ By a judgment dated 28-8-92 the Supreme Court dismissed a petition filed by the Union Minister for Human Resources Development Arjun Singh challenging the order of the Chief Election Commissioner in the "symbol

case". The CEC had held in his order that he had no power to deregister the Bharathiya Janata party and freeze "lotus symbol" on the ground that it had violated the tenets of secularism by carrying election symbol during the Rath yatra.

### Lawyer Nabbed

On 15-8-1992, Mr. Bala Krishnan, an advocate from Madras was nabbed at the Madras Airport and contraband goods worth Rs. 6.3 lakhs was seized from his baggage. The arrest and seizure followed a tip off from the D.R.I. officials. According to the reports the lawyer had travelled fifteen times from Madras to Singapore between January and June 92 and every time he used to bring in the contraband goods from Singapore.

### City Lawyers Held

Bangalore : K. T. Anand (40), a city lawyer was arrested by the Frazer Town Police for alleged murder of his wife Srimathi (37) on 22-8-92. According to the police the accused had an affair with a lady advocate for the last eight years and he even paraded her as his wife. The accused has been remanded to judicial custody. Subsequently on 4-9-92 the lady advocate Sunitha Bai was arrested by the police.

### Senior Advocate

During August 1992 the High Court of Karnataka designated Mr. M. P. Eswarappa as a Senior Advocate.

## Posting of New Munsiffs

With effect from September 1, 1992 the Munsiffs appointed on July 7, 1992 who were under training in the High Court of Karnataka are posted to the charges as noted below :

P.N. Desai, M & JMFC, Turuvekere ; Manjula, Addl. M & JMFC, Mandya ; Aswathnaryana, M & JMFC, Somwarpet ; K.B.M. Patel, M & JMFC, Malur ; M. Abdulsahab, Addl. M, Chitradurga ; Balappa K.B. M & JMFC, Hungund ; K. Palakshappa, M & JMFC, Mudigere ; Patil P.M., M & JMFC, Kalhatgi ; C. S. Kulkarni, M & JMFC, Molakalmuru ; P. L. Nadiger, Addl. M & JMFC, Doddaballapur ; T. G. Channabasappa, M & Addl. JMFC, K.G.F. ; M.S. Patil, M & JMFC, Ankola ; R.G. Joshi, Addl. M & JMFC, Gokak ; V. A. Venkatesh, M & JMFC, Hosanagar ; L. R. Deshi, M & JMFC, Srinivasapur ; A. Gurumurthy, Addl. M & JMFC, Karkala ; Sridevi S.A., III Addl. M, Mangalore ; Rajshekar B.G., M & JMFC, Gowribidanur ; Kalaskar K., Addl. M & JMFC, Virajpet ; G. S. Chickaveermath, Addl. M & JMFC, Bijapur ; Hegde N.V., Addl. M, Shimoga ; Kittur M.H., Addl. M & JMFC, Bellary ; Kemparaj, JMFC, Chitradurga ; I.S. Jantli, Addl. M & JMFC, K.G.F. ; Sudheer H.K., M & JMFC, Mulbagal ; P.S. Balikai, Addl. M & JMFC, Srirangapatna ; R. Srivastava, M & JMFC, Holenarasipur ; Raoji M.S., IV Addl. M, Belgaum ; H. Ramu, III Addl. M & JMFC, Gulbarga ; Gokhale G.K. and H. G. Nagarathna, Addl. M, Dharwad.

### Wish you Happy

*Dasara*

## Political Interference Deprecated

Former Supreme Court Chief Justice E. S. Venkataramaiah strongly criticised undue political interference in the affairs of the Administration and said that this has affected the morale of honest officials and led to structural instability in the administration. Justice Venkataramaiah was speaking at a conference of the chairmen of State Administrative Tribunals in Bangalore on 21-8-92. He also felt that it was high time that the Union Government enacted a common High Courts Act and introduced common service rules for all the members of the administrative staff in unions High Courts and extended the same rules to the staff of the Central Administrative Tribunals.

The conference was inaugurated by Mrs. Margaret Alva, the Union Minister of state for personnel and public grievances, who called for evolution of uniform procedure by the Central and State Administrative Tribunals in their adjudication process.

### Miscellany

□ On 7-8-92 D. A. Udaya Kumar & N.S. Krishna Murthy, Advocates, opened their law chamber at 3906/37, "Shree Lakshmi Nivasa", 1st Main Road, Tha Ra Su Road, Gayathrinagar, Bangalore-21

□ On 9-8-92 M/s. T.R. Rangaraju Associates, Advocates, opened their law chambers at No. F-4, 9 & 11, Krishna Towers, 3rd Main, Gandhinagar, (Opp. Kamath Yathri Nivas), Bangalore - 560 009.



Petty laws breed great crimes.....Quid

## LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

### Right To Practice

Of late a couple of instances have come to light where in the Karnataka State Bar Council has permitted two persons to enroll as lawyers even while they are employed. On the basis of the said enrollment the concerned persons have presented suits/proceedings on behalf of their respective employers. In the usual course these suits/proceedings had to be instituted by the professional lawyers rather than the employee lawyers. However the circumstances under which the concerned have been enrolled as lawyers is not clear.

As in the case of other professions legal profession is also a highly specialised profession and as such only the enrolled lawyers are authorised to represent the clients before the courts as well as other forums. A combined reading of the provisions of Section-29 and 30 of the Advocates Act, 1961 shows that the right to practice is restrictive in nature and only a class of persons are entitled to practice law as a profession.

As per the Bar Council Rules any person seeking enrollment as a lawyer should not be employed. It is seen that the Bar Council insists that the person who was previously employed and wants to enroll as an Advocate to produce the letter of acceptance of resignation from the employer. Even after enrollment a person who seeks employment is asked to suspend practice of law for the duration of such employment by notifying the Bar Council.

Often the enrolled Advocates take up appointments and on occasions they will be occupying the post of a Law Officer or a Legal Assistant under any given employer. In their new role such persons might be dealing with the legal

question vis-a-vis the cases concerning their employer. However it can't be said that they are Advocates in the sense as has been recognised under Section-29 of the Advocates Act, 1961. Therefore those persons do not have the right to practice as Advocates before the courts and or other quasi judicial forums.

In the light of these facts and legal position it is not quite certain that under what circumstances the State Bar Council has permitted the two persons to enroll as lawyers notwithstanding the fact that they continue to be the employees of their respective employers. It is also learnt that there are some similarly situated persons who have already applied to the State Bar Council seeking enrollment as lawyers. On the precedent of the two cases if the other applicants are also enrolled as lawyers it leads to a situation that even those persons can practice as lawyers.

Perhaps the purpose and object of enactment of the Advocates Act, 1961 would be defeated by allowing the employees to practice as lawyers. It is to be seen that it was not the intention of the parliament to allow the employees (by whatever designation they are called) to practice as lawyers. Advocacy has always been understood as professional rather than being treated as job that can be handled by employees. In the light of these aspects and considering the serious implications involved in the matter whether the Bar Council will take immediate remedial measures to uphold the sanctity of our profession?

### OBITUARY

On 20-8-92 Anantha Shankarappa (83) an Advocate of Mandya passed away.

(from the last issue)

Government. In State of Rajasthan vs. Mst. Vidyawati the claim for damages for injuries suffered in an accident involving of vehicle maintained by the Government for the official use of the Collector was upheld. The Peninsular and Oriental Steam Navigation Co. case was referred to. Chief Justice Sinha said; "The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong and therefore of authorising or instigating one and that he could not be sued in his own courts. In India ever since the time of the East India Company, the Sovereign has been held liable to be sued in tort or in contract and the common law immunity never operated in India. Now that we have by our Constitution established a Republican form of Government and one of the objectives is to establish a socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification in principle or in public interest that the State should not be held liable vicariously for the tortious act of its servant".

But in Kasturilal Palia Ram Jain V. State of U. P. Chief Justice Gajendragadkar rejected the plaintiff's claim on the ground that the tort was committed by the police officers in the exercise of delegated sovereign powers. The learned Chief Justice referring to the exclusionary observations of Peacock C. J. in Peninsular and Oriental Steam Navigation Co's case observed that "Principle has been consistently followed in all subsequent decisions. The correctness of the view has been doubted by legal critics pointing out that several High Courts in India had not followed the principle in Peninsular case and had taken a different view and that in a

democratic polity, there is no logical basis for the immunity of the State that too even after the Crown Proceedings Act, 1947 in England. In State of Gujarat v. Memon Md. and Basava Kom Dyamoguda Patil v. State of Mysore liability against state was upheld. Rudul Shah v. State of Bihar, Sebastin M. Hongray v. Union of India, Bhim Singh v. State of J & K are cases which indicate the transformation in judicial attitudes in this important area. In these cases the Supreme Court through the expansive interpretation of Article 21 has awarded damages in its writ jurisdiction under Article 32. But what is necessary is a consistency of principle.

What is the relevance of the English cases to the development of our law? The answer is to be found in a passage in Takaro Judgment itself: "Their Lordships consider that question to be of an intensely pragmatic character, well suited for gradual development but requiring most careful analysis. It is one upon which all common law jurisdictions can learn much from each other; because, apart from exceptional cases, no sensible distinction can be drawn in this respect between the various countries and the social conditions existing in them. It is incumbent upon the courts in different jurisdictions to be sensitive to each others' reactions; but what they are all searching for in others, and each of them striving to achieve is a careful analysis and weighing of the relevant competing considerations". (p501) What is suited to and thrives on the English soil may be fruitless in the Indian context. We may, perhaps, need more fluent and pragmatic judicial tools.

The methods of recruitment legal training and sensitisation

(to be continued)



## TRANSFERS AND POSTINGS

The following transfers and postings of officers of the judicial department in the Cadre of Civil Judges have been ordered during third week of August 1992. H.L. Ramaprasad, Prl. CJ & CJM, Tumkur, has been posted as CJ, leave reserve, High Court of Karnataka; P.G. Kulkarni, Addl. CJ, Gulbarga as Prl. CJ & CJM, Gulbarga; P. T. Patil, Addl. CJ, Tumkur as I Addl. Judge CSC, Bangalore; G. H. Prasad, IV Addl. CMM, Bangalore as Prl. CJ & CJM, Mysore; Kukkaji Ramakrishna Bhat, Addl. CJ, Bangalore Rural District as Prl. CJ, Bangalore rural district; Prakash Bellary, CJ & JMFC, Chintamani as CJ & JMFC, Chikballapur; Shetkar Subhash, VII Addl. CMM, Bangalore as Addl. Secretary legal aid Board, Bangalore; V. G. Charati, V Addl. CMM, Bangalore as CJ, Haveri; S.V. Patil, II Addl. CJ, Belgaum as Prl. CJ & CJM, Belgaum; Mahipal Desai, CJ, as Deputy Registrar, Karnataka Lokayukta, Bangalore; N.S. Patil, III Addl. CJ, Belgaum as I Addl. CJ, Belgaum; N. Chandrashekharaiah, Addl. CJM, Bangalore Rural District, as Judge, CSC, Mysore.

The following munsiffs are temporarily promoted to officiate as Civil Judges and posted to the charges noted against their names:

B. Yoginath, M & JMFC, Kadur as III Addl. Judge, CSC, Bangalore; Sudhakar Pandit, M & JMFC Gowribidnur as VII Addl. Judge, CSC, Bangalore; S.M. Shivananna Goudar, M & JMFC Turuvekere as X Addl. Judge, CSC, Bangalore; V.M. Aradhya, Munsiff, OOD as Dy. Manager, Food Corpn. of India, Bangalore; A.S. Patil, Prl. M Karkala as IV Addl. CMM, Bangalore; N.H. Savelgi, Prl. M. Bijapur as Addl. CJ, Bangalore Rural District; S.G. Palled, Prl. M & JMFC Arsikere as Prl. CJ & CJM, Tumkur; Basavaraj S. Tadhali, Prl. M & JMFC II

Court, Gulbarga, as CJ & JMFC Ranebennur; N.N. Dhawadkar, M & JMFC Hadagali as Dy. Secretary, Law Dept; R.S. Patil, Prl. M & JMFC Bagalkot as Addl. CJ Gulbarga; B. Durgappa, M & JMFC Sira as II Addl. CJ, Belgaum; B.M. Angadi, JMFC I Court, Hubli as Dy. Secretary, Law Dept.; Mr. Srinivasa, OOD as Asst. Registrar, Karnataka Lokayukta as Dy. Secretary Karnataka Lokayukta; N. Narayana, Dy. Registrar, CCC, Bangalore as XV Addl. Judge, CSC, Bangalore; B. S. Totad, M & JMFC Shikaripur as CJ & JMFC, Chintamani; J. V. Angadi Hiremath, M & JMFC, Bailahongal as III Addl. CJ, Belgaum; H.R. Deshpande, M & JMFC, Shimoga, as Addl. CJ, Tumkur; A.C. Vidyadhara, M & JMFC Holenarasipura as Addl. CJM, Bangalore Rural District; N.B. Kulkarni, Prl. M. Hospet as V Addl. CMM, Bangalore and M. T. Ananda Shetty, M & JMFC Molakalmuru as VII Addl. CMM, Bangalore.

### News Spectrum

Between 1977-92 the West Bengal Chief Minister Mr. Jyoti Basu undertook twenty two foreign trips. Perhaps irked by his current foreign trip the Ganatantrik Nagarik Samiti (Democratic Citizens Committee) has filed a suit before the Calcutta High Court against the West Bengal Government paying for Mr. Basu's foreign trip.

Recently a rabbinical court in Jerusalem (Israel) ruled that a test tube baby is a legitimate child and that the father of the baby must pay monthly maintenance of \$ 680 to his divorced wife to look after the baby. The father had refused to pay in his defence on the ground that his wife got the baby by way of artificial insemination thereby committing adultery. His further contention was that according to the Jewish tradition the baby can only be considered a bastard born to an adulterous mother and can only marry another bastard.

### S.C. Calls for details

By a directive dated 11.8.92 the Supreme Court has directed the Registrars of the High Courts of all States and Union territories to furnish, within two weeks, status reports of backlog of habeas corpus petitions in preventive detention cases as well as the duration of their pendency. A Division Bench of the Court issued this directive in the writ petition filed by the Bar Association of India seeking expeditious disposal of all pending habeas Corpus petitions.

During August 92 the Supreme Court consisting of Justice S.R. Pandian and Justice S. C. Agarwal ordered issue of Notice to the Union Government in respect of a case of far reaching importance. The issues raised in this case concerns the power of CBI to close corruption cases. It is to be decided in this case as to whether the CBI can close the corruption case on its own on the ground that there is no evidence or insufficient evidence.

While quashing the Karnataka State Government Order extending the term of Special officer of Vishwabharathi House Building Co-operative Society Ltd. the Supreme Court has appointed Retd. Justice H. G. Balakrishna as the Court Receiver in place of the Special Officer. The term of the receiver will be valid upto July 6, 1993.

By a ruling dated 27-8-92 a constitution bench of the Supreme Court of India held by majority (4 : 1) that Justice V. Ramaswamy is not entitled to receive a copy of the report of the committee headed by Justice P.B. Sawant even before the same is submitted to the Lok Sabha Speaker. However the Constitution bench headed by Justice J.S. Verma held that in the event of the report going against Justice V. Ramaswamy the Speaker may furnish a copy of the same to him. The court passed the judgment in this re-

gard in a petition submitted by Smt. Sarojini Ramaswamy w/o Justice V. Ramaswamy.

### Book Review Marriage or a Mirage

Authored by Prof. : B.N. Sampath. Published by the Indian Institute of Legal Literacy, 209, Second Stage, Indira Nagar, Bangalore-38. Price : Rs. 24/-

The author, who is a Professor of Law in Benaras-Hindu University, has written this book with an object of educating the common man and woman about the marriage laws.

The subject is dealt in four chapters. Chapter two deals among other things about the conditions which validate a marriage and the ceremonies of a marriage. It is commendable that the author has stressed the need for registration of the marriage either under the Special Marriage Act or under the Hindu Marriage Act. This aspect of the marriage is very necessary in the present context, as the husbands wreck marriages, deny the very marriage when they face litigation.

Chapter three deals about the reliefs one can get like restitution of conjugal rights, judicial separation and divorce. It also throws light about maintenance that one could get and the custody of the children. It would have been more informative if the author had discussed about Dowry Prohibition Act and the recent amendments in the Code of Criminal Procedure involving offences against women.

Chapter four deals with the marriages in other religions like Muslims, Christians, Parsis and Jews. The author has taken pains to distinguish between the marriages in different religions and how they could be legalised. The book is educative and informative both to a Legal Practitioner and a layman. The book is a must for the library.

A. R. Nagarajan  
Advocate, Doddaballapur.



### Around the Courts

□ Income Tax Act, 1961 (Central Act No.43 of 1961)-Section 273 A (3) - Scope and ambit - Application to be considered only once in respect of an assessee; there can be one application relating to one or more assessment years.

In Sub-Section (3) of Section 273 A of the Act, there is no bar to make one application for more than one assessment year and to consider that application in respect of all the years concerned therein because Sub-Section(3) specifically mentions "Whether such order relates to one or more assessment years." Therefore, in one application, the assessee can seek for waiver of penalty for more than one year and such application can be considered. The words contained in sub-section (3) of Section 273 A do not, in anyway, prohibit consideration of such application for all the years .... The application has to be considered only once as the power under sub-section (3) of Section 273 A (3) can be exercised only once in respect of an assessee and there can be one application relating to one or more assessment years.

CIT Vs M/s M. S. Gunj  
ILR 1992 KAR 2421 DB

### Commission of Jurists

On 22-8-92 Justice K. A. Swami, inaugurated the seminar sponsored by the Karnataka State Commission of Jurists. The topic of the seminar was "Role of police in upholding Rule of Law".

Justice P. K. Shyamasundar, Sri K. V. Ravindranath Tagore, Dy. Commr. of police, Sri M. V. Devaraju, Advocate and Sri Belaram, Journalist spoke on the subject. In the beginning Sri Vijayashankar welcomed the guests and the participants. Sri S. S. Naganand introduced the speakers and the subject. Ms P. G. Gowri, proposed vote of thanks.

### News Focus

□ On 12-8-92 under the auspices of Prajapitha Brahma Kumari Iswaria Vidyalaya "Raksha Bandhan" was celebrated in the city unit of AAB.

□ On 13-8-92 Mr. N.S. Rama Chandran, General Manager, Bangalore Telecom District, inaugurated a STD/ISD booth in the city unit of AAB. K. N. Subba Reddy president of the Association presided over the function.

□ On 15-8-92 Independence day was celebrated by the AAB at the High Court Unit. K. N. Subba Reddy, President unfurled the National flag. "LAHARI" provided a cultural programme.

□ On 17-8-92 Raksha Bandhan was organised under the auspices of the Literary Union Shri Mangesh Bhende, addressed the participants on the occasion.

□ On 28-8-92 AAB organised a get together for the newly appointed Munsiffs.

□ On 8-9-92 Justice A. N. Verma was sworn in as the Chairman of MRTPC.

### Jois Resigns

Protesting against the elevation of two of his juniors as judges of the Supreme Court of India, Justice M. Rama Jois resigned as the Chief Justice of the Punjab and Haryana High Court. The resignation took effect from 1-9-92. In the usual course Justice Jois was to retire on 26th July 1993.

### C'wealth Course

Britain has organised a six months training course for young lawyers from the commonwealth countries commencing from January 1993. Reports indicate a large number of applications have been received by British Embassy in India from all over India seeking admission to the course.

### Periscope

□ **Ways of Using the Computers** : Of late a handout is in circulation containing informations about the working of the Computer section in the High Court. According to the handout too BE graduates intending to goto the US are securing training from their guides in the computer section. It is another fact that they are not employees of the High Court.

□ **Ways of serving the members** : The Telecom Department has provided that Re. 1/- may be collected from a public telephone user in respect of a local call. Infact public are using the telephone by paying Re. 1/- However the Advocates are to pay Re. 1-50 per local call if they use the telephone provided by their Association.

□ **Emission Test** : On the request of AAB it was ordered by the Minister that emission test may be carried out free of cost where the Vehicle owners are the members of the Advocates Association. However AAB collected Rs. 10/- in respect of two wheelers and Rs. 20/- in respect of four wheelers from its members.

□ **STD/ISD Booth** : The STD/ISD Booth in the High Court Unit is given to a private person and it is learnt that he is paying some nominal amount to the AAB. Obviously the selection of the person and the fixation of the amount to be paid was not based on any quotations.

□ **Xerox Copiers** : A private person has been permitted to install three xerox copiers in the Library of the AAB in the High Court Unit (perhaps now controlled by the Advocates Foundation) for a long time. There appears to be no basis on which this permission was granted. Further it is learnt that the concerned person had not paid any licence fee to the Concerned even when he is busy with the operation of the three copiers.

—Insider

### LAHARI

Invites your presence in the lecture

### "Emerging Trends in Judicial Attitudes on Tax Planning"

**Speaker : Dr. V. N. Lalithkumar Rao**  
Commissioner for Income Tax Appeals.

**Justice K. Shivashankar Bhat, Presides**

Date : 19-9-92 ; Time : 3-00 p.m.

Venue : Conference Hall, City Civil Court, Bangalore.