

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 7

Law Must Respond to Social Needs — S. D. Sharma

Bangalore, Sept. 25 : Dr. Shankar Dayal Sharma called upon the legal fraternity to respond to the social needs of people as the law can not be static. He said "law is not a static body of rules but a living creature continually forged and shaped to serve the needs of the community and hence a variable constant". Dr. Sharma was of the opinion that the lawyers, Judges and the law makers have important roles in this regard and they must come upto expectations of the people.

Dr. Sharma was delivering his speech in the inaugural convocation of the National Law School of India University at Bangalore. He exhorted the members of the legal fraternity to interpret laws appropriately in the interests of the people. Dr. Sharma's address underlined the need for maintaining a clear recognition of the connection between law, truth and welfare which he said were inseparable. He was of the view that these doctrines would form a composite and practical asset to every individual and the society.

Quoting profusely with various scriptures Dr. Sharma lamented the concept of Dharma as found in the Vedas, Upanishads and Geethas had given way to distortions and deficiencies in public outlook and beliefs resulting in obscurity of purity of our ancient culture. He advised the new entrants to the profession to apply their minds

consciously and meticulously to gather truth from mass data and present a truthful and polished version.

Earlier, the graduates of the Institution were conferred degrees by the Chief Justice of India Justice M.N. Venkatachalaiah. The Director of the University Dr. N.R. Madhava Menon gave a resuming of the present status of the graduates from the Institution and also announced that the UGC has come forward to support the Institution with financial help. The function was attended by a large number of judges, the Chief Justice of High Court of Karnataka, the Chief Minister, and a host of other distinguished personalities.

Lawasia

Sri Lankan President Sri B. B. Wijeyatunge, inaugurated the 13th Conference of Law Asia in Colombo on 12-9-93 by calling upon the legal community to rationalise the legal concepts so as to make it more understandable by the litigants. The four day Conference had attracted a large number of delegates from Asia-Pacific region consisting of lawyers and jurists.

Simultaneously the 5th Conference of Chief Justices of Asia-Pacific regional countries was also held at Colombo. Justice P.B. Sawanth, the Supreme Court Judge, represented India in the conference on behalf of the Chief Justice of India.

C J I's Call for Speedy Disposal

Bangalore Sept. 25 : Justice M. N. Venkatachalaiah called upon the judiciary for ensuring speedy disposal of cases with a view to mitigate the anxieties of the litigants. Inaugurating the "COURTNIC" National Informatic Centre's Computer Net work at the Karnataka High Court he said that the net work was just the beginning, where technology had entered in the administration of justice, and added that it marks the commencement of a larger computerised scheme.

Dr. N. Seshagiri, Director General of National Informatic Centre, who was the chief guest on the occasion said that out of the 18 High Courts which had approached NIC for computerisation 8 were already computerised and 6 more would be computerised by April 94. He also told that the COURTNIC Information would be available on all NIC centres which would facilitate the litigants to know the date of hearing of cases, their status, reference number of the order of the High Court etc. at the District Head Quarters and State Capitals on a fee of Rs. 40 per query. He further informed that in its 3rd phase starting from March 1st, 1994 COURTNIC facility will be made available at District Centres as well.

Justice S. B. Majmudar, Chief Justice of High Court of Karnataka also spoke on the occasion. The Registrar General Sri R. G. Vaidyanatha welcomed the gathering.

Commission of Jurists

Karnataka State Commission of Jurists will be holding a seminar on 'Scope of Judicial Review in re : Article 356 of the Constitution of India' on 9th October 1993 at Taj Residency in Bangalore. Justice E. S. Venkataramiah, former Chief Justice of India, will be inaugurating the seminar, Mr. Soli, J. Sorabji former Attorney General of India will deliver the Keynote Address. Papers will be presented by Mr. M. Rama Jois, former Chief Justice, P. & H. High Court, Mr. S. P. Shankar and Mr. V. Sudhish Pai.

Book Released

Bangalore, Sept. 25 : Justice M. N. Venkatachalaiah, the Chief Justice of India, today released the book "Law on Self Defence in India" authored by C. K. Jaisimha Rao and Vardhaman V. Gunjal, under the auspices of the AAB. Justice S. B. Majmudar, the Chief Justice of High Court of Karnataka presided over the function.

Humour in Courts

□ "Haven't I seen your face before?" a judge demanded, looking down at the Defendant.

"You have, Your Honour", the man answered hopefully. "I gave Your Honour's son Violin lessons last winter."

"Ah yes", recalled the Judge.

"Twenty years!"

□ Judge : "The IA is set down for hearing. Are you ready?"

Counsel : "Yes, Your Honour. I am ready to hear!"

Lawyers are the only persons whose ignorance of law is not punished
—James G. Hunekar

Need For Fresh Look

The Constitution (Fifty Second Amendment) Act, 1985 brought into operation the Anti-defection law mainly amending Articles 101 & 191 and adding Tenth Schedule to the Constitution of India. Though the object of the anti-defection law is laudable its application during the past eight years has left an indelible impression that there is much to be desired in the efficacy of this law in its application to live situations. It mainly aims to prohibit defection of members of either house of the Parliament apart from defining the term "defection", providing for disqualification in cases of established defection, setting out the situations under which disqualifications do not apply, making the decision of the presiding officers final and barring the jurisdiction of the Courts in respect of any matter connected with the disqualification of a Member of Parliament. Similar legislations in respect of State legislatures and Local Bodies has also been passed by almost all the states.

Application of anti-defection laws in parliament as well as state legislatures to various situations have shown not only the deficiencies in the legislation but also the abuse of the various provisions of anti-defection laws.

The most important reason for the failure in the effectiveness of the anti-defection laws can be found in Clauses (3) & (4) added on to the Tenth schedule by the Amendment Act. While Clause (3) speaks of non-applicability of disqualification in the cases of the split of a political party Clause (4) concerns the cases of merger. By experience the ruling parties have found a convenient way

out for not attracting disqualification of the legislators by manouvering to bring in a split in political parties having smaller representation in the legislative bodies. While the ruling party, with its power and position, is well placed to bring about split in a smaller political party by arranging to attract 1/3rd of its legislative members the same is not possible for the smaller parties in the case of a larger political party that too if it is a ruling party.

All said and done the Presiding Officers of the legislative bodies are not well equipped to deal with the cases of split and disqualification of legislative members. Besides, notwithstanding their position of holding an august office, they are politically motivated in their decision making depending upon the stakes of the situation. Besides the Presiding Officers tend to exercise their unbridled power for political considerations rather than following the precedents, conventions and rational basis. This enormous power vested in the presiding officer has often resulted in tilting the balance of political equations to the advantage of the ruling party thereby stultifying the democratic process.

Issue of whips by various political parties has been grossly abused by almost all the political parties to their absurd extent. This has resulted in devaluing the powers and functions of an elected representative of the voters besides helping a political party or group of parties to remain in power. It is seen that whips have been issued to prop up the chances of a patently anti-people legislation being

(continued on page 3)

THE SCAM

(Its Genesis and causes)

C B. Srinivasan, LL.B., Advocate

(from the last issue)

to pay to the foreign bank for the overdawal. So much so, that a thousand rupee investment procures a deal worth a crore of rupees with the government security acting the sham of a valuable security. Paper promises procure promiscuous profits !

The Law's Innovation

From the stage of currency and government security, as time passed by, the banking system was ushered in. It was an alternative to private borrowing as well as a measure of safe deposit. The Government felt that encouragement to banking was one thing, but resting confidence in the safety of the deposit was another. The Banking Regulation Act, 1949 was enacted to assure depositors that the banking ran a smooth course and they could sleep in peace while their deposits were with the bank. It was noticed that one of the cheap defects of the Indian Banking System was the weak and vulnerable capital structure of the vast majority of the banks. So the government devised statutory regulations to act as safety valves.

The First Safety Valve

" Section 18. Cash Reserve - Every banking company shall maintain in India by way of cash reserve with itself or in current account opened with the Reserve Bank or State Bank of India or any other bank notified by the central government in this behalf.... a sum equivalent to atleast three percent of the total of its time and demand liabilities in India and shall submit to the Reserve Bank before the 15th day of every month a return showing the amount so held on Friday of each week of the preceding month.... "

This provision is termed the Cash Reserve Ratio (CRR) requirement and it envisages the deposit of a percentage of cash in respect of time and demand liabilities. It is apparent that there is fluctuation about this deposit. As the banks deposit soar, the Cash Reserve has to rise and with the fall of deposits it can be rinsed.

The Second Safety Valve

" Sec. 24. Maintenance of percentage of assets - (1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in India in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than 20% of total of its time and demand liabilities in India. "

There is a note at the foot of this section which reads " this clause is an attempt to prescribe by law what has already been recognised as sound banking practice, namely, that a bank should keep a reserve of cash and liquid assets to meet its demand liabilities. One of the worst defects of Indian Banking is the propensity of the smaller Banks to over trade at the expense of liquidity and it seem best to insist of all banks maintaining a reasonably large proportion of their cover in the form of cash or trustee securities as defined in the Trusts Act excluding immovable property. The proportion of 20 [25]% is in accordance with the actual practice followed by smaller Banks. "

This provision is termed Statutory Liquidity Ratio (SLR) requirement, as it envisages a percentage of time and

(to be continued)

Supreme Court

□ On the E.S.I Act, 1948, Section 1; By a Judgment dated 6-9-93 the Supreme Court held that where a kitchen is an integral part of the hotel business the hotel becomes a factory and so its owner becomes liable to pay contribution to the ESI for the welfare of the employees of the hotel. Justices P. B. Sawant & Yogeshwar Dayal pointed out that it should not be forgotten that in social welfare legislation the definitions given are artificial. Since the object of the Act is to extend the welfare coverage to as large a section of individuals as possible the definition clause should be liberally construed so as to achieve the object.

Cases filed by M/s Eastern International Hotels Ltd., M/s G.L. Hotels Ltd. and M/s Ritz Pvt. Ltd. came to be dismissed by the court through this judgment. The effect of the judgment will be that the hotels having 10 or more workers in the kitchen having power and 20 or more workers in the kitchen without power will be liable for ESI contribution.

Around the Courts

□ Hindu Adoptions & Maintenance Act, 1956, Section 12. The provision makes it clear that the doctrine of "Relation back" is put an end and the adoption is made effective only from the date of adoption. The fiction employed in first part of Sec. 12 is applicable for all purposes from the date of adoption and the person adopted would be considered having been born in the family only from the date of adoption and not before. Therefore the adopted son cannot reopen the partition that took place after the death of his adoptive father and before his adoption.

Virayya V/s Shiddayya Irayya Ghanthimath by his LRS 1993 (2) KLJ 304.

Office Bearers

The following are the office bearers of Lahari: President, PGC Chengappa; Vice-President, R.K. Sridhara Murthy; Secretary, S. N. Prashantha Chandra; Treasurer, Sri Pal J. Sanghvi; Committee Members, Ms V. Jayalakshmi, Bhakthavachala, K. J. Gopi, L. Nagaraju and T. S. Mahanthesh.

Need For Fresh Look

(continued from page 2)

passed or defeated by the legislatures. So much so whips have been issued to the Parliament members not to participate in voting of the parliament even in cases of impeachment and or other important legislative matters concerning the people's interest.

In the matter of bar of jurisdiction of Courts concerning the interpretation and application of anti-defection laws no final word could be said. However, there has been continuous conflict between the judiciary on the one hand and the Presiding Officers of the various legislative fora in the country on the other. Several instances have come to light where in the legislative bodies have attempted to assert about the exclusiveness of its jurisdiction vis-a-vis that of the High Courts and the Supreme Court. These include the instances of punishing journalists as well as summoning of the Presiding Officers of the various legislative bodies by the High Courts and the Supreme Court.

In the light of the past experience in the interpretation and application of the anti-defection laws it has become essential that the various provisions of this law requires suitable amendments/modifications with a view to serve the purpose for which the concerned legislation was brought about.

News Focus

□ Social Welfare Minister Dharam Singh inaugurated the Legal Literacy Programme for Women for 1993-94 at Maharani's Science College for Women, Bangalore on 11.9.93. Stressing the need for awareness of legal literacy, particularly among women, he appreciated the institution for undertaking the conducting of the 4 months course. Dr. N.R. Madhava Menon, Director, NLSIU, delivered the key note address on the occasion. The function which was attended by the students and staff members of Maharani's Science, Arts as well as Home Science Colleges was presided over by K.C. Jayaram Reddy, the Principal of the College.

State Level Advocates / Writers Meet and Book Fair

12th, 13th & 14th
October, 1993

Timings :
10-30 a.m. to 5-30 p.m.

Sponsored by :

Lahari,

A Forum of Advocates for
Socio Cultural Activities
Maruthi Plaza,
Opp. Vijayalakshmi Talkies,
Chickpet, Bangalore-560 003

P. G. C. Chengappa
President

12th October, 1993
Inaugural Function
at 4-45 p.m.

Presiding by :

Dr. Suryanath U. Kamath
Chief Editor,
Karnataka Gazetteer,
Bangalore-560 009

Inauguration by :

Hon'ble Mr. Justice
S. A. Hakeem
Judge, High Court of
Karnataka

Guest of Honour :

Sri B. K. Somasekhar
Principal Judge, Bangalore
City Civil & Sessions Court

you are cordially invited

S. N. Prashantha Chandra
Secretary

13th October, 1993
Panel Discussion
at 4-00 p.m.

Presiding by :

Sri B S. Krishnamurthy
Advocate,
President,
Bangalore Literary Union

Initiation of Discussion by :

Prof. V. Narayanaswamy
Advocate,
Deputy Director of Legal
Studies, BMS Law College,
Bangalore-560 004

Moderator :

Sri G. Lingappa

Advocate,
Rtd. Dist. & Sessions Judge
all Advocate writers are
invited

14th October, 1993
Valedictory Function
at 4-45 p.m.

Presiding by :

Hon'ble Mr. Justice
A. J. Sadashiva
Judge,
High Court of Karnataka

Valedictory Address by :

Hon'ble Mr. Justice
M. Ramajois
Rtd. Chief Justice,
Punjab & Haryana High Court

Chief Guest

Sri GoRu. Channabasappa
President, Kannada Sahitya
Parishat, Bangalore-560 018

you are cordially invited

R. K. Sridhara Murthy
Vice President & Convenor

Padukone Felicitated

Sports is played not only at the competition level but also at other levels to keep oneself fit. After the New Delhi Asiad the awareness of sports culture and also the participation in sports activities has increased manifold. The infra-structure provided in the country and the sponsorship received by the sports persons should help the contemporary sports personalities to improve their standards. The mass media has always playing a big role in spreading the sports culture according to Mr. Prakash Padukone, the former All England Badminton Champion and internationally known shuttle badminton player. Mr. Padukone was speaking to the members of AAB on 23-9-93 after being felicitated. While thanking the Advocates' Association for this gesture Mr. Padukone expressed his happiness about the sports activities among the members of the Association.

Justice A. J. Sadashiva, who was the chief guest of the function felt that by honouring Mr. Padukone the members of the Association are honouring themselves. While expressing that Mr. Padukone is a source of inspiration for all the youth his Lordship commended the AAB for felicitating the ace sports person that too when he is not very much seen in the international circuits.

Irish Presidents' address to SC Bar

On 28-9-93 the Irish President Mary Robinson addressed the members of Supreme Court Bar. While tracing the sources which have influenced the Irish and the Indian legal systems she called upon the members of the legal fraternity of both the countries to exchange ideas. Before becoming the President of the Irish Republic Mary Robinson was practising Law in Dublin.

Opposition to Creation of Appellate Forums

V. T. Raya Raddi and several other Advocates from the High Court unit have submitted a memorandum to the Governor opposing the recent cabinet decision to create Divisional and State Level Appellate Forums by amending the Karnataka Land Reforms Act, 1961. They have suggested that instead of creating such Forums the Government may allow (i) the continuation of the existing system by requesting the Chief Justice of the Karnataka High Court to provide a special bench/benches to deal and decide exclusively the Land Reforms cases (ii) alternately to make a provision for Judicial Review by the High Court of Karnataka of all Land Reforms cases decided by the Appellate Forums. According to the press note issued by Mr. V.T. Raya Raddi, the Governor has expressed that he will sympathetically consider the suggestion.

Book Fair

Lahari has organised a Book Fair on 12th, 13th and 14th October 93 at the Conference Hall of Bangalore City Civil Court Complex. Details of the programme is printed in the 3rd page.

KTCA Memorandum

The Karnataka Tax Consultant's Association has urged the Chief Minister Either to abolish the Sales Tax Appellate Tribunal or restore the power to grant stay.

Obituary

On 10.9.93 M. Thipperudrappa, District Judge (working as Member, KAT), expired at Bangalore.

On 16.9.93 H.N. Nanjaiah, Advocate, passed away at Bangalore.

On 17.9.93 N.S. Gurusiddaiah, Advocate, expired at Bangalore.

On 17.9.93 M.M. Kamal, Advocate, expired at Bangalore.

News Focus

The Chief Election Commissioner of India Sri T. N. Seshan addressed the members of AAB at the High Court Unit on 16.9.93. The topic of his lecture was "Indian Democracy and Elections".

On 23.9.93 a Professionals' Meet was jointly organised by the Bangalore Zonal Office of the State Bank of India and the Karnataka Branch of Indian Federation of Women Lawyers in the AAB Auditorium.

Miscellany

With effect from 12.8.93 N. P. Amruthesh, Advocate, shifted his residence / office to No. 28, J.C. Nagar, Behind Ambedkar B. Ed/ Pharmacy College, Kurubarahalli, Mahalakshmiapuram Post, Bangalore-560 086. Phone 320811

On 17.9.93 Sri Chowda Reddy, Minister for Housing & Urban Development, inaugurated the law chamber of N.S. Shiva Prasad and K.M. Janardhana Reddy, Advocates, at No. 115, CMH Road, Bangalore-560 008.

News Spectrum

The UN Secretary General Boutros Boutros Ghali has nominated India's former Attorney General Soli Jehangir Sorabjee to be appointed as the prosecutor of the International War Crimes Court for the former Yugoslavia which has been formed to prosecute human rights abuses in the war-torn region. The nomination dated 23.9.93 received from the Secretary General will have to be approved by the Security Council.

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ಲಿಟರರಿ ಯೂನಿಯನ್

ತಾ. 10-9-93 ರಂದು ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ಆಶ್ರಯದಲ್ಲಿ ವಿ. ವಿ. ಪುರಂ ಕಾಲೇಜಿನ ಭೌತಶಾಸ್ತ್ರ ಪ್ರಾಧ್ಯಾಪಕರಾದ ಶ್ರೀ ಹೆಚ್. ಎಸ್. ಲಕ್ಷ್ಮೀನಾರಾಯಣಭಟ್ಟ ರವರು ಡಿ.ವಿ.ಜಿ ವಿಲೇಜಿ "ಮಂಕುತಿಮ್ಮನ ಕಗ್ಗ" ದ ವಾಚನ ಮತ್ತು ನ್ಯಾಯಾನ್ ಮಾಡಿದರು.

ತಾ. 17-9-93 ರಂದು ಸಾಹಿತ್ಯ ಕೃಷಿರಂಗದ ಅಂಗವಾಗಿ ಜಿನ್ನಯಾನಂದ ಆಶ್ರಮದ ಬ್ರಹ್ಮಚಾರಿ ಸುದೇವ ಜೈಕೃಷ್ಣ ಸ್ವಾಮಿಗಳು "ರಮಣ ಮಹರ್ಷಿಗಳ ಉಪದೇಶ ಸಾರ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

ತಾ. 24-9-93 ರಂದು ಸಾಹಿತ್ಯ ಕೃಷಿರಂಗದ ಅಂಗವಾಗಿ ಮಹಾರಾಣಿ ಕಲಾ ಕಾಲೇಜಿನ ಪ್ರಾಧ್ಯಾಪಕರಾದ ಶ್ರೀ ಎಂ.ಎಚ್. ಕೃಷ್ಣಯ್ಯನವರು "ಕಲೆ ಮತ್ತು ಜೀವನ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

ಗಣೇಶೋತ್ಸವಗಳು

ಪ್ರತಿ ವರ್ಷದಂತೆ ಈ ವರ್ಷವೂ ಸಹ ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಘಟಕದಲ್ಲಿ ಗಣೇಶೋತ್ಸವವನ್ನು ವಿಜೃಂಭಣೆಯಿಂದ ಆಚರಿಸಲಾಯಿತು. ಈ ಸಲದ ವಿಶೇಷವೆಂದರೆ ತ್ರಿಮೂಲ ಗಣಪತಿಯ ಪ್ರತಿಷ್ಠಾಪನೆ ಹಾಗೂ ವಿಶೇಷ ಅಲಂಕಾರದ ಏರ್ಪಾಡು. ಮಹಂತೇಶ ಹೊಸಮಠ ಹಾಗೂ ಅವರ ಮಿತ್ರರು ಉತ್ಸವವನ್ನು ಹೆಚ್ಚಿನ ವಿಜೃಂಭಣೆಯಿಂದ ಆಚರಿಸಲು ತೆಗೆದುಕೊಂಡ ಶ್ರಮಕ್ಕೆ ಅಭಿನಂದನಾರ್ಹರು.

ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ನಗರ ಘಟಕದಲ್ಲಿ ಪ್ರಪ್ರಥಮ ಬಾರಿಗೆ ಗಣೇಶೋತ್ಸವವನ್ನು ಅತಿ ವಿಜೃಂಭಣೆಯಿಂದ ಆಚರಿಸಲಾಯಿತು. ಸಮಾರೋಪ ಸಮಾರಂಭದಲ್ಲಿ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ನ್ಯಾಯಾಧೀಶ ಆರ್. ರಾಮಕೃಷ್ಣನವರು ಉಪಸ್ಥಿತರಿದ್ದರು. ಕುಮಾರಿ ವಿಜಯಲಕ್ಷ್ಮಿ ಹಾಗೂ ಸಂಗಡಿಗರಿಂದ ಸಾಂಸ್ಕೃತಿಕ ಕಾರ್ಯಕ್ರಮ, ಜೆನ್ನಾಗಿ ನೂಡಿಬಂತು, ಶ್ರೀ ಎಲ್.ನಾಗರಾಜು ಹಾಗೂ ಅವರ ವಕೀಲಮಿತ್ರರು ಹೆಚ್ಚಿನ ಶ್ರಮ ವಹಿಸಿ ಕಾರ್ಯಕ್ರಮವನ್ನು ಯಶಸ್ವಿಯಾಗಿ ಸಡೆಸುಕೊಟ್ಟಿರುತ್ತಾರೆ.

ಪ್ರತಿ ವರ್ಷದಂತೆ ಈ ವರ್ಷವೂ ಸಹ ಬೆಂಗಳೂರು ವಕೀಲರುಗಳ ಗುಮಾಸ್ತರ ಸಂಘದ ನಡೆಯಿಂದ ಗಣೇಶೋತ್ಸವವನ್ನೂ ವಿಜೃಂಭಣೆಯಿಂದ ಆಚರಿಸಿದ ಬಗ್ಗೆ ವರದಿ ಬಂದಿರುತ್ತದೆ.