

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 7

October 1995

Part 7

## H.C. Rule Amended

By a circular Dt. 29-9-95 it is ordered that with effect from 11-10-95 the procedure laid down under Rule 14 Chapter XII of the High Court of Karnataka Rules, 1959 be discontinued regarding returning of case papers to the Party/Advocate for the purpose of rectification of defects. As per the changed procedure there is no need to assign F.R. No to the newly filed cases and the office is directed to strite away number the cases in respective categories along with the Examiners Report in duplicate and serve a copy of the said report on the Party/Advocate for rectification with in 14 days from the date of such service. In the event of the non rectification of the defects with in the stipulated time the office will have to post the case before the Court in orders category regarding non compliance of the defects contained in the Examiners Report.

## CEGAT Bench for City

Union Minister of State for Finance M.V. Chandra Shekara Murthy, declared on 11-10-95 that the newly set up Circuit Bench of the Customs, Excise and Gold (Control) Appellate Tribunal could be made into a Regular Bench if there is sufficient work load. Mr. Murthy was speaking at the function after inaugurating the Circuit Bench of CEGAT at Bangalore. At present Regional and Zonal Benches are functioning as Circuit Benches after the abolision of the Special Bench of CEGAT in Delhi having all India jurisdiction.

## Janatha Nyayalaya

Report: T. S. Mahanthesh

The Chief Minister of Karnataka Sri H.D. Deve Gowda inaugurated the Golden Jubilee Bruhat Janatha Nyayalaya on 16-9-95 at the precincts of the Bangalore City Civil Court and lauded the efforts of Lok Adalaths in amicably resolving the disputes among the parties and there by reduce the pendency of litigations. The function was jointly organised by the Bangalore District Legal Aid Committee and Karnataka Legal Aid Board. Justice S A. Hakeem who participated in the function as one of the Chief Guests, said that the Lok Adalaths have done yeomen service in reducing the pendency of litigations particularly in the field of accident claims and called upon the Insurance Companies to adopt a liberal approach.

The State Law Minister Sri M. C. Nanaiah who was the other Chief Guest in the function conceded that Legal Aid Committees have failed in achieving its objectives since they are unable to motivate the Senior Advocates to handle the briefs of poor litigants. He also announced that a Committee has been constituted under the Chairmanship of the Law Secretary to screen all such criminal cases which can be withdrawn

President of AAB Sri K. N. Subba Reddy who presided over the function lauded the interest shown by the Law Students with regard to settlement of disputes through Lok Adalaths.

Sri P. B. Rama Murthy, DC and Chairman, Bangalore District Legal Aid Committee, Sri K. K. Seetharama, Secretary District Legal Aid Committee, Sri K. V. Vasudeva Murthy, Secretary, KLAB, Sri A. M. Bennur, Additional Secretary KLAB and host of other dignitaries participated in the function.

## Site For Judges : W. P. Dismissed

By the Judgment dated 12-10-95, the Division Bench of Karnataka High Court comprising Justice K. S. Bakthavatsalam and Justice M. F. Saldanha, dismissed the public interest writ petition filed by Advocate S. Vasudeva and connected writ petitions challenging the validity of acquisition of lands by the Karnataka State Judicial Department Employees House Building Co-operative Society, Bangalore and allotment of sites by the said Society in favour of some Supreme Court and High Court Judges.

The Judges observed that even though no prior approval had been accorded by the government for the acquisition of lands as required under the law the writ petitions will have to be dismissed on the ground of delay and laches. As regards the membership of the Society granted to the Judges, the Bench observed that even though the Bye Laws do not provide for the same the

(continued on page 4)

## Point Blank

☐ The Rule of law does not apply only to Executive and Legislative. It is equally applicable to Judiciary also.

— Chief Minister Sri H. D. Deve Gowda while replying to the Assembly debate on l'affair Vasudevan.

☐ In Independent India for the first time the Supreme Court has proved that it is Supreme Court. Our High Court is yet to prove that it is the High Court.

— Mr. K. N. Subba Reddy, President AAB, while speaking at the symposium "Consequences of contempt" with pointed reference to J. Vasudevan's case.

☐ The Court is prepared to immediately suspend the sentence if the petitioner could furnish the name of the Minister in the State Cabinet responsible for non-compliance of the Court order.

— Justice B. L. Hansaria, while hearing arguments of Advocate P.P. Rao representing J. Vasudevan in his mercy petition.

☐ If a honest and sincere officer like J. Vasudevan has to go behind the bars it only shows that there is some deficiency in judicial system.

— Ms. J. Vasudevan in a T. V. interview.

*wish you a  
Happy Diwali*

Judges are the weakest link in our system of justice and they are also the most protected.

—Alan Dershowitz

## Judging the Judges

The recent Supreme Court Judgment relating to the Former Chief Justice of Bombay High Court Justice A. M. Bhattacharjee providing for an "in house procedure" to be adopted by the Chief Justice of India for initiating action against a Chief Justice or a Judge of the High Court whose conduct entails disciplinary action short of impeachment is a novelty in itself. The judgment observes that the "yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-co-operating Judge or Chief Justice of a High Court could be disciplined by self regulation through in house procedure. This in house procedure would fill in the constitutional gap and would yield salutary effect."

Perhaps the framers of the Constitution of India were of the definite view that "the Ceaser's wife must be above suspicion" and therefore provided the exclusive means of removal by impeachment. In other words they thought that there was no need to discipline the Judge but he was only to be removed for his proved mis conduct or misbehaviour. This would ensure not only the security of tenure of the Judge but also independence of Judiciary. It is in this context the in house procedure would act as a democle's sword against the Judge who is constantly subjected to the threat of disciplinary action. Whether this will result in loss of the independence of the Judge is only a matter for thinking.

Having approved the in house procedure for the Judges of the High Courts it is not certain as to why this procedure could not be made applicable to the Judges of the Apex Court. In

the context of Justice V. Ramaswamy's episode it is all the more necessary to extend the in house procedure even to Supreme Court Judges. Even then the scheme does not provide an answer as to what should happen to a situation where the Chief Justice of India himself has to be dealt with.

The suggestion of the Apex Court that "when the CJI is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereto, the Bar should suspend all further actions to enable the CJI to appropriately deal with the matter" may not be a universally acceptable one. Another alternative could be that the concerned Judge may proceed on leave pending completion of the in house procedure by the CJI. This will not only reinforce the confidence of the Lawyer/Litigant in the efficacy of Judiciary but also ensure that the in house procedure is completed without delay.

The very fact that this in-house procedure had to be approved by the Apex Court speak volumes about the inadequacies with regard to the selection and appointment of the High Court Judges. Though the aspirants for the posts of High Court Judges may not answer the expectation of the framers of the Constitution still they are expected to come up to certain minimal standards of etiquette and conduct. The selection process will have to take note of the fact that "prevention is better than cure" and find solutions to the malady leading to unacceptable standards of conduct and behaviour of Judges at the Higher level. Much thinking has to be done in this regard.

## A Constitutional Faux Pas ?

C. B. Srinivasan, Advocate

(continued from last issue)

to employ its arms as a warrior and not as an assassin. 'Complete justice' is meant to give protection to alleviate a wrong in a given situation and not to give a light excuse for a murderous attack. The general words of discription carry an import of providing a rescue to a sinking boat. It cannot be employed for applying pressure and make a boat sink. The true import of the maxim lies in the use of the phrase in an appropriate context and its avoidance out of context.

### The Temperate Use and Intemperate Aberration :

The judgments of the Supreme Court have periodically made a list of circumstances where the power under Art. 142 of the Constitution of India could be employed for doing complete justice in the cause or matter. It has been held that the inherent power of the Court under Art. 142 embraces the power to quash criminal proceedings pending before any Court. If the court is satisfied that the proceeding in a criminal case is being utilised for oblique motives or if the same is continued on manufactured or false evidence it would be in the ends of justice to set aside or quash the criminal proceeding. In the case of Prem Chand Garg V/s. Excise Commissioner AIR 1963 SC 996 it was held that the wide powers of the Supreme Court for doing complete justice can be used, a) in adding parties to the proceedings pending before it, b) in admitting additional evidence, c) in remanding the case to the appellate or trial court, d) in allowing a new point to be taken for the first time.

In the case of K.M. Nanavathi Vs. State of Bombay AIR 1962 SC 605 it had been

declared that the power under Art. 142 of the Constitution could be exercised to grant bail in cases brought before it.

In the case of Union Carbide Corporation V/s. Union of India it had been held that where an interlocutory order in a matrimonial cause pending in the trial court comes up before the apex Court it could resolve the main matter itself either on merits or by compromise. Similarly, if criminal proceedings are pending between litigating spouses, the apex Court in addition to dealing with the matter before it could also pass an order settling the criminal dispute.

In addition to these general principles the Supreme Court has exercised the power under Art. 142 for many other benevolent purposes. In the case of H. C. Putta Swamy Vs. Hon'ble Chief Justice ILR 1991 Kar 1 (SC) the Supreme Court found that the appointment of 40 Second Division Clerks and 25 Typists had been set aside by the High Court as arbitrary and derogatory to the rules of recruitment. The Supreme Court had also rejected the Special Leave Petitions. After entertaining a review petition the Court held that the recruitment was without parallel. The appointments were in violation of statutory law. But it found that they had been in service for 10 years. A humanitarian approach was necessary. The court held that the petitioners deserved justice ruled by mercy.

In such and similar circumstances the Supreme Court had resorted to its power under Art. 142 to prevent the perpetuation of a wrong. But, the case of Vinay Chandra Mishra is possibly the sole exception where this power has been exercised for an intemperate imposition of a double jeopardy.....

(to be continued)

## Judiciary and Speedy Justice

Justice M. F. Saldanha

(continued from last issue)

the society and by thus making and moulding the law, he takes part in the work of creation. A Judge is not a mimic. Greatness of the Bench lies in creativity. The process of judging is a phase of a never ending movement and something more is expected of a Judge than imitative reproduction, the lifeless repetition of a mechanical routine. It is for this reason that when a law comes before a Judge, he has to invest it with meaning and content and in this process of interpretation, the Judge must remember that he has to do justice not according to his own subjective opinion nor according to what the Government of the day thinks but according to the objective ideals set out in the Directive Principles of State Policy. Where the language of the law is clear, then of course the Judge must give effect to it. But there are many cases where it is possible to decide either way and it is here that the choice of values has to be made by the Judge. Where the law and its application are plain or the rule of law is certain and the application alone is doubtful, there will be no difficulty for the Judge. But there are cases where a decision one way or the other will count for the future, will advance or retard the development of law in the proper direction and it is in these types of cases where the Judge has to leap in the heart of legal darkness where the lamps of precedent and common law principles flicker and fade, that the Judge gets an opportunity to mould the law and to give it a shape and direction. It would be useful here to recall a verse from "Mrichakatika" where the qualities of a good Judge are enumerated and so are the expectations. They are,

"Shastragnya" - mastery of the Dharma Shastras or the laws to be more explicit. Next comes "Vakrutwa" namely eloquence and persuasive power and the most significant being that a Judge has to be a "Dharmika". He has to protect the weak and punish the wrongdoer, he should be free of greed and above all, he should have the courage to protect the citizen from unjustified wrath of the executive authority. These references may sound utopian or fanciful in these troubled times but I must be pardoned for being a confirmed idealist and one who maintains that it is the vocation of every Judge in this day and age to be a reformed - both judicial and social.

It is, therefore, necessary if we want to build up a new socio-economic order based on the rule of law that our Judges should not only be deeply conscious but should be passionately devoted to the objective ideals set out in the Directive Principles of State Policy. Then only we shall be able to reach the millennium where there will be real freedom and real justice not only for a few privileged but for the entire mass of population of our country. We must in administering the law and dispensing justice always keep in mind the common man who has suffered social and economic injustice at the hands of the powerful sections of the community. We must heed his anguish and his suffering, for, ultimately it is the common man who forms the base of the democratic structure.

Jawaharlal Nehru, himself a distinguished lawyer, once said, "No law can be unchangeable law. It must be based on knowledge and as knowledge grows it must grow with it."

(to be continued)

## Around the Courts

The Flag Code of India is not law—citizens right to hoist National Flag cannot be curbed :

A Division Bench of the Delhi High Court comprising Justice D. P. Wadhwa and Justice S. N. Sharma, ruled in its judgment dated 22-9-95 that citizens were entitled to hoist the National Flag on their houses or offices on all days. This judgement was pronounced on the basis of a Writ Petition filed by Mr. Naveen Jindal, an Industrialist, from Madhya Pradesh. He had challenged the action of the Government officials prohibiting him from hoisting the Flag on his Premises in Madhya Pradesh.

The Respondents contended that this privilege is only extended to government dignitaries and officials and the citizens were permitted to hoist the Flag only on National Holidays like the Republic Day, Independence Day and Gandhi Jayanthi. In support of this contention the Respondents had relied upon the Flag Code of India. The Court held that the Code cannot be construed as law and therefore citizens are entitled to hoist the Flag on all days.

## Federation of christian Advocates

In the General Body Meeting of the Indian Federation of Christian Advocates held on 31-8-95 the following office bearers were elected :

President : Mr. S. Kanagarajan ; Vice President: Ms. Anne ; Secretary Mr. Anil Scaria; Joint Secretary: Ms. Prema Latha & Treasurer: Mr. Shanta Kumar Malgi.

## KAT Vice Chairman

Justice R. V. Vasanth Kumar has taken over as the vice chairman of the Karnataka Administrative Tribunal with effect from 25-9-95.

## Rent Bill Gets Assent

Contrary to anticipation President Shankar Dayal Sharma gave his assent to the Delhi Rent Bill on 23-8-95. It may be recalled that several provisions of the Bill after its adoption by Parliament had evoked strong protest from tenants residing in Delhi, particularly from the business community. Incidentally the Delhi Administration had also demanded that the Bill be referred back to Parliament for review/reconsideration of certain provisions of the Bill.

However, implementation of the Amended Act has been postponed due to indefinite closure of business establishments throughout the capital region. Drastic amendments to the Amended Act even before it is implemented is likely to be made.

## Campus Watch

On 15-9-95 Bangalore University Law College Students' Council was inaugurated by Prof. M. R. Janardana, Advocate General of Karnataka. Dr. N. R. Shetty, Vice Chancellor of the Bangalore University, presided over the function.

## Humour in Courts

☐ Lawyer A : Why do you call him a Senior Advocate ?

Lawyer B : Because he recently took a junior !

☐ Lawyer A : Why do you call him leading Lawyer ?

Lawyer B : Since he is in the habit of putting Leading questions in the examination in chief !

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## News Focus

□ On 25-8-95 Mr. S. R. Muqther Ahmed, Advocate, unveiled the photo of late B. Shivanna, Advocate, in Magistrate's Court Unit. Mr. K. N. Subba Reddy presided over the function. Mr. K. N. Puttegowda, General Secretary AAB, was the Chief Guest.

□ On 8-9-95 Karnataka Tax Consultants Association organised a lecture on "Simplification of Sales Tax structure." Mr. Sudhir Krishna, IAS, Commissioner of Commercial Taxes in Karnataka was the Speaker. Mr. Subba Reddy presided over the function.

□ On 21-9-95 Special General Body Meeting of AAB was held at the High Court Unit to discuss about IAS officer J. Vasudevan's Case.

□ On 16-9-95 Ms. Manjula Chellur, principal Judge, Family Court, Bangalore addressed the members of Indian Women Lawyers' Forum in AAB Auditorium.

□ On 23-9-95 AAB held organised a symposium on "Consequences of Contempt." Justice M. F. Saldanha inaugurated the symposium held in the AAB Auditorium. Prof. M.R. Janardana, Advocate General, R. N. Narasimha Murthy, Senior Advocate and Former Advocate General, Mr. K. Jai Raj, Managing Director, KPC were the speakers.

□ On 25-9-95 Mr. G. V. G. Krishnamurthy, Election Commissioner of India, addressed the members of AAB High Court Unit.

□ On 15-10-95 Annual General Body Meeting of the BLPC Society was held at Bangalore.

## Miscellany

□ With effect from 5-8-95 Mr. B. O. Mahesha, Advocate shifted his chamber to No. 13, 12th Cross Cubbonpet, [opp. to Taluk Office], Bangalore-02.

□ Mr. K. Nagaraj, Advocate, [High Court] and Mr. M. G. Uthappa, Advocate [City Unit] have been appointed as Central Government Notaries for a period of three years.

□ On 21-8-95 Mr. M. K. Srinivasa Iyengar, Advocate, called on former Prime Minister of U. K. Ms. Margret Thatcher, at Bangalore and presented to her the type written portrait.

□ On 1-9-95 Mr. M. A. Sebastian, Advocate, has shifted his chamber to Flat No. 108, 'Saraswathy Nivas', No. 5, Main Channel Road, Saraswathypuram, Ulsoor, Bangalore-8

□ In the election held on 16-9-95 to the Bharath Co-operative Bank Ltd., Mr. M. Rama-Krishna, Advocate, has been elected as one of the Directors.

□ Mr. L. Mohan, Advocate, has shifted his chamber from Sri Venkateshwara Market, Avenue Road, Bangalore-2, to No. 15, 5th Main, 1st Floor, Gandhinagar, Bangalore-9. Phone : 2261766

□ The Special General Body Meeting of Lahari held on 29-9-95 passed a resolution condoling the sudden and sad demise of J. Jeshtmal one of its patrons who died on 12-9-95

Sites For Judges :  
W. P. Dismissed

(Continued from page 1)

question cannot be gone into under writ jurisdiction. It was further observed that even if any irregularity has been committed in respect of allotment of sites it is an internal matter of the Society and the petitioners cannot question the same.



Jeshtmal Jasraj Sanghvi

16-6-1938 12-9-1995

*Man is no more  
memory lingers on ;  
Deeds of his stand out  
driving us to emulate.*

Lahari's tribute

## ಲಿಟರರಿ ಯೂನಿಯನ್

○ ತಾ|| 19-9-95 ರಂದು ಬೇಲಿಮಠ ಮಹಾ ಸಂಸ್ಥಾನದ ಶ್ರೀ ಶಿವರುದ್ರ ಸ್ವಾಮಿಗಳು ನಿವೃತ್ತ ಜಿಲ್ಲಾ ನ್ಯಾಯಾಧೀಶ ಹಾಗೂ ವಕೀಲರಾದ ಶ್ರೀ ಜಿ. ಲಿಂಗಪ್ಪ ನವರ "ಭೀಮ ಲಿಂಗೇಶ ವಚನಗಳು" ಎಂಬ ಪುಸ್ತಕ ಬಿಡುಗಡೆ ಮಾಡಿದರು. ಕುವೆಂಪು ವಿಶ್ವವಿದ್ಯಾನಿಲಯದ ನಿರ್ದೇಶಕರು ಹಾಗೂ ಕರ್ನಾಟಕ ಜಾನಪದ ಮತ್ತು ಯಕ್ಷಗಾನ ಅಕಾಡೆಮಿಯ ಅಧ್ಯಕ್ಷರು ಆದ ಡಾ|| ಎಚ್. ಜಿ. ಲಕ್ಷ್ಮಪ್ಪಗೌಡರು ಸಮಾ ರಂಭದ ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು.

○ ತಾ|| 27-9-95 ರಂದು ವಕೀಲ ರಾದ ನಾಗರಾಜ ಶರ್ಮ ರವರ ಪತ್ನಿ ಎನ್. ರೇಖಾ ರವರಿಂದ ಭರತನಾಟ್ಯ ಪೃಥರ್ವನ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. ಅಂತರ ರಾಷ್ಟ್ರೀಯ ಖ್ಯಾತಿಯುಳ್ಳ ಪ್ರೊ|| ಯು. ಎಸ್. ಕೃಷ್ಣರಾವ್ ಸಮಾರಂಭದ ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು. ಇವರ ಶ್ರೀಮತಿ ಯವರಾದ ಯು. ಕೆ. ಚಂದ್ರಬಾಗಾದೇವಿ ಯವರು, ಅಧ್ಯಕ್ಷರು, ಕರ್ನಾಟಕ ಸಂಗೀತ ನೃತ್ಯ ಅಕಾಡೆಮಿ, ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿದ್ದರು.

○ ತಾ|| 28-9-95 ರಂದು "ಕವಿ ಮಿಲನ್" ಕಾರ್ಯಕ್ರಮವನ್ನು ಹಮ್ಮಿ ಕೊಳ್ಳಲಾಗಿತ್ತು. 9 ಜನ ವಕೀಲರ ಹಾಗೂ ಗಾರರು ತಮ್ಮ ಕಾವ್ಯಗಳನ್ನು ಈ ಸಂದರ್ಭದಲ್ಲಿ ವಾಚಿಸಿದರು.

○ ತಾರೀಖು 14/15ನೇ ಅಕ್ಟೋಬರ್ ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ಆಶ್ರಯದಲ್ಲಿ 40 ವಂದಿ ವಕೀಲ ಮಿತ್ರರು ಜೋಗ್ ಜಲಪಾತ, ಇಕ್ಕೇರಿ, ಕಮ್ಮಣ್ಣುಗುಂಡಿ, ಬೇಲೂರು, ಹಳೇಬೀಡು ಮತ್ತು ಎಡೆಯೂರಿಗೆ ಭೇಟಿಕೊಟ್ಟು ಹಿಂದಿರುಗಿದರು.

## Obituary

□ On 15-9-95 I. K. Mohan Rai (45) an Advocate, from Bangalore passed away at Mangalore.

□ On 18-9-95 M. Shankar-Babu (36) an advocate from Doddaballapura died at Bangalore.

□ On 18-9-95 N. Murugesh, Advocate's Clerk (working with Mr. K. S. Subba Rao, Advocate) passed away at Bangalore.

□ Former Advocate General and Senior Advocate P. P. Muthanra (67) passed away at Bangalore on 19-9-95.

□ On 12-10-95 S. G. Srinivasan (52), Advocate, passed away at Bangalore.

## To be Released Shortly :

Prof. R. B. Guttal's

- \* The Constitution of India with case laws ;
- \* Basic structure of the Constitution ;
- \* The Karnataka Rent Control Act, 1961, with latest Amendments.

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