

Part 8

Laws grind the poor and richmen rule the law

—Goldsmith

Walk Out No Answer

There 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. However, the 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 decision 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 would 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 bulwark of conservative family values in the eyes of most of the world now has a divorce rate of one every three minutes 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 depositors. 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 which brings in its wake more cash and the need arise to buy more securities. Thus the buying & selling game of Government securities is a quodidian 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 independent organ. The increase in the proportion of government loans provided an opportune 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

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Article 356 - Scope of Judicial Review

Justice (Retd.) **M. Rama Jois**

This paper under the caption Scope of Judicial Review In Re-Art 356 of the Constitution of India was presented by the learned author in the recently held seminar under the aegis of Karnataka State Commission of Jurists at Bangalore. Considering the importance of the subject and the scholarly presentation of the issue the paper is published as a serial for the benefit of our readers.....Editor.

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, Indi, Bijapur; H M. Nanjunda Swamy, Tumkur; S. H. Hosagoudar, Kudupali, Dharwad; Rajendra Badamkar, Dharwad; K. S. Timmannachar, Bangalore; Shivanagappa K. K. Narayanapura, Dharwad; B.G.N. Somayaji, Jodumarg, Dakshina Kannada; G. Basavaraja, Chitradurga; R. B. Dharmagoudar, Assistant Public Prosecutor, Humnabad; G. V. Vijayakumar, Channarayapattana; Shivasharanappa, Chincholi; A. M. Nagaswamy, Ramnagar, Srikant Shimpri, Harihar; I. P. Bidari, Ranebennur; D. V. Patil, Kakole, Dharwad; D. K. Basalingappa, Hangal; M. Laxman Rao, Brahmapura, Gulbarga; 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; Uthas I. Balekundri, Belgaum; A.N. Pattan, A.P.P., Badami; S R. Thulsiram, 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 Advocate-authors 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, offered valuable suggestions regarding encouraging Advocate-Writers. 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 by 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 offered 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 offering

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

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his own suggestions. Sri S.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. Subramanya Jois as Senior Advocates.

News Focus

□ On 16.10.93 a Legal Aid Camp was held at Bevoor 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. Advocates Prabhamurthy, 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. H.T. 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. Venkatasubbaiah, 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 Cffing

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

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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 flown 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 ಯೂನಿಯನ್

□ ತಾ. 1-10-93 ರಂದು ಜಾನಪದ ಪ್ರಶಸ್ತಿ ವಿಜೇತರೂ ಹಾಗೂ ಹಿರಿಯ ನ್ಯಾಯನಾದಿಗಳೂ ಆದ ಶ್ರೀ ಕೆ. ಆರ್. ಲಿಂಗಪ್ಪ ನವರು "ಜನಪದ ಸಾಹಿತ್ಯ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

□ ತಾ. 8-10-93 ರಂದು ಭಾರತೀಯ ರಿಸರ್ವ್ ಬ್ಯಾಂಕ್ ಕನ್ನಡ ಸಂಘದವರಿಂದ ಸುಗಮ ಸಂಗೀತ ಹಾಗೂ ಮರಠಜನಾ ಕಾರ್ಯಕ್ರಮವನ್ನು ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.

□ ತಾ. 22-10-93 ರಂದು ಶ್ರೀ ಎ. ಬಿ. ಶ್ರೀನಿವಾಸ ಅಯ್ಯಂಗಾರ್ ರವರು "ಭರತನ ಆದರ್ಶ ಭಾಷ್ಯಪ್ರೇಮ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

□ ತಾ. 27-10-93 ರಂದು ಜರಿತಾ ಹ್ ಸ್ಥಳೀಯರಾದ ಬೇಲೂರು, ಹಳೇಬೀಡು ಮತ್ತು ಶ್ರವಣಬೆಳಗೊಳಗಳಿಗೆ ಪ್ರವಾಸವನ್ನು ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.