

**Volume 11**

**October 1999**

**Part 7**

## Jayaram Appointed Advocate General

The Governor of Karnataka has appointed Mr. Amruthur Narayan Jayaram [67] as the new Advocate General of Karnataka. Mr. Jayaram is the former Principal of Sri Jagadguru Renukacharya Law College, Bangalore, President of AAB for two terms and Addl. Solicitor General of India. He is a designated Senior Counsel besides being an authority on Company Law.

## Status Report on Net

Preparing itself to the new millennium, the Supreme Court on October 11, 99 made itself accessible to litigants across the country through the internet. To start with, litigants can know when their pending cases would be heard by accessing <http://164.100.10.12/sc-cl>. They would get to know the daily, weekly as well as supplementary cause lists. While inaugurating the service the Chief Justice A. S. Anand said that with the help of NIC, a website will also be created where all post January 1, 1999 judgments of the Supreme Court will be available. All pre 99 judgments are already available on CD-ROMs.

## Lahari Law Academy

Ms. Anu Chengappa of University Law College, Bangalore has been declared as the winner of the inaugural talent search programme in Administrative Law organised by Lahari Law Academy. She will be receiving a citation and cash award of Rs. 5,000/- from the Academy for her achievement. Ms. Kaveri Bopanna, Advocate from Bangalore has been declared to be the runner up in the competition. She will be receiving a citation and cash award of Rs. 3,000/- from the Academy.

## Code of Conduct for Judges Soon

- Ram Jethmalani

Union Law Minister Ram Jethmalani said on 15.10.99 that his ministry was committed to bring about speedy judicial reforms as promised in the agenda of the National Democratic Alliance. Outlining his priorities in the first 100 days of assuming office, the Minister said that the government would increase the number of judges and fill existing vacancies. He emphasised that quality of the judges would not be compromised.

Mr. Jethmalani said that the quality of Supreme Court and High Court judges in most of the cases were at par or even better than world standards but lamented that the lower judiciary was not looked after well with emoluments and perks which is low. He said that the emoluments and standard of living of judges should be made attractive. This applies to the sub-ordinate judiciary much more than to the higher levels. Commenting on the delays in judicial proceedings he said emoluments and working conditions of those who represent the Government in Courts and Tribunals must be so fixed as to create no temptation for frivolous litigation or delay in disposal of cases. Mr. Jethmalani said "in consultation with the Attorney General and other law officers, procedures will be set in motion to eliminate avoidable litigation".

Significantly the law minister said that the government proposes to bring in a legislation on the code of conduct for judges. He said that "I propose to give legal shape to the code of conduct evolved by the Supreme Court to define 'Misconduct' which calls for action against the judge including removal from office".

On the legislation relating to companies, he said it would be most probably placed before the parliament in the winter session. Mr. Jethmalani stressed on strengthening corporate democracy even while highlighting the need for protecting small share holders

or small investors against fraud and misappropriation. He also touched upon issues like barring persons of foreign origin from holding position of high office and the law commission recommending for a fixed five year term for lok Sabha and said that any amendment to the constitution could be brought about only after prior consultation with all political parties.

## New Law Ministers

Renowned Jurist and Senior Advocate Mr. Ram Jethmalani has taken over the portfolio of Law, Judiciary and Company Affairs in the Union Cabinet of Prime Minister Atal Behari Vajpayee.

Mr. D.B. Chandre Gowda has been named the Cabinet Minister for Law and Parliamentary Affairs in the recently sworn ministry in Karnataka headed by the Chief Minister Mr. S.M. Krishna.

## Elected

In the recently held elections to the Karnataka Legislative Assembly former President of AAB Sri K. N. Subba Reddy has been elected from Basavanagudi Assembly constituency on Bharatiya Janata Party ticket.

In the recently held election to the Bangalore University Senate Sri R. Rajanna, has been declared elected to represent law graduates constituency.

## Around the Courts

Conviction of an accused under section 302, IPC based on eye witness evidence with minor discrepancies - permissibility :

A bench of the Supreme Court comprising Mr. Justice K. T. Thomas and Mr. Justice M. B. Shah, has ruled that the sessions court should not doubt the veracity of an eye witness evidence even if there were minor discrepancies. The judgment delivered during September 99 would obviously help the prosecuting agencies throughout the country. The court held that "when an eye witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible in the credibility of his version that the court is justified in jettisoning his evidence".

This ruling came in two criminal appeals filed by convicts in a murder case.

Conviction of an accused on the basis of hearsay evidence - permissibility :

In a recent judgment a three judge bench of the Supreme Court headed by Justice G. B. Pattanaik ruled that in the absence of corroboration hearsay evidence of a witness who is inimical to the accused cannot form the basis for conviction. While allowing an appeal filed by a convict sentenced to five years RI for an offence punishable under section 307, IPC the court held that "Unreliable and shaky evidence" of a witness without corroboration could not be sustained. The session court had convicted the Appellant and



## State Bar Council

As per notification No. - 35/99 dated September 28, 99 Sri R. Sampath Kumar, Advocate, R/o Lakshadeep Complex, Marathahalli Main Road, Bangalore-17 [Roll No. KAR/660/89] has preferred DC Appeal No. 28/99 challenging the order dated 3.9.99 of the State Bar Council removing his name from the rolls of Karnataka State Bar Council and the Disciplinary Committee of the Bar Council of India, New Delhi, has stayed the operation of the impugned order till the next date of hearing.

## Miscellany

□ On 15.8.99 Mr. M. G. Padmanabha Chari, Advocate, opened his law chamber at # 58, 3rd Floor, 22nd Cross, Kilari Main Road, Bangalore-560 053.

□ Renowned Kannada daily Prajavani in its edition dated 5.10.99 has published an article "Responsibility of Judiciary - Scope and Limitations" written by Mr. Y. N. Nagaraja, Advocate from Bangalore. The article is a thought provoking one.

## Kolar Diary

On 25.9.99 a Lokadalat was held at Mulbagal under the presidentship of Mr. S.N. Dhage, Civil Judge [Jr. Dn.] Mulbagal. Mr. Gapalkrishna, President, Mulbagal Bar Association, Mr. A. D. Mahanthappa, Civil Judge, Mr. D. Venkatarame Gowda, Advocate, Mr. K. V. Shankarappa, Advocate and Mr. N. G. Vasudeva Murthy were the guests of honour. Mr. C. M. Govinda Reddy welcomed the participants and Mr. N. Prabhakar proposed vote of thanks.

## Vacancy Available

An Advocate with two years experience is required by a law firm. Interested person may write or contact:

Mr. Shamsundar Shetty  
Advocate  
# 7/96, II Floor  
Lingarajapuram  
Bangalore-560 084  
Phone : 5480220.

## News Focus

□ On 5.10.99 a voluntary blood donation camp jointly organised by Lions Club of Bangalore Jayamahall and AAB was inaugurated by the Chief Justice of High Court of Karnataka Mr. Justice Y. Bhaskar Rao at the High Court Unit. His Lordship said on the occasion that *Manavaseva* was infact *Madhavaseva*. He also pointed out that it is laudable that lawyers who are known for protecting the litigants have come forward to save their lives. Mr. N. Dinesh Rao, Vice President of AAB, High Court Unit representing Lions Club of Bangalore Jayamahall welcomed the participants. Mr. K. L. Manjunata, President of AAB proposed vote of thanks. Mahaveer Jain Hospital had made arrangements to receive blood.

□ On 7.10.99 Hon'ble Justice Nittoor Srinivasa Rao, Former Chief Justice of High Court of Karnataka was felicitated in a function held at the AAB, High Court Unit. The function was jointly organised by Advocates Association, Bangalore and *Nyayavadijala Vichara Vedike*, Bangalore.

□ On 12.10.99 Mr. Justice K. R. Prasada Rao and Mr. Justice N. S. Veerabhadraiah, were sworn in as judges of the High Court of Karnataka. Previously they were functioning as the additional judges of the same court.

□ On 14.10.99 Mr. Justice P. Vishwanatha Shetty, Chairman, Karnataka Judicial Academy, inaugurated orientation courses for Advocates in AAB City Unit. The courses are organised under the auspices of Advocates Association, Bangalore. Dr. N. L. Mitra, Director, NLSIU, Mr. A. N. Jayaram, former Addl. Solicitor General of India and Mr. M. S. Mandanna, President, Bangalore Advocates Co-operative Society Ltd., were the Chief Guests at the function.

□ On 16.10.99 a *bruhat Janata Nyayalaya* was held at the Bangalore City Civil Courts' Complex. Mr. Justice G. T. Nanavati, Judge, Supreme Court of India, inaugurated the programme. Mr. Justice Y. Bhaskar Rao, Chief Justice of High Court of Karnataka, Mr. Justice A. J. Sadashiva - Chairman, Karnataka Legal Services Authority, a number of Judges of High Court of Karnataka, members of the Sub-ordinate judiciary and lawyers participated in the programme.

## Role of Legal Profession in Nation Building

Justice Y. Bhaskar Rao

From last issue

Now in the post independent era lawyers must be equally active in removing the evils which come in the way of nation building. Lawyers have to come forward with voluntary spirit to conduct camps to educate the people about their rights. A duty is cast on the lawyers to educate the people. It is also essential that the people must be enlightened not only of their rights but also of the fundamental duties enshrined under the Constitution. Lawyers have to carve out possible areas of inquiry in order to solve the rural problems, more so, when interests of conflicting nature arise. In such a situation, how a lawyer has to react has been ideally put by Friedmann thus :

"It is the lawyer's task not only to ensure a proper balance between these competing interests with a sense of justice that should be sharpened by his legal training, but also to ensure that the minimum safeguards of due process be preserved in order to have these matters ultimately settled by an impartial authority. But, for example, to let the Court to decide the adequacy of compensation offered for expropriations made in the public interest, presupposes a judiciary that is not in ideological opposition to the very principles of the new order"

Lawyers, thus are expected to make out possible areas for analytical enquiry and survey and also to identify the root causes for the problems of rural societies. Like Doctors, who administer medicine to cure the patients, lawyers should help administer the laws. Legal aid and assistance will be the task of lawyers in securing justice to the poor and the weaker sections. They should also take up more public interest litigation to secure to the people, conditions and environment suitable for living consistent with self-respect and dignity. They should take up the role of a social worker by defending the dignity, rights, and privileges of the clients when they are threatened or denied. In other words, lawyers have to serve as "Keepers of social conscience" and trustees for the welfare of the society."

In this task, lawyers have to maintain "the rule of law" and see that it is observed in all walks of life. Any action which threatens the rule of law has to be fought with the tools possessed by a lawyer as a "social engineer" and see that the rule of law is preserved at all costs. It shall be the duty of the lawyers as keepers of legal conscience to ensure that all authorities act in accordance with law and become accountable to law for their actions. Administration of justice requires an independent judiciary committed to the Constitution and the laws made by the state. No doubt, independence of judiciary can be maintained to a great extent by the self-assertive will of the Judges. It is equally true that lawyers, the professional wing attached to the Courts, have a great role to play in protecting the independence of the judiciary. This calls for evolving new norms, which find a wider ethical base structured in the roots of truth and justice. Lawyers should play a creative role as innovations are made in making the law a dynamic instrument of social justice than preserving the status quo, particularly in a developing society crying for a rapid change.

The role of legal profession in nation building is thus a continuous one.

Concluded

## Special Leave Granted

On 16.8.99 the Supreme Court has granted special leave to file appeal [civil] No. 7470/99 and other connected cases in which the constitutional validity of the Consumer Protection Act, 1986 has been challenged. Vishwa Bharathi House Building Co-operative Society Ltd., has filed the said appeal against the Union of India and others against the judgment and order dated 18.12.98 passed in W.P. No. 30149/96 by the High Court of Karnataka. Sri N. D. Ramachandra Rao, Advocate, represented the Appellant and argued the special leave petition.



## Around the Courts

From Page 1

sentenced him to five years RI which was upheld by the Allahabad High Court.

### □ Lodging of FIR before a Police Station which has no jurisdiction to prosecute the accused - permissibility :

In an important ruling a bench comprising Justice K. T. Thomas and Justice M. B. Shah of the Supreme Court ruled that there was no bar on a person lodging an FIR at a Police Station even if the crime did not occur at a place under its territorial jurisdiction. The decision delivered during October 99 set aside a Delhi High Court order quashing an FIR on the ground that it was lodged at a Police Station which had no territorial jurisdiction to investigate the offence and remanded the case back to the trial court. The court held that if the investigating officer arrives at a conclusion that the crime was not committed within the territorial jurisdiction of the Police Station, then *an FIR can be forwarded to the Police Station having jurisdiction over the area in which the crime was committed*. The court further said section 156(2) of the Criminal Procedure Code contained an embargo that no preceeding of a police officer should be challenged on the ground that he had no territorial jurisdiction to investigate the crime. The Apex Court while reversing the Delhi High Court order observed that the High Court had completely overlooked the said embargo when it entertained the criminal petition on the ground of lack of territorial jurisdiction.

### □ Awarding of Maintenance to a spouse under section 125, Cr.P.C., whether proof of performance of marriage rites essential ?

In a judgment delivered during October 99 a bench of the Supreme Court comprising Justice K. T. Thomas and Justice M. B. Shah ruled that an estranged wife is entitled to maintenance from her husband if she *prima facie* proves her marriage even without proving the essential marriage rites. The court observed that "If the magistrate is *prima facie* satisfied with regard to the performance of marriage, proceedings under section 125, Cr.P.C. which is of a summary nature,

strict proof of performance of essential rites is not required. Dismissing the appeal filed by one Satpathy against the order of the Orissa High Court restoring maintenance of Rs. 400/- a month to wife Bidyut Prabha Dixit and Rs. 200/- to her child, the Apex Court said that the provision of section 125, Cr.P.C. should not be utilised by a litigant for defeating the rights conferred by legislature to destitute women, children or parents who were victims of social environment.

### □ Section 223 of the Criminal Procedure Code, 1973 - not mandatory to try different accused together when the prosecution has pleaded different stories :

In a judgment delivered during the last week of October 99 a Supreme Court bench headed by Mr. Justice K. T. Thomas has ruled that in rare cases where the prosecution comes up with diametrically different stories against different accused, backed by evidence, there should be two separate trials instead of one. While acquitting the appellant Balbir on the ground that there was no substantive evidence for conviction of the appellant the court rejected his contention that both the accused should have been tried together as provided under section 223, Cr.P.C. as the prosecution had come up with two versions of the alleged offence. The court noted that "seldom would the courts have come across such a weird scenario as the present case has presented".

Fatehabad Police in Haryana had filed a chargesheet against one Guria for the murder of one Om Prakash. However, the relatives of the deceased complained to the S.P. that one Balbir belonging to a rival family had murdered their kin and that the local police had not properly conducted the enquiry. The relatives then moved the Magistrate who after recording evidence had committed the case to the sessions court. The sessions judge tried the cases separately, acquitted Guria but convicted Balbir. P & H High Court confirmed the conviction and sentence against Balbir and the appellant challenged his conviction and sentence before the Apex Court.

### □ Liability of LIC to pay insured sum when the premia deducted under SDS not remitted by the employer :

In a landmark judgment delivered recently a bench of the Apex Court headed by Justice S. Saghir Ahmad ruled that dependants of employee will be entitled to entire insured sum if its premium although deducted from his salary was not remitted to the LIC by the employer. The court held that once the employer starts deducting the premium from the employee's salary, LIC was liable to pay the kin the assured sum in the event of the employee's death. This would apply even if the employer failed to remit the amount so collected from the employee's salary to the LIC.

Delhi Electricity Supply Undertaking [DESU] employee Bhim Singh's widow Basanti Devi had challenged the validity of the LIC endorsement stating that she is not entitled for the insured sum as DESU had not remitted the premia deducted from her husband's salary before the Consumers' Redressal Forum. Her claim was allowed by the Forum which was confirmed by both State and National Forums. However, the liability had been fastened on DESU. On appeal preferred by DESU the Apex Court held that LIC was wrongly discharged of its liability under the insurance policy taken out by Bhim Singh. While allowing the appeal the Apex Court also directed the LIC to pay 15% interest on the assured sum from December 1999 till payment is made to the claimant.

### □ Customs Act, 1962, section 12 r/w Customs Tariff Act, 1975, section 2 - Whether landing charges to be added to the cost of imported goods?

In a judgment delivered during October 99 a bench of the Supreme Court headed by Justice B. N. Kirpal has ruled that for assessment of customs duty landing charges have to be added to the cost of imported goods. In a judgment which may affect all the importers in the country the court held that "landing charges which have to be paid to the port trust must be taken into consideration while determining the value of the imported goods for the purpose of assessment of duty. While dismissing as many as 15 appeals filed by the importers, the Court, however, said that "it is only if

the importer establishes that the obligation to pay the landing charges is on the seller and not on the importer and that the seller or his agent has in fact paid the said landing charges to the port trust authorities the importer can claim that landing charges should not be again added to the price". This judgment was delivered by the Apex Court in the appeals filed by a silk mill and others challenging several High Court decisions upholding that customs department rightly added landing charges to the CIF price for determining the duty on the imported goods.

## CAT Ruling

A full bench of the Central Administrative Tribunal, Maharashtra, presided over by Justice K. M. Agarwal in a recent ruling has held that a retiring government employee who relinquishes charge on the afternoon of the last day of service is deemed to have effectively retired the next day. This notional benefit is given to the retiring employee on the basis that the day comes to an end at midnight. This ruling came in the wake of two employees of department of posts viz. V. Rajagopalan and M. A. Paranjpe's claim that the benefit of enhanced DA for purpose of calculating gratuity notified by the government on the date of their retirement on superannuation i.e. March 31, 1995 is available to them. The respondent had claimed that the applicants cannot claim such benefit as they had retired on the afternoon of the date of Notification which would take effect from the next day. Rejecting the contention of the respondent the department was directed to give the benefit of enhanced DA to the applicants amounting to Rs. 40,000/- each.

## Campus Watch

The National Law School of India University [NLSIU] is hosting consilience '99, a conference on Information Technology [IT] Law in the city during the second week of December 99. The primary objective of the workshop organised by Computer and Law Society of the University is to create partnership between entrepreneurs, corporate business interest, legal professionals, academicians and government agencies.



## Senior Advocates

Through a notification dated 25.10.99 the High Court has designated the following persons as Senior Advocates :

S/s. M. R. Achar, A. G. Holla, H. N. Narayan, K. Kasturi and Padmanabha Mahale.

## Conference Inaugurated

Chief Justice of India Mr. Justice Adarsh Sein Anand inaugurated the Second National Level Legal Conference at Hyderabad on October 9, 99.

## Point Blank

The concept of public interest litigations [PILs] distinguishes our legal system. PILs have filled a vacuum which the Executive could not.

— Mr. A. N. Jayaram  
Advocate General in Karnataka

## Know This

In a significant move the requirement of police verification for issuing fresh passports based on the residential qualification has been reduced to one year. For computing one year's period all the residential places are taken into account. The earlier requirement was that the applicant should have been a resident of a locality for at least two years. All regional passport offices have already been notified about the change.

## Obituary

On 17.10.99 S. Narayana Bhatta, 90, Advocate from Srirangapatna, passed away.

## Vacancy Available

A law firm requires the services of a lady Advocate. Interested persons may apply to :

**M/s. Bhuvan & Co.**

Advocates

No. 5, "Sindhoor"

First Floor, Second Block  
Reservoir Road, K. P. West,  
Bangalore-560 020

Ph. : 3310479/3360358

## Humour in Courts

□ A Judge irritated by a lawyer's behaviour admonished him, "you are crossing the limits". "*Kaun saala aisa kehta hai*" roared the lawyer. "how dare you call me saala [brother-in-law] I will have you charged for contempt of court" said the judge angrily. "Your Honour has misunderstood me" replied the lawyer coolly, "I did not call you saala, all I said was *kaun sa law aisa kehta hai* [which law says so]".

□ A man was hauled up in court for beating his neighbour.

Magistrate : Did you beat up your neighbour?

Accused : Yes, Your Honour, he called me a Punjabi rascal.

Magistrate : So what ?

Accused : your Honour, if he had called you a Bengali or Madrasi rascal or the type of rascal you really are wouldn't you have beaten him up?

— Courtesy Bharat Kumar Mehta

## Foreign Tour

Smt. Hemalata Mahishi, Advocate, returned to Bangalore on 22.10.99 after six weeks tour of USA and Canada.

## Solicitor General Appointed

By a notification dated 31.10.99 the President has appointed Mr. Harish Salve as the Solicitor General of India. The vacancy had been caused due to elevation of Mr. N. Santosh Hegde as a judge of the Supreme Court of India. Four additional Solicitors General Viz. Mr. Althaf Ahmad, Mr. Kirti N. Rawal, Mr. R. N. Trivedi and Mr. Mukul Rohatgi, have also been appointed. Mr. Soli Sorabjee has been retained as the Attorney General of India for a further period of three years.

## Chairman NHRC Appointed

The President has appointed former Chief Justice of India Mr. Justice J. S. Verma as the Chairman of the National Human Rights Commission of India. The vacancy was caused due to retirement of Mr. Justice M. N. Venkatachaliah on October 24, 1999 after attaining 70 years of age. Mr. Verma will be in this post till January 28, 2003.

## What Lawyers can do for the Common Civil Code

— Prof B. Venkatakrishnappa  
Former Principal, BMS Law College

We have been waiting and hoping, rather naively for these 48 years for the government to come up with a Common Civil Code and to get it passed by the Parliament. It is a double possibility which is inherently fallacious in the circumstances. I humbly believe that the Lawyers and particularly premier Bar Associations have failed to give a lead by coming up with suggestions in the form of draft pieces of legislation, so that a meaningful discussion would be available before a proper climate for reception of the code is created.

I am not suggesting that a comprehensive code should first be drafted but on the other hand, following the work of the Parliament in 1955-56 with regard to the Hindu Code, particular pieces of legislation common to all the people could be floated.

The best way would be to organise a working committee of the Bar Associations consisting of members who are governed by different personal laws and an acceptable draft prepared by them in respect of at least a few areas of common agreement, which could be published. Several examples, where there is a possibility of consensus could be given and for want of space, I limit the narration to a few.

First taking the Islamic Law as an example, we find that in the unfortunate event of the parents succeeding to their children's estate both the parents are entitled to a share, which appears eminently reasonable. However, in the case of succession to a Hindu male, the mother totally excludes the father who is relegated to entry (1) in list (2) of the Schedule to the Hindu Succession Act, 1956. The paradox is that under the Indian Succession Act the father excludes the mother. I hope there will be no serious objection for the common acceptance of the 'Shariat Rule' for all communities in regard to this matter.

In 1952, in *Md. Amin Vs. Vakil Ahmad* AIR 1952 SC 358 Justice Bhagavati (senior) simply followed the dicta of Ameer Ali J. in 1928 P.C. in *Imam Bandi Vs.*

*Mutsaddi*, holding that a mother is incapable of acting as the guardian of her own children even in the absence of the father or the paternal grandfather. There is actually no authority for barring women to act as guardians in the classical sources of Islamic Law. If only the Supreme Court had noticed 1907 Indian Appeals 34 IA 46 *Shahar Banoo V Aga Mahomed Jaffer Bindaneem & Others*, it could have observed that the Privy Council had held that there is absolutely no bar for muslim women in regard to holding the office of a Mutawalli. In other words she could act as the manager of properties worth millions belonging to a Wakf (Religious Endowment) on behalf of a Mohalla, but could not enter into any transaction even beneficial, in regard to her children's property as a guardian in the absence of the father or grand-father. This aberration could possibly be removed by a consensual approach. In 1952, a little bit of judicial activism by the Supreme Court could have achieved this. Perhaps the severe criticism of the Shariat is reserved in regard to the rule wherein a pre-deceased son's children are disabled from claiming any share in their grandfather's estate. Whatever may be the historical reasons for the paucity of a fairly elementary principle of jurisprudence, it is not to be found in most middle eastern countries and even in Pakistan and Bangladesh. Very few people appear to have noticed that a similar deficiency stares us in the Hindu Succession Act. We find therein when a person dies without he leaving behind a spouse, lineal descendants or parents, his brothers and sisters succeed to the estate and in the process they exclude the children of a pre-deceased brother or sister, even though that person might have died just a day or an hour or a minute or second earlier.

This brings us to one other matter regarding succession in case of a common calamity like drowning or accident where you cannot determine who died first and this would be a matter of great consequence.

to be continued