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Part 8

Appointment and Transfer of Judges Primacy to Judiciary

In a 7:2 majority judgment the Constitutional Bench of the Supreme Court on 6-10-93 held that the appointment of Judges to the High Courts and Supreme Court must be made by the President in accordance with the unanimous recommendations of the Chief Justice of India in consultation with the prescribed number of judges of the Apex Court and the High Courts. It was further held that the Prime Minister and Council of Ministers can veto an appointment recommended to the Supreme Court or the High Court by the Chief Justice of India if such recommendation is not unanimous.

The Judgment lays down that the two seniormost judges of the Apex Court should be consulted by the Chief Justice of India while he is expected to consult are those in the Apex Court who are likely to be conversant with the particular High Court and the Chief Justice of the High Court in respect of the appointments to be made to the High Courts. However, it is discretionary for the Chief justice of India to consult one or more senior Judges of that High Court whose opinion he considers likely to be significant in the formation of his opinion.

The latest judgment has reversed the view taken by the Apex Court in its judgment of S.P. Gupta Vs Union of India in which it was held that primacy in respect of appointment of Judges and their transfers was vested in the

Prime Minister and the Council of Ministers.

The majority view of the latest judgment shows that even in the matter of transfer of High Court Judges the Chief Justice of India is not to give his opinion all alone and a unanimous dicision of himself alongwith the prescribed number of judges can only be binding on the Prime Minister.

In a sharp dissent Justice M M, Punchhi has declared that in delivering this judgment the majority Judges have" 're-written the Constitution", made the Chief Justice of India barter away his exclusive power to a collectively unknown authority to the Constitution, made the Chief Justice of India like a "sheet that went to the bush for protection and found that it had lost its fleece" and thereby created the basis for a storm in the application of the judgment. Justice A.M. Ahmadi has opined that primacy cannot be given to the Chief Justice of India till the Constitution is amended.

Judicial Oligarchy

In an unprecedented judicial denunciation of the manner inwhich judicial appointments have been made since indeppendence to the High Courts and Supreme Court Justice S. R. Pandian called for an end to the judicial oligarchy which has been initiating and grooming candidates for judgeship thereby denying due share in the appointment to the persons belonging to SC/STs, BCs and women.

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Article 356 must go-Justice E.S.V.

Bangalore, Oct. 9th: Former Chief Justice of India Justice E.S. Venkataramaiah declared that there is no point in discu. ssing about Article 356 of the Constitution of India and it should be removed once and for all. He said that this Article has been abused far too long by every political party that ruled at the centre and as such there is no justification to retain the Article in the Constitution. He pointed out that the controversial Article was nothing but a re-written version of the Draconian Section 93 of the Govt. of India Act, 1935. Justice Venkataramaiah was speaking at the one-day Seminar of the Karnataka State Commission of Jurists in Bangalore on "the scope of Judicial Review In Re: Article 356 of the Constitution of India."

Elaborating his speech Justice Venkataramaiah said that we have proved Churchill's observation that Indians are not fit to rule themselves. He further said that what we now have is a situation where a Chief Minister of a State has to make 10 or 20 trips to Delhi every month and the opposition demands imposition of President's Rule rather than staking its claim to form a tsable Govt. He called upon the Jurists Commission to recommend removal of this most abused Article.

However, the eminent Constitutional expert Soli Sorabjee who delivered the key note address differed with the above view and he was of the view that Article 356 should

not be repealed despite it being turned into a deadly instrument in the hands of the Centre. No doubt he conceded the fact that this Article was most abused & the Centre has so far invoked this provision 98 times to dismiss the democratically elected State Governments. He pointed out that in the Constituent Assembly debate it was felt that incorporating Article 356 would disfigure our Constitution but the framers of the Constitution were deeply concerned about the peace and the alround violence in the country as an aftermath of the partition. Mr. Sorabjee was of the view that the founding fathers Constitution were visionaries who despite being aware of its possible abuse chose to incorporate it in the belief that the Centre would use it only for bonafide reason. He pointed out that this belief has been belied and the Centre has misused provision giving room for friction between the Centre & the States.

Amongst others Justice M.Rama Jois, Mr.S.P. Shankar & Mr. V. Sudish Pai read their papers on the topic. The Seminar which was attended by over 150 delegates was presided over by Justice P.P. Bopanna, the president of the Commission.

機能器器器器器器 Wish You Happy Diwali 器器器器器器器器器器器 Laws grind the poor and richmen rule the law

-Goldsmith

THE SCAM

(Its Genesis and causes)

C.B. Srinivasan, LL.B., Advocate

Walk Out No Answer

here can be two opinions as to the appropriateness of raising questions of corruption and nepotism in the prevailing circumstances before the higher courts in a function organised by a Bar Association to felicitate some judges of the Apex Court. However, one cannot be certain as to whether a walkout staged by the members of the apex judiciary could have been the only way of expressing resentment over the unexpected happening in the function. The situation is further compounded when the walkout was led by none other than the Chief Justice of India and the Union Law Minister and other prominent personalities followed suit.

Whether one likes it or not that the issues of corruption and nepotism should be mentioned in public or not they can not be brushed aside under the carpet. Unfortunately the judiciary in the higher level is not without being accused of such serious allegations The only saving grace is that such instances are not common. Howsovever, smallness of the number of such instances the judiciary has to squarely face it and initiate remedial measures without delay in all such matters. In this regard the Vigilance Cells functioning internally should be more vigilant and be in a position to bring all such instances to the notice of the dicision making authorities even before it assumes public gaze.

"Walk outs" may not be a correct approach in effectively meeting the allegations of corruption and nepotism. Somehow, it gives an impression that the judicial administrators are unusually sensitive about the issues being

publicly mentioned and they have no proper answer to them. If only the challenge posed by such allegations are squarely answered in public the possibility of a whispering campaign ultimately resulting in erosion of public confidence in the system could be prevented. Therefore, the judicial authorities must be able to call the allegations a "bluff" if need be by readily possessing statistics and convincingly answering such allegations.

The ideal situation would be that no member of the public or the Bar can muster courage to level serious allegations against the members of judiciary, particularly the higher judiciary. However, the judiciary itself should evolve mechanisms of routing out or curbing the chances of its members falling a prey to such allegations by their exemplary behaviour. As otherwise the consequences wouid be disastrous. Therefore, each one of us, including the members of judiciary, should strive to bring about the restoration of glory to our profession by squarely answering to the issues of alleged corruption and nepotism. In this direction the administration must find immediate solutions to the growing number of instances of the judges and their kins practicing before the same Courts. All said and done the Ceaser's wife must be above suspicion.

News Focus

Japan, a seeming bulwork of conservative family values in the eyes of most of the world now has a divorce rate of one every three minites according to its Social Welfare Ministry.

(from the last issue)

demand liabilities, it is apparent that there is a fluctuation about this deposit also. As the bank's deposits soar the SLR has to rise; as they fall it can be rinsed.

The Sting in the Tail

No doubt these statutory mandates are well meant. They have concern of the large body of faceless depositers. But there is a sting so far as the banks are concerned in these inescapable directives. The Government pays for all these deposits a rock bottom interest. The very system of banking is possible because the depositor gets a lesser rate of interest than the bank earns in its investment. It looks for more and more profitable pastures than investing in government securities. Therefore, the banks are eager to sell their securities the moment their deposits fall. They are on their toes to buy the moment their deposits soar Added to this the maturity of government securities wh ch brings in its wake more cash and the need arise to buy more securities. Thus the buying & selling game of Government securities is a quofidian concern of all banks.

The Control of the Valves

The proportion of government securities of institutional holders has substantially increased over the decades. An inspection and control of the SLR became a desideratum. The efforts of the Reserve Bank as the agent of Government in the management of public debt, the interest of safety and administrative convenience demand the creation of another independant organ. The increase in the proportion of government loans provided an apportune occasion for recasting the control and management of

central and public debt. The Public Debt Act,1944 was the answer. It prescribed a procedure for transfer and custody of Government securities

"Section 3 - Transfer of Government Securities-

1)...... a transfer of a Government security shall be made only in the manner prescribed for the making of transfers of securities of the class to which it belongs......

Section 28 - Power to make rules -

- (1 The Central Government may... -- make rules to carry out the purposes of this Act.
- 2) In particular and without prejudice to the generality of foregoing power such rules may provide for all or any of the following matters, namely:
- e) The holding of Government securities in the form of stock by the holders of offices other than public offices and the manner in which and the conditions subject to which Government securities so held may be transferred".

Public Debt Rules are framed in this behalf.

This meant that according to rules banks are bound to buy government securities and deposit them in the Public Debt Office [PDO]. Any transfer can be made only by means of entries in the Subsidiary General Ledger [SGL]. All transfers of Government securities by dint of buying and selling, at a time before the maturity takes place through such entries. The Physical Certificates coolly slumber in the PDO and actual delivery is difficult and at times unnecessary. The system assured that the banks maintained the SLR in word and deed and deposited the securities with the PDO. With lapse of time and multiplication of banks and their operations, selling and buying of securities

(to be continued)

Article 356 - Scope of Judicial Review

Justice (Retd.) M. Rama Jois

Object and Purpose

Article 356 was incorporated in the Constitution in National interest. Relevant part of the Article 356 (1) reads:

356. Provisions in case of failure of Constitutional machinery in States:

If the President, on receipt of the report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation:

- (a) Assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State.
- (b) Declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.
- (c) Make sure incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State.

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Court.

The article was intended to be used for upholding the Constitution and the laws only in cases in which it was found that the Government in a State could not be carried on in accordance with the provisions of the Constitution. However, the possibility of misuse of such power by an unscrupulous ruling party at the Centre for collateral and selfish purposes was voiced in the Constituent assembly. In reply thereto Dr. Ambedkar said thus:

"In fact, I share the sentiments expressed by my Hon'ble friend Mr. Gupta yesterday that the proper thing that we ought to accept is that such Article will never be called into operation and that they remain dead letter. If at all they are brought into operation, I hope the President who is endowed with these powers will take proper precaution before actually suspending administration of the provinces. I hope the first thing he would do would be to issue a mere warning to a province that has erred" (C.A. Debates Re Clauses 275-278 Page 176)

The above statement must have been the guiding principle for invoking the power under Article 356. Unfortunately, it has been consistently disregarded.

In the context of exercise of power under Article 356 Article 256 read with Article 355 are also relevant. These

(to be continued)

Munsiffs Appointed

The Governor has appointed the following persons as Munsiffs in the Karnataka Judicial Services. They will undergo training from 18-10-93:

B S Bhagya Rathna, Tumkur; K. J. Mohiuddin, Bangalore; Gopalkrishna Kolli, Raichur; B. B. Channabasappa, Bijapur; H M. Nanjunda Swamy, Tumkur; S. H. Hosagoudar, Kudupali, Dharwad; Rajendra Badamikar, Dharwad; K. S. Timmannachar, Bangalore; Shivanagappa K. K. Narayanapura, Dharwad; B.G.N. Somayaji, Jodumarg, Dakshina Kannada ; G. Basavaraja, Chitradurga; R. B. Dharma-goudar, Assistant Public Prosecutor, Humnabad; G. V. Vijayakumar, Channarayapatna; Shivasharanappa, Chincholi; A. M. Nagaswamy, Ramanagaram; Srikanth Shimpi, Harihar ; I. P. Bidari, Ranebennur; D V. Patil, Kakole, Dharwada; D K. Basalingappa, Hangal; M. Laxman Rao, Brahmapura, Gulburga; S. L. Patil, Shiggaon; Suresh L. K. Vanatigodi, Soundatti; G. B. Mudigoudar, Sridnur, Dharwad; N. N. Yalavatti, Laxmeshwar; G.S. Sangreshi Chikkumbi, Belgaum; V. H. Sambrani, Belur, Bijapur; M. V Jadar, Hangal; Ulhas 1. Balekundri, Belgaum; A.N. Pattan, A.P.P., Badami; S.R. Thulsiam, Mysore; M. M. Srinivas Gouda, Gangavathi and K. P. Tukaramappa, Laxmeshwar.

Humour in Courts

Father: "Now that you have graduated, what are you going to be?"

Son: "I would like to be a lawyer, Dad. A good deal of money passes through a lawyer's hands. isn't it?"

Father: "He never lets it pass through if he knows his business, my son!"

Advocate Writers' Meet

The recently concluded State level Advocate-Writers Meet and Book Fair was a fresh experience amongst the members of our fraternity. It was also a success in many ways in as much as over 25,000 persons visited the Book Fair and purchased Books from 10 reputed publishers of Law Books. In its maiden attempt Lahari was able to spot 66 Advocateauthors apart from displaying their works numbering over 200 Books.

The inaugural function was held on the 12th October which was presided over by the known historian Dr. Suryanath U. Kamath. Justice S. A. Hakeen who inaugurated the Meet and the Book Exhibition commended the role of Lahari in organising such a meet. Mr. B. K. Somasekhara, who was the guest of honour at the function, offerred valuable suggestions regarding encouraging Advocate-Wri-In his presidential remark Dr. Kamath lauded the role of Advocates in providing legal and applied literature. He was of the view that much more efforts are needed on the part of legal fraternity to give prime of place to Kannada in Court proceedings.

The panel discussion held on the subsequent day on the problems faced Advocate-Writers with regard to selection of subject, research, write ups, publication and marketing of their works was initiated by Prof. V Narayana Swamy. Several suggestions were offerred by the participants including the institution of Annual Awards for Advocate - Writers and exploring the possibility of publishing a Law Journal by Lahari. Sri G. Lingappa, who was the moderator, summed up the views expressed by the participants apart from offerring

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At the valedictory function of the Lahari Advocate-Writers' Meet and Book Fair.

(continued from page 3)

his own suggestions. Sri B.S. Krishna Murthy who presided over the function congratulated Lahari in its endeavour and thanked the organisation for organising such a literary project.

The valedictory function was held on the 14th October. Apart from introducing the Advocate-authors Lahari also presented mementoes to all the participants. Sri Go Ru. Channabasappa, who was the chief guest, appreciated the task undertaken by Lahari. However, he was not happy about the printing of invitations in English in the year of Kannada awareness. He announced that considering the role played by the Advocate authors Kannada Sahitya Parishat will organise a State level convention exclusively for the members of legal fraternity under the auspices of the Parishat. Justice A. J. Sadashiva who presided over the function hoped that in the days of exhibitionism and showmanship the effort made by Lahari should not end up with this meet but continue to conduct such programmes for the benefit of one and all He was also of the view that Kannada could be used at all levels without merely proclaiming sympathy for the cause of Kannada. The function ended with a good musical treat by Swaralahari

Foundation laid

On 17.10.93 Justice S.B. Majmudar, Chief Justice of High Court of Karnataka, laid the foundation stone for the proposed Court Complex at Davanagere. The programme was presided over by Mr. Harnahalli Ramaswamy, the State Law Minister. Justice N.Y. Hanumanthappa, Justice R. Ramakrishna, State P.W D. Minister Mr. K H. Ranganath, M. Ps. Sri Channayya Wadeyar, K.R. Jayadevappa and a host of other dignitaries participated in the function.

Miscellany

- In the elections held on 22 10.93 to Karnataka Industrial Co-operative Bank, Bangalore, S. Srinivasa Murthy, Advocate, has been elected as Vice-president for three years term.
- Sri S. Gangadhara Aithal, Advocate, Bangalore collected Rs, 4501=65 as donations and remitted it to the Indian Express-Lok satta Marathwada Earthquake Relief Fund.
- With effect from 25.10.93 Mr. C. Ramakrishna, Advocate, shifted his chamber from No. 7/1, 19th Cross, Cubbonpet, Bangalore-2 to No 62, 1st Floor, Sanjeevappa Lane, Avenue Road Cross, Bangalore-2.

Senior Advocates

During October 1993 the High Court of Karnataka designated Sri T.R. Subbanna and Sri H. Subramhanya Jois as Senior Advocates.

News Focus

- On 16.10.93 a Legal Aid Camp was held at Bevur-Channapatna Taluk under the joint auspices of the Bangalore District Legal Aid Board and the V.V. Puram Law College, Bangalore. Shri. K.Krishnappa, Principal, V.V. Puram Law College presided. Prabhamurthy, Advocates Shiva Chandra Naik, J. Prakash & H B. Somapur from Bangalore explained to the villagers about the various facets of law.
- On 21.10 93 Sri B.V. Acharya, Advocate General, addressed the members of AAB (High Court Unit) on the topic "Cauvery Water Dispute."
- On 22.10.93 Mr. HT. Sangliana, Special Commissioner of Police, Bangalore, addressed the members of AAB on the topic "Co-ordination of Advocates and Police in Dispensation of Justice."

Advocate Suspended

Karnataka State Bar Council has ordered that H.V. Venkata-subbaiah, an Advocate from Bangalore (Roll No. KAR/289/74), be suspended for one year from practicing after finding him guilty of committing professional misconduct.

Obituary

- N T. Shekaregowda, who retired as the Joint Director of Prosecutions on the previous evening, passed away at Bangalore in the early hours of 1-10-93.
- On 4.10.93 B.S. Somasunder, Advocate, passed away at Bangalore.
- On 9.10.93 K.R. Shankara Sastry, Advocate, passed away at Bangalore.
- On 9 10.93 R.P. Hiremath, Advocate, passed away at Bangalore.

Islamic Courts in Offing

The 11th Session of Muslim Personal Law Board which ended on 10.10.93 at Jaipur has issued a statement that it would establish Islamic Courts in all States of the country apart from arranging to have Mobile Islamic Courts in rural areas to settle disputes in family matters. The statement appeals to all Muslims to refer their family disputes to these courts and abide by the decisions of such courts.

Appointment & Transfer of Judges Primacy to Judiciary

(continued from page 1)

The ringing denouement put for the first time on judicial record the "nepotism & favouritism" resulting in such judicial appointments based on caste, religion and other extraneous factors. He pointed out that many among the judiciary had been giving high flewn sermons which were hardly followed by the preachers.

Speaking on the basis of his 20 years at the Bar and 20 more at the Bench, the judge supported his Judgment on exclusion of the majority of Indians from judgeship with figures. The Judge also stated that a democratic policy is not for a "self perpetuating oligarchy" and this is the ground reality howsoever unpalatable.

ಲಿಟರರಿ ಯೂನಿಯ**ನ್**

- □ ತಾ. 1-10-93 ರಂದು ಜಾನಪಡೆ ಪ್ರಶಸ್ತಿ ವಿಜೀತರೂ ಹಾಗೂ ಹಿರಿಯ ನ್ಯಾಯವಾದಿಗಳೂ ಆದ ಶ್ರೀಕೆ.ಆರ್.ಲಿಂಗಪ್ಪ ನವರು "ಜನಪದ ಸಾಹಿತ್ಮ" ಎಂಬ ವಿಷಯ ದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.
- ್ ತಾ. 8-10-93 ರೆಂದು ಭಾರತೀಯ ರಸರ್ವ ಬ್ಯಾಂಕ್ ಕನ್ನಡ ಸಂಘದನರಿಂದ ಸುಗಮ ಸಂಗೀತ ಹಾಗೂ ಮುನರಂಜನಾ ಕಾರ್ಯಕ್ರಮವನ್ನು ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.
- □ ತಾ. 22-10-93 ರಂದು ಶ್ರೀ. ಎ೯. ಟ್ರಿ ಶ್ರೀನಿ ನಾಸ ಅಯ್ಯುಂಗಾರ್ ರವರು "ಭರತನ ಆದರ್ಶ ಭ್ರಾಕೃಪ್ರೇಮ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದ್ದು.
- □ ತಾ. 27-10-93 ರಂದು ಚರಿತ್ರ ಹೇ ಸ್ಥಳಗಳಾದ ಬೀಲೂರು, ಹಳೇ೩ೀಡು ಮತ್ತು ಶ್ರವಣದೆಳಗೊಳಗಳಿಗೆ ಪ್ರವಾಸವನ್ನು ಏರ್ಪ-ಡಸಲಾಗಿತ್ತು.