

## Volume 11

## September 1999

## Part 6

### India Ratifies UN Law

Recently India has ratified two protocols which restrict the use of anti-personnel landmines, booby traps and other such devices and ban use of laser weapons designed to cause permanent blindness. Indian Ambassador to the United Nations Mr. Kamlesh Sharma deposited the instruments of ratification with the world body during September 1999. The protocols are part of the convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.

### Ban on Independents

In its 170th report the Law Commission headed by former supreme court judge Mr. Justice B. P. Jeevan Reddy has recommended to the union government to impose a ban on independent candidates from contesting elections for loksabha and legislative assemblies apart from emphasising that the legislatures should have a full five year term. It also suggested inclusion of a chapter in the Representation of People Act regulating the formation and functioning of political parties with a view to avoid them splintering, ensure internal democracy and maintenance of funds.

### Lahari Law Academy

Lahari Law Academy, Bangalore is proposing to hold a Mock Court Competition during second week of December, 1999. The subject chosen for the Mock Court is on torts. The competition is open for law students and young Advocates. Persons interested in participating the competition are required to register their names with Mr. Aravind Kumar, Advocate, Phone : 2202843 or Mr. S. N. Prashanth Chandra, Advocate, Phone : 3443780. Last date for registration is 30.10.1999.

### SC Comes Down Heavily on EC

The constitutional bench of the apex court came down heavily on the election commission during the proceedings on September 14, 1999. The remarks made by the court on the occasion indicate the strong opinion of the court with regard to the guidelines issued by the election commission banning publication and telecast of opinion and exit polls during the election period.

You have no power. It's as simple as that. Your guideline will remain a guideline. It is not binding [on anybody]. At the end of the day, you [the EC] may go home with a perception that you have far less powers than the public perception of it.

On counsel's plea that the publication of the opinion/exit poll results would create a problem, the court said, the problem is your own creation. You should have seen what your powers are before issuing such guidelines. Referring to the counsel's appeal for issuing a directive to the central government to enforce the guidelines the court remarked, it is absurd that EC will issue the guidelines but if somebody violates them the supreme court will take action. If you had assumed that you had powers to issue such guidelines why are you doubting the very same powers by coming to the court and seeking their enforcement? what you wish to do is to make the supreme court act in aid of the commission and declare the guidelines as law. This is a presumption on the part of the commission. Why are you seeking a declaration to that affect from us? This is not the way directions are issued to the government. You have no power [to issue such a guideline].

### Concern on Migration

On September 20, 99 the supreme court expressed its concern over the unabated migration of refugees into north-eastern-states from Bangladesh and asked the centre to make "honest and serious" attempts to stop the influx. A division bench comprising Mr. Justice A. S. Anand, Chief Justice, Mr. Justice M.

Srinivasan and Mr. Justice R. C. Lahoti expressed apprehensions that large scale migration of Bangladeshis into the north-eastern-states could alter the demography of the region.

Asking the government to file its reply within eight weeks, the court said, "It is a serious matter. Serious and honest attempts should be made to stop illegal immigration into the north-eastern-states where it is threatening to change the demography". "The court made these observations during the hearing of a public interest litigation filed by the All India Lawyers' Forum for civil liberties which alleged that both the state and central governments were doing nothing to prevent illegal immigration from Bangladesh.

### Advocates Co-operative Society

□ In a pressnote dated 9-9-99 Mr. M. S. Mandanna, President of the Society has notified the public and the lawyers that the Government Order has permitted the Society to vend non-judicial stamp papers to the tune of Rs. 5 lakhs on one transaction and the Society in providing this facility w.e.f. 6-9-99. He has appealed to the general public and the lawyers to avail this facility as and when required.

□ The Society has adopted a modified loan rules which will take effect from 2.10.99. The salient features of the modified rules are - a) the loan will be sanctioned for the purchase of books, typewriter, computer, establishment of office or purchase of vehicles only; b) loan can be availed up to Rs. 30,000/- repayable in 36 equal monthly instalments with interest of 12% per annum; c) any member offering surety to a loan transaction is also eligible for personal loan. Detailed rules can be obtained from the society.

### Around the Courts

□ Section 2 [9] r/w order XX Rule 4 [2], CPC-what constitute a judgment :

A judgment cannot merely say "suit decreed" or "suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other, the supreme court ruled in a guiding judgment delivered on September 8, 1999. A bench comprising Mr. Justice S. Saghir Ahmad and Mr. Justice D.P. Mohapatra observed "In judicial proceedings there cannot be arbitrary orders" The apex court set aside the order of the singly judge of the Delhi High Court in Balraj Taneja and others Vs. Sunil Madan and others which had incidentally been upheld by the division bench of the Delhi High Court. Failure to file a written statement by the Debendants in itself cannot be a ground for the ground to write a perfunctory order. The Apex Court pointed out that judgment as defined in section 2(9) of the code of civil procedure means a statement given by the judge stating the grounds for a decree or order. What a judgment should contain is indicated in order XX Rule 4 (2) which says that a judgment "shall contain a concise statement of the case, the points for determination, the decision thereon and the reason for such decision".

□ Articles 14 and 16(1) of the Constitution - Claiming of seniority on the basis of reservation policy at the time of promotions, not a fundamental right.

A five judge constitution bench of the supreme court ruled during third week of September 1999 that the employees recruited under the reservation quota cannot continue to claim seniority over their colleagues in the general category as a matter of right. The bench comprising Mr. Justice A. S. Anand, Chief Justice,



## News Panorama

□ A Malaysian man was jailed for 33 years for raping two underage girls after his shocked wife twined him in when she found videotapes of the rapes, news reports said on Monday.

Ng. Liang Neng 35, was also ordered to be whipped 23 times by a judge in northern Alor Setar town on 15-8-99 after he pleaded guilty to raping and sodomising the two girls aged 12 and 15 years, at his house last September and February.

He had videotaped the rapes which occurred after he lured the girls to his house. His wife found the tapes in a closet in their home in March, and immediately went to the police.

The accused thanked his wife in a letter read out in court, saying he had also been sodomised as a 12 year old by a "Pah haji" (an old Malay man) who later forced him to have sex with the man's wife until he was 15.

□ A Spanish Lawyer Juan Garces is among the four winners of the Alternative Nobel Prize announced on 30.9.99. He has been selected to win this prestigious Swedish Right Livelihood Award, which carries a citation and 1.8 million Swedish Kronor [2,20,500 Dollars] prize money for his efforts to bring former Chilean dictator Augusto Pinochet to trial on the charges of torturing and killing large number of Chileans of Spanish origin.

## Thus Spoke Tilak

"In spite of the verdict of the jury I maintain that I am innocent. There are higher powers that rule the destiny of men and nations and it may be the will of providence that the cause which I represent may prosper more by my suffering than by my remaining free".

Last words of Lokamanya Balagangadhar Tilak at his historic trial in 1908 which is engraved on the wall of High Court of Bombay in the court room [Room No. 46]

Courtesy : H. C. Krishne Urs, Advocate.

## Miscellany

□ With effect from 3.9.99 Mr. Siddalinga Prabhu, Advocate, has shifted his chamber to # 6, IV Floor, II Cross, J. M. Lane, Balepet, Bangalore-560 053.

□ On 5.9.99 M/s. Rachana Law Associates hosted a lunch on the occasion of the inauguration of their new law chamber at No. 2980, "Lakshmidheep", 17th Cross, Banashankari Second Stage, Bangalore-70.

□ On 11-9-99 Bharatiya Vidyabhavan Bangalore, celebrated 97th birth day of Sri Nittoor Srinivasa Rao, former Chief Justice of Mysore High Court. Mr. Justice Y. Bhaskar Rao, Chief Justice of High Court of Karnataka was the chief guest. Prof. A. N. Murthy Rao, Mr. Justice D. M. Chandrashekar, former Chief Justice of Allahabad High Court and Sri K. S. Narayanaswamy spoke about the contribution of Sri Nittoor Srinivasa Rao. Sri Nittoor Srinivasa Rao himself answered the questions from a galaxy of audience about his life and mission. He asserted that he enjoyed every moment of his life in the company of his wellwishers.

□ With effect from 11.9.99 Ms. A.N. Shanthala, Advocate, has shifted her chamber to No. 112/32, 3rd Main Road, Ganganagar, Bangalore-32.

□ With effect from 13.9.99 Mr. D. Jayaramaiah, Advocate, has shifted his law chamber to # 14/1, 2nd Floor, 14th Cross, Cubbonpet, Bangalore-560 002.

□ On 24.9.99 Mr. G. K. Rajanna, Mr. Mali Mariyappa and Mr. M. S. Sathyanarayan Rao, Advocates, opened their law chamber under the name and style of M/s. Rao and Raj Law Associates at No. 62, Nanjundeswara Complex, II Floor, J. M. Road, Avenue Road Cross, Bangalore-560 002. Phone : 2215102 (PP).

## Beware of Prohibition

On your next visit to Goa be careful to remember that smoking and spitting in public places is prohibited so as to take effect from Gandhi Jayanthi day (October 2nd, 1999). Any violation on being detected will result in payment of a minimum fine of Rs. 1,000/-. The enactment passed by the Goa Assembly almost two years ago has finally received the assent of the President of India.

## Role of Legal Profession in Nation Building

Justice Y. Bhaskar Rao

From the last issue

"The first thing which you must always bear in mind, if you would spiritualize the practice of law, is not to make your profession subservient to the interests of your purse, as is unfortunately but too often the case at present, but to use your profession for the service of your country. There are instances of eminent lawyers in all countries who led a life of self-sacrifice, who devoted their brilliant legal talents entirely to the service of their country....

We have given ourselves the constitution which provides for the fundamental rights, directive principles and also fundamental duties. The preamble of the constitution provides that ours is a sovereign socialist secular democratic republic and securing to all its citizens social, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them fraternity assuring the dignity of the individual and the unity and integrity of the nation. Thus the preamble points out the object and ambit of the constitution. Most of the rights which are fundamental are covered in the part dealing with guaranteed rights viz. articles 14 to 31.

Likewise social and economic rights such as right to work, education, living wage, etc., are enshrined in the directive principles of state policy. The directive principles are fundamental in the governance of the state.

These rights sometime conflict with social defence. Social defence and individual freedom have to be balanced while considering the rights of individual.

All rights, concepts and theories have to be so interpreted as to achieve the goal of the Constitution. The Advocates play a vital role in this process.

The legal profession should be the guardian and watchdog of the rights of the citizens which the Constitution guarantees. As said by the late Chief Justice Warren,

"If lawyers are not to be the watchmen for the Constitution, on whom can we rely?"

As has been put in a nutshell by the former Chief Justice of India, Mr. Justice M. N. Venkatachaliah : "Conceptualisation and 'role of perception' of an ethically exemplary lawyer is perhaps more idealisation than descriptive..... The lawyer, to be respected in society, shall continue to be a scholar, fearless warrior, a compassionate friend and above all a great gentlemen".

Therefore, the role of lawyers in nation building continues to be of critical importance. They must be active participants in the development of society and nation building.

The lawyers have to play a great role in protecting the fundamental and other rights of the citizens and to see that the state enforces the directive principles for the welfare of the citizens and that the economic, political and social equality is maintained in the society. The legal profession should come forward and strive for achieving the goal of the constitution by taking active role in the society.

The country today is studded with violence, illiteracy, poverty and other types of evils. To achieve the goal of transforming our country into a "Welfare State" as envisaged by our Constitution, we should first make our best efforts to eradicate all the evils from the society. As long as such social evils are not annihilated completely, it is not possible to build a strong nation, and to achieve the true meaning of a 'welfare state'. The active participation of lawyers in all social activities leads to improvement of society, which furthers the cause of nation building. Lawyers constitute a respectful and resourceful segment of the society. That is the reason why people look forward towards lawyers at the time of need. It is the lawyer who has to jump to help solve the social problems of the people. But, after the independence, barring few exceptions, lawyers, have become somehow very indifferent. During the preindependence days the phenomenon was quite different. In those days lawyers were active in every movement for achievement of freedom and to remove the foreign yoke from the country.

[To be continued]



## HC Cautions

A division bench of the high court of Karnataka, comprising Mr. Justice M. F. Saldanha and Mr. Justice N. S. Veerabhadraiah, has cautioned the trial courts to be careful while dealing with cases of dowry deaths. The court observed that every death of a newly married woman cannot be assumed to be dowry death case unless there is sufficient evidence. These observations were made by the court while acquitting aged parents who were sentenced by the trial court. The court noted that the evidence on record clearly indicated that the deceased had committed suicide because her husband had not allowed her to leave the joint family. The court also observed that the police must discriminate the few cases where there is no ground for prosecution from the rest of such cases.

## Sex Sans Consent Is Rape

Having sex without the wife's consent amounts to rape said Mr. Justice M. F. Saldanha. He was delivering a lecture on amendments to rape laws at Bangalore at a function organised by the Mahila Dakshata Samiti. Justice Saldanha described section 375 IPC as archaic. He suggested setting up of special courts and entrustment of rape cases to women judges as far as possible to reduce instances of acquittal.

## Pakistan Lay Claim

During the third week of September 1999 Pakistan filed a petition claiming 60.02 Million dollars from India in the International Court of Justice at Hague as damages for last month's downing of a military air craft that killed all 16 people on board. Pakistan wants India reparations in respect of the downed Atlantique air craft and compensation for the heirs of the killed victims.

## Vacancy Available

Services of an Advocate, who is science graduate, is required. Suitable candidates may contact :

Mr. R. Muralidharan  
Advocate  
56/1, 18th Cross, 4th Main  
Opp. Shringar Apartments  
Malleswaram, Bangalore-560 055  
Ph. : 3346166, 3314404.

## Around the Courts

From Page 1

Mr. Justice K. Venkataswami, Mr. Justice G. B. Pattanaik, Mr. Justice S. P. Kurdukar and Mr. Justice M. Jagannadha Rao held that Articles 16(4) and 16(4 A) of the Constitution "do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provision resting a discretion to the state to consider providing reservation if the circumstances so warranted. "The ruling came as a clarification to the court's earlier judgment on the issue. It is noteworthy that through this clarification the court over ruled its earlier judgment which had held that a *mandamus* can be issued either to provide for reservation or for relaxation of rules for the reserved category employees. The court also held that the promotees on the basis of "roster point" cannot counter their seniority in the promoted category from "the date of their continuous officiation in the promoted past vis-a-vis the general category employees who were senior to them in the lower order but who were later promoted. On the other hand a senior general category employee at the lower cadre, if he reaches the promotional level later but before further promotion of the reserved category employee, he will have to be treated as senior at the promotional level to the reserved category employee even though the latter was promoted earlier to that cadre" the court said.

□ **Section 376 r/w 302 and 201 of the IPC-Admissibility of extra-judicial confession as a basis for conviction.**

A division bench of the supreme court comprising Mr. Justice K. T. Thomas, Mr. Justice D. P. Mohapatra and Mr. Justice U. C. Banerjee, in a judgment delivered during the third week of September 1999 held that extra judicial confession, by itself, if otherwise in conformity with the law can be treated as substantive evidence and in appropriate cases be used to convict an accused. The court also observed "We, however, hasten to add have that this statement of law stands qualified to the extent that the court should insist on some assuring material or circumstances to treat the same as a piece of substantive evidence".

An appeal filed by state of Punjab against the judgment of P & H

high court acquitting one Gurdeep Singh came to be dismissed by the apex court. A 10 year old girl was allegedly raped and murdered on November 18, 1989. The accused could not be traced. After 20 days of the occurrence of the offence the accused, out of sheer remorse made an extra-judicial confession to one Jaspal Singh, a witness in the prosecution case, that he had in a drunken state of mind had raped and killed the girl. Though there was no direct evidence against the accused the sessions judge had convicted and sentenced the accused on the basis of extra-judicial confession. However, the high court reversed the judgment of the sessions court, the supreme court said that in the instant case one would not return a verdict of non-credit worthiness of such a piece of circumstantial evidence.

## Humour in Courts

□ God and Satan got into an argument over the repairs of the wall dividing heaven and hell. God insisted that all the damage was caused by people in hell and Satan should pay for its repair. Satan was adamant that they should share the cost. When they failed to resolve their dispute, Satan said : "Let's appoint an arbitrator and let our lawyers argue the case before him".

"I don't mind having an arbitrator" replied God, "but you will have an advantage over me, Since I have no lawyers, in heaven; they are all on your side".

□ A lady sued man for abusing her in a filthy language in public. During arguments the defense counsel asked her to state in the court exactly what the accused said.

The lady replied that it was so filthy, that no decent person would like to hear that.

The counsel said "Then please step up and whisper it to His Lordship".

## Kolar Diary

□ On 5.9.99 Mr. K. C. Prasad, Advocate, Kolar, married Ms. B.K. Manjula at Kolar.

□ On 26.9.99 President of Kolar Bar Mr. P. N. Krishna Reddy and Secretary Mr. S. N. Somanna hosted a dinner to members of Kolar Bar at Gajula Dinna Forest Guest House. Mr. K. L. Manjunath and Mr. H. N. Nagamohandas, President and Secretary of AAB, were the guests of honour



Mr. Kiran N. recently proceeded to USA to take up studies in M. S. [computer] at Rutgers University, New Jersey. He completed B.E. [computer] degree with distinction in August 99 from Karnataka Regional Engineering College [KREC], Srinivasnagar, D.K. He is the son of Mr. Sindhaghatta Nagaraj, Advocate.

## News Focus

□ On 1.9.99 Prof. Babu Mathew of National Law School of India University addressed the members of AAB, City Unit on the topic "Politics of Power Vs Power of Politics". Mr. K. L. Manjunath, President of AAB presided over the programme.

□ On 17.9.99 Mr. Justice Ashok Bhan, judge, High Court of Karnataka, unveiled the portraits of national leaders under the auspices of AAB, Mayo Hall Unit. Sri K. Sreedhar Rao, Principal City Civil and Sessions Judge, Bangalore was the chief guest at the function which was presided over by the President of AAB, Sri K. L. Manjunath

□ On Saturday, the 18th September 1999 High Court took up judicial work.

□ On 23.9.99 Mr. Justice A.J. Sadashiva, Chairman, Karnataka Legal Services Authority and Mr. Baraguru Ramachandappa, renowned Kannada writer, addressed the members of AAB, High Court Unit, on the subject "Publication/transmission of opinion/exit poll results, supreme court judgment on this question and voters".

□ On 28.9.99 Sri Belagere Krishna Shastri, National and State award winner as best teacher, addressed the members of AAB, High Court Unit, about his experiences with Mahatma Gandhi and Ramana Maharshi.

□ Incensed over the mysterious death of Advocate Madhusudhan in New Delhi, in an extra ordinary special general body meeting of the Mysore Bar Association held on 28.9.99 a resolution was adopted demanding CBI probe into the circumstances leading to the death of Madhusudhan. About 1600 Lawyers also refrained from attending court work for the day.

□ On 28.9.99 Mr. Justice Ashok Bhan inaugurated the extension counter of Karnataka Bank at Bangalore City Civil Court premises. Chairman of the Bank Sri M.S. Krishna Bhat lit the lamp on the occasion.

□ On 29.9.99 Chief Justice Mr. Y. Bhaskar Rao addressed the Members of AAB, High Court Unit. Sri K. L. Manjunath, President, AAB, presided.



## The Future of Legal Education And Practice

An extract of the paper submitted by a participant to the conference held at Collingwood College, University of Durham :

### Keywords

Internet lawyering; professional ethics and cyberspace; legal education and the Internet.

### Abstract

The legal profession has an increasing presence on the Internet. As lawyers use the Internet to communicate with clients, legal issues about the unauthorized practice of law, advertising, and client confidentiality arise. These ethical problems are difficult to solve in large part because cyberspace transcends political boundaries. As the body of Internet lawyers increases, professional organizations will probably develop and assume a regulatory role. Internet law schools, now in their infancy, will grow primarily in the post-law degree market.

## State Bar Council

□ Under notification No. 32/99 dated 14.9.99 the State Bar Council has suspended from practise Sri T. S. Dwarakanath, Advocate, R/O No. 75, South End Road, Basavanagudi, Bangalore-4, with roll No. KAR/123/90 for a period of three years for committing professional misconduct.

□ Under notification No. 34/99 dated 14.9.99 the State Bar Council has removed Sri R. Sampath Kumar, Advocate, R/O Lakshadeep Complex, Marathahalli Main Road, Bangalore-17 from the rolls of the Council for professional misconduct. His name had been registered with the Council with roll No. KAR/660/89.

## Kargil Martyrs Relief Fund

The following donations have been received by the Forum during this month :

S/s. K. B. Adhyapak- Rs. 1,001/-; B. R. Viswanath- Rs. 500/-. Total contributions received as on 30.9.99 is Rs. 1,64,716/-.



## Literary Union

□ On 22.9.99 a function was organised in the AAB Auditorium to introduce a Kannada book titled *Yegdagella Aithe* - a memoir of Mukundoor Seer written by Belagere Krishna Shastri. Author of the book Sri Krishna Shastri and the former Chief Justice of Mysore High Court Sri Nittoor Srinivasa Rao, who were the guests at the function, spoke on the occasion. Sri C. Prakash, Advocate, introduced the book to the audience. Being the second edition the book has pages X+96 and modestly priced at Rs. 25/- he said. President of the Union Sri C. G. Gopalaswamy welcomed the guests and the Secretary of the Union Sri D. H. Mokhashi proposed vote of thanks.

□ On 29.9.99 renowned magicians of Bangalore Mr. Shankar and Junior Shankar provided a magic show.

## Campus Watch

National Law School of India University, Bangalore had to suddenly cancel all end-term semester examinations due to start on 25.9.99 and declare holidays due to outbreak of chicken pox in the hostels located in the campus. Fifteen students were reported to be ridden with symptoms of chicken pox.

## Ganesh Utsav

Glittering Ganesh majestically seated on the peacock crown - Belgaum Ganesh, installed at the High Court Unit.

□ Under the leadership of Mr. Mahanathesh Hosmath Ganesh festival was observed at the High Court Unit of AAB between 13th and 17th September 1999.

□ Association of Advocates Clerk observed Ganesh Utsav in the High Court between 13th and 17th September, 1999.

□ Ganesh Utsav was observed with religious fervor by the Advocates Clerk's Association in the Bangalore City Civil Court.

□ Vinayaka Seva Samithi, High Court of Karnataka, observed Ganesh Utsav on a grand scale.

## Corrigendum

In the first item of the news pertaining to Lahari Advocates Forum published in page 4 of August 1999 part of Communique, name of the Advocate who delivered the lecture has been wrongly mentioned as Mr. A. V. Akbar whereas it should have been Mr. A. V. Albal. The error is bonafide and regret for the same.

—Editor

## Obituary

Madhusudhan, an Advocate from Mysore, who was on a visit to New Delhi, died under mysterious circumstances in New Delhi on 24.9.99. His wife Shashikala is also a lawyer practising at Mysore.

## The Bangalore Advocates Co-Operative Society Ltd.,

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ವಕೀಲರ ಸಂಘದ ಕಟ್ಟಡ, ಕೆಂಪೇಗೌಡ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560 009

ಕೋಟು ಫೀ ಸ್ವಾಂಪುಗಳು ಮತ್ತು ಭಾಷಾ ಕಾಗದಗಳು,

ಮೌಲ್ಯ ರೂ. 5,00,000/- [ಐದು ಲಕ್ಷ ರೂಪಾಯಿಗಳು] ವರೆಗೂ

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