

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 7

November 1995

Part 8

## Judge Appointed

President of India has appointed Mr. H. N. Narayan as a Judge of the Karnataka High Court. Justice Narayan was sworn in on 9-11-95. It may be recalled that hitherto Justice Narayan was functioning as Addl. Judge in the High Court.

## State Award For Justice Venkatesh

Retired Justice N. D. Venkatesh has been among the forty persons selected to be conferred with the State Awards for the distinguished services rendered in their respective fields of activity. The Award was presented to Justice Venkatesh on Rajyotsava Day by the Chief Minister Sri H. D. Deve Gowda.

## Divorce Not a Sin

—Bishop Mar

Divorce by a Christian is not a sin but was more often a reflection of impossible marriage. Theologically there is nothing to prevent the Churches from declaring null any marriage which had lost its substance, i. e. love, declared Bishop Mar poulouze of the Church of the East. The Bishop was speaking at the inaugural session of a Seminar on "Laws governing Marriage and Divorce among Christians in India" organised by the Indian Federation of women Lawyers at Kochi on 11-11-95. Acting Chief Justice of the Kerala High Court Justice K. T. Thomas inaugurated the Seminar.

## Doctors Come Under C. P. Act

In a landmark Judgment delivered on 13-11-1995, the Supreme Court ruled that a scrutiny of the relevant provisions of the Consumer Protection Act shows that the Consumer Disputes' Redressal Agencies can entertain an application made by a patient and adjudicate upon complaints relating to deficiency in service rendered by Medical Practitioners and Hospitals. The Division Bench comprising Justices Kuldip Singh, S. C. Agarwal and B. L. Hansaria however held that service rendered free of charge by a Medical Practitioner attached to a Hospital/Nursing Home or a Medical Officer employed in a Hospital/Nursing Home will not be "Service" as defined under Section 2 (1) (o) of the Act and that the payment of a token amount for registration purpose only at the Hospitals/Nursing Home would not alter the position. The Court also further held that the service rendered at a government Hospital/Health Centre/Dispensary, where services are rendered on payment of charges and also rendered free of charges to other persons availing such services won't fall within the ambit of the expression "service" as defined in Section 2 (1) (o) of the Act irrespective of the fact that the service is rendered free of charges to persons who do not pay for such services and free service would also be 'service'; the recipient a "Consumer" under the Act.

By this Judgment the Apex

Court set aside the Judgment of the Madras High Court dated 17-2-94 whereunder a contrary view was taken and SLPs filed by certain Hospitals against the Judgment of Kerala High Court was dismissed. Judgment of the National Commission constituted under the C. P. Act was partially modified.

## Humour in Courts

☐ A Lawyer : Very glad, your junior colleague has been appointed as a Judicial Officer.

Other Lawyer : I am also glad since it is a good riddance to the Bar and a headache to the Bench!

☐ A Lawyer : I have become an independent Lawyer.

Other Lawyer : How come after so many decades in the Bar you are telling just now you have become Independent?

A Lawyer : Since I have no botheration now as all my junior colleagues have left my office!

## State Level Conference

Seventh Karnataka State Level Conference of Lawyers is scheduled to be held at Dharwad on 28th and 29th December 1995. Delegates fee is prescribed as Rs. 350/-.

## Appointment

Mr. J. Y. Martin, Advocate, has been appointed as the Administrator General for a period of one year.

## Miscellany

☐ Mr. S. Srinivasa Murthy, Advocate, has been elected as the Vice-President of the Karnataka Industrial Co-operative Bank Ltd., for the year 1995-96 for a third consecutive term.

☐ In the recently held elections Mr. G. R. Shiva Kumar, Advocate was unanimously elected as the Honorary Secretary of Divya Jyothi Credit Co-operative Society Ltd., 2nd Block, Jayanagar, Bangalore-11.

☐ Mr. Y. K. Seshagiri Rao and Mr. M. G. Srinivas, Advocates and Former colleagues of late M. Ranga Rao, have donated Rs. 25000/- to AAB for the purpose of periodically holding endowment lectures in memory of late M. Ranga Rao.

☐ 26-10-95 Prof. M. G. Srinivas, Advocate delivered a lecture in the Indian Institute of World Culture on the topic "Law and Ethnicity".

Sri Sathya Sai

Sai Ram

Lawyer devotees of Bhagavan Sathya Sai join millions in rejoicing the 70th Birth Day Celebrations of Baba and his service to humanity.



Obey the law, whoever you be that made the law.  
—Pittacus

## Hoopla About Vasudevan's Case

Sentencing of the Karnataka IAS Officer J. Vasudevan by the Supreme Court in a Contempt proceeding generated a lot of public attention throughout the country. But the stand taken by the State government regarding one of its officers being sent to jail cannot be said to be based on proper advice. The reaction of the Chief Minister and that of the Law Minister representing the State government was one of an ad hoc response to a unparalleled situation. It was apparent that they were more political in their approach rather than sagacious statesmen. Their anxiety to ward off embarrassment to the government was understandable but not the remedies pursued by them.

Apart from approaching the President of India, the Prime Minister and the Union Minister for Law and other Ministers seeking the Presidential interference purportedly under Article 72 of the Constitution was the immediate reaction of the Chief Minister. The fact that the President did not choose to act upon such a plea should be construed as sufficient rebuff to the State government. Meeting of the Chief Justice of India by the Chief Minister of the State just before the Review Petition filed by the State government came up for consideration cannot but be described as a direct attempt by the Chief Minister to over reach the highest judicial functionary of the land. Dismissal of the Review Petition of the State government as one without locus standi speaks volumes about the immature nature of the Review Petition. The State government has obviously spent a lot of the scanty resources of its perceived defence of the Contemner as if it is not accountable to the tax payer. The Chief Minister

owes an explanation to the people of Karnataka as to Vasudevan's case.

The speeches made on the floor of the State Legislature, particularly by the Treasury Benches, perse, would have attracted contempt action if only such speeches were to be made outside the Legislature. The fact that the ministers and Legislators enjoy privileges seems to have prompted them to have made speeches castigating the severity of the sentence by the Supreme Court and holding the Officer concerned as guilty. The tenor of the speeches indicate that the State government was not happy that the Apex Court found "a honest and a sincere senior IAS Officer" guilty of contempt. The Ministers seem to have forgotten the fact that all government officials are expected to be honest and sincere in discharging their duties. So what is special about the Ministers mentioning that the Officer concerned was honest and sincere? As regards his seniority it is quite evident that he joined the government service at early point of time and with the efflux of time he would attain seniority over his junior colleagues. Surprisingly the State government failed to have a word of sympathy for Mr. T. R. Dhananjaya, the BCC Engineer, who had to battle out for 18 years to secure his posting. The State government also miserably failed to fix up the responsibility of the concerned who was ultimately responsible for this sorry state of affairs.

The bluff played by the State government was exposed by the Apex Court when Mr. P. R. Rao the Counsel for Mr. J. Vasudevan in his Review

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## A Constitutional Faux Pas ?

C. B. Srinivasan, Advocate

(continued from last issue)

Also, the Supreme Court appears to have lost sight of the fact that the suspension of the right to practice a profession is a deprivation of the right to livelihood. That right is held to be a right to life which is a fundamental right under Art. 21. Therefore, the decision of the Supreme Court to impose a penalty of a suspension from practice has clearly the effect of a direct brush with a fundamental right. If at all, it was the rule enunciated by the Supreme Court in the case of A. R. Antulay-V/s. R.S. Nayak AIR 1988 SC 1531 that deserved itself to be commended for acceptance. A suspension from practice for three years is clearly killing the goose that laid the golden eggs. The fact that even the imposition of such a penalty had been made without trial adds poignance to its severity. In Antulay's case, his appeal was accepted by the Supreme Court. It held that the effect was to blow off, by a side wind as it were, a number of earlier decisions of different benches of the Supreme Court, binding inter parties, rendered at various stages of the criminal trial. It included the setting aside of three judgments of five judge benches of the Supreme Court. It set at naught all the proceedings taken over the years before the three successive judges of the High Court and in which already 57 witnesses had been examined for the prosecution. The Court did not hesitate to do so to avoid a gross miscarriage of justice. In the case of Vinay Chandra Mishra, however the power under Art. 142 has been used in reverse gear. There has been a victimisation of two essential principles enunciated by the Supreme Court all along. The one was that to shield an onslaught against a fundamental right it was permissible to

knock at the base of the prosecution and such other evil effects even at an advanced stage. The second principle was that the power under Art. 142 would be available for its exercise to alleviate and soothen the evil effects of an unfortunate malady.

### The Rhetoric Questions :

The Supreme Court has felt inclined to invoke its power under Art. 142 of Constitution of India to uphold the majesty of the law and of the administration of justice. It has quoted with approval the statement of the Supreme Court in the case of Harbans Singh - V/s. - State of U. P. AIR 1982 SC 849 where it was said that the court retained the inherent power and jurisdiction for dealing with an extraordinary situation in the larger interest of administration of justice and preventing manifest injustice being done. The power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. It is a tragedy of sorts that under such declarations vouchered, the judgment in the case of Vinay Chandra Mishra has given occasion for a number of rhetoric questions.

- 1- Does the majesty of the law lie in exercising restraint and exhibiting compassion? or Does the majesty of the law lie in making manifest, a naked brute force?
2. Is not suspension of practice an axe at the right to life? or Does rubbing salt to the wound afford a measure of legal therapy?
3. If Antulay's prosecution be quashed because of an error of a five judge bench of the Supreme Court can Vinay Chandra Mishra suffer penalty without prosecution? (to be continued)



## Judiciary and Speedy Justice

Justice M. F. Saldanha

(continued from last issue)

The Indian judiciary has of late come in for sharp criticism because of the manner in which the system has been functioning. This country has seen some outstanding Judges and a large number of them have contributed to the field of legal thought and reform ideas that have been not only nationally but internationally applauded. The real malady lies in the fact that the system is working under immense pressure and is close to a breakdown. The complexities of cases that come up for decision before the Court has not only varied but multiplied at least 25 times over in the last 40 years not to mention the volume of litigations that has grown by as much as 150 times. As against this there has not even been a 10% increase in the strength of the judiciary at all levels. This is the real crux of the problem though the antiquated procedures and the general reluctance on the part of both the Bench and the Bar to function with any degree of expediency are contributory factors to the extreme sluggishness that is evident in the working of the system. Nothing could have provided a greater set back than the recent experiment of transferring Judges from one State to another. The exercise of transferring Chief Justices has been a total and complete failure and an unmitigated disaster and ought to have been discontinued the moment this was evident. Instead, approximately 1/3rd of the total strength of High Court Judges in this country have been transferred from one State to another. It has achieved nothing positive except that all these 90 odd Judges have been harassed and humiliated and the entire Judicial community completely demoralised in

the process. Undoubtedly, the Constitution makes provision for transfer of Judges and there has been a few instances when such a power has to be exercised either because the Judge himself asked for it or for some very valid and genuine reason. Mass transfers of Judges has slowed down the disposal rate of cases in the High Courts by 50% in the course of the last one year, not to mention the problems created to the litigants and the bar when a case is placed before a Judge who is unfamiliar with laws and conditions prevailing in that part of the country but more importantly where an important case is placed before a Judge who is completely handicapped because vital documents and the record are in the regional language of which he knows nothing. The expenditure and time involved in translations has almost brought the system close to a grinding halt not to mention the gross injustice that is done to the litigant and his lawyer only because the Judge cannot grant a relief without scrutinising the record and the proceeding becomes infructuous by the time it is transferred elsewhere or translations are produced. The insecurity, the threat of transfer and the pressure under which Judges are now required to function inevitably takes a heavy toll when it comes to the quality and quantity of their work output. Apart from the immediate and immense damage that has already been done, the long term effects are simply disastrous. More importantly, whereas hitherto it was extremely difficult to persuade the better class of lawyers to join the judiciary; after the implementation of the Judges' transfer policy that source has completely evaporated.

(to be continued)

## Around The Courts

□ Section 3 (f) [vi] of the Land Acquisition Act, 1894 r/w The Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Act. No. 17 of 61):

There is no inconsistency between the provisions of Act No. 17/61 providing for substituting clause f in the original Act and Section 3 (f) (vi) of the Land Acquisition Act, 1961. Acquisition of Land for public purpose for a society is valid.

In W. P. No. 28707/95 we are not able to find out any prior approval of the government as contemplated under Section 3 (f) (vi) of the Land Acquisition Act. We have no other option but to hold that this itself is enough to vitiate the whole acquisition proceedings and render the same as invalid so far as the lands pertaining to the Petitioner in W. P. No. 28707/95 are concerned.

Even though we have accepted the contention of Mr. A. K. Subbaiah, the learned counsel, in law, the writ petition has to fail on the ground of laches, delay and conduct of the petitioner. We are not inclined to exercise our discretionary jurisdiction in favour of the petitioner.

Article 226-Writ against a Co-operative Society:

We have gone through the applications of the Judges who have become members of the Society. There is no column at all in the application form asking whether he (member) or any member of his family owns a site or house in Bangalore City. At the same time it is to be noted that such a column appears in the case of the application forms given to the members of sub-ordinate judiciary and there is a declaration to be furnished. It is true two sets of

application forms are used. As such the allegations that Judges of the High Court and the Supreme Court (sitting, transferred and retired) have given false declaration is absolutely baseless and it has been made in a reckless manner by the petitioners concerned.

A reading of clause 7 of the Bye-Laws in our view, by no stretch of imagination can include the Judges of the High Court or Supreme Court (sitting, transferred and retired). Even assuming for a moment that certain Judges have been allowed to become members of the Society it may be an irregularity in the conduct of the business of the Society. It is settled law that even though the allotment is made contrary to the Bye-Laws this Court cannot exercise jurisdiction under Article 226 as no writ will lie against a Co-operative Society.

(W.P. Nos. 35837/94, 11211/95 and 28707/95 D.D. 12-10-95 Subrameni and others Vs. Union of India and others)

### Delegation of AAB Called on the CM

A delegation of Advocates Association, Bangalore under the leadership of the General Secretary Mr. K. N. Putte Gowda called on the Chief Minister on 19-10-95 and appraised the latter about the problems faced by Advocates. Mr. M. C. Nanaiah, State Minister for Law and Parliamentary Affairs also participated in the meeting. The topics discussed with the CM included the early commencement of Advocates' Association Building, revival of Advocates' Welfare Fund, provision of Law Chambers, shifting of CAT/KAT to old KGID Building and other aspects.



## News Focus

□ On 19-10-95 a Seminar on the Karnataka Land Reforms (Bill), 1995 was held under the auspicious of AAB in the High Court Unit. Justice D. M. Chandrashekar, Former Chief Justice of Allahabad High Court inaugurated the Seminar. Former Minister K. H. Ranganath, Advocates L. G. Havanur and Ko. Chennabasappa were the Speakers at the Seminar.

□ On 20-10-95 Mr. P. S. Devadas, Advocate, unveiled the photograph of the Advocate late S. Raja Iyengar in AAB Magistrate's Court Unit.

□ On 26-10-95 some delegates to International Commission of Jurists held at Bangalore visited the High Court Unit of AAB and exchanged views with the Lawyers.

□ On 27-10-95 a meeting on the theme "Uniform Civil Code" was held at City Unit under the joint auspicious of Joint Women's programme, Advocates' Association, Bangalore and Indian Federation of Women Lawyers. Justice M. F. Saldanha inaugurated the meeting and delivered key note address. Mrs. Jyotsna Chatterji, Chairperson of Joint Women's programme and Mr. K. N. Subba Reddy, President AAB also spoke on the occasion.

□ On 30-10-95 Mr. T. N. Seshan, the Chief Election Commissioner, addressed the members of AAB in the City Unit on the topic "Criminalisation of politics".

□ On 3-11-95 Mr. Sitaram Yechury, Former President of Student's Federation of India, addressed the members of AAB in the City Unit on the topic "Criminalisation of Politics".

□ On 4-11-95 a symposium on the "Amendment to Karnataka Land Reforms Act" was held by the AAB in the City Unit. Former Ministers L. G. Havanur and K. H. Ranganath spoke on the occasion.

□ On 9-11-95 Mr. Ganesh Vikatan gave a mimicry performance in the AAB Auditorium.

□ On 10-11-95 Advocates in Bangalore abstained from attending Courts during the morning session in support of certain demands.

### Hoopla About Vasudevan's Case

(continued from page 2)

Petition was questioned by the Bench to name the Cabinet Minister who was responsible for the lapse if his contention was that the petitioner was innocent and he was only a scape goat. Therefore the State government cannot go on contending that Mr. Vasudevan was innocent without owning its own responsibility regarding denial of posting for Mr. T. R. Dhananjaya despite the Apex Court's order to that effect. It is time that the hoopla about Vasudevan's case is stopped and the State government behaves in a responsible manner.

### ರಾಜ್ಯೋತ್ಸವ

○ ತಾ|| 7-11-95 ರಂದು ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವದ ಅಂಗವಾಗಿ ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ಆಶ್ರಯದಲ್ಲಿ ಶ್ರೀ ಡಿ. ನಾರಾಯಣ ಸ್ವಾಮಿ ಹಾಗೂ ಯಶವಂತ ಹಳಬಂಡಿ ಸಂಗಡಿಗರಿಂದ ಜಾನಪದ ಮತ್ತು ಸುಗಮ ಸಂಗೀತ ಕಾರ್ಯಕ್ರಮ ನೆರವೇರಿತು.

### ಲಿಟರರಿ ಯೂನಿಯನ್

○ ಲಿಟರರಿ ಯೂನಿಯನ್ ವತಿಯಿಂದ ಪ್ರಕಾಶನವಾಗುವ ಹೊಸ ಕನ್ನಡ ವರಸ ಪತ್ರಿಕೆ "ವಕೀಲ ನಿೂತ್ರ" ಈ ತಿಂಗಳಲ್ಲಿ ಓದುಗರ ಕೈ ಸೇರಲಿದೆ.

○ ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವದ ಅಂಗವಾಗಿ ಏರ್ಪಡಿಸಿದ್ದ ವಿವಿಧ ಸ್ಪರ್ಧೆಗಳಲ್ಲಿ ಕೆಳಕಂಡ ವಕೀಲರು ಬಹುಮಾನ ಪಡೆದರು.

ಕನ್ನಡ ಚಲನ ಚಿತ್ರಗೀತೆ : 1. ತೇಜಸ್ವಿನಿ 2. ಬಿ. ಆರ್. ದೀಪಕ್ 3. ನಾಗರತ್ನ (ಸಮಾಧಾನಕರ) : ದಿವಾಕರ ಮದ್ದೂರು ಮತ್ತು ಭಾರತೀ ಭಟ್.

ಭಕ್ತಿಗೀತೆ : 1. ಭಾರತೀ ಭಟ್ 2. ಪಂಕಜ ಮಣಿ 3. ನರೇಂದ್ರ ಬಾಳಿಗ, (ಸಮಾಧಾನಕರ) : ತೇಜಸ್ವಿನಿ.

ಭಾವಗೀತೆ : 1. ಆರ್. ಯತೀಶ್ ಕುಮಾರ್, 2. ನಾಗರತ್ನ, 3. ತೇಜಸ್ವಿನಿ (ಸಮಾಧಾನಕರ) : ಭಾರತೀ ಭಟ್

ಜಾನಪದ ಗೀತೆ : 1. ದಿವಾಕರ ಮದ್ದೂರು 2. ಸುಬ್ರಹ್ಮಣ್ಯ ಭಟ್, 3. ತೇಜಸ್ವಿನಿ, (ಸಮಾಧಾನಕರ) : ಭಾರತೀ ಭಟ್

ಆಶಂಭಾಷಣ : 1. ಡಿ. ಹೆಚ್. ಮೊಕಾಶಿ, 2. ವಿ. ಮಂಜುನಾಥ್, 3. ಜಿ. ಎಸ್. ನಟರಾಜ್, (ಸಮಾಧಾನಕರ : ಪುಟ್ಟ ಸಿದ್ದಪ್ಪ.

ಏಕ ಪಾಶ್ವಾಭಿನಯ : 1. ಡಿ. ಹೆಚ್. ಮೊಕಾಶಿ, 2. ಕೆ. ಎಂ. ನಾಗರಾಜ, 3. ಎಂ. ಎನ್. ರವಿಕಂಠ. (ಸಮಾಧಾನಕರ : ಆರ್. ಟಿ. ಕೃಷ್ಣ ಮೂರ್ತಿ.

ಸಮೂಹ ಗೀತೆ : 1. ಜಯಲಕ್ಷ್ಮಿ ಹಾಗೂ ವೃಂದಾವರಂ, 2. ರಾಧಾನಂದನ ಮತ್ತು ವೃಂದಾವರಂ.

ಅಣಕು ಸ್ಪರ್ಧೆ : 1. ಕೆ. ಎಂ. ಬಸವ-ರಾಜು, 2. ಡಿ. ಹೆಚ್. ಮೊಕಾಶಿ, 3. ಟಿ. ಗುರುಮೂರ್ತಿ.

ಕನ್ನಡ ಚಿತ್ರಗೀತೆಗಳ ಪ್ರಥಮಾಕ್ಷರ :

1. ತೇಜಸ್ವಿನಿ, 2. ಬಿ. ಆರ್. ದೀಪಕ್ 3. ಗೋಪಾಲ ಸ್ವಾಮಿ.

### ತುಣುಕು

ಶಾಸಕಾಂಗ 'ಉಪು'

ಕಾರ್ಯಾಂಗ 'ಸಿಹಿ'

ಎಂದರು ಸಚಿವೋತ್ತಮರು

ಇವರಿಗೆ ಬೇಕ ಸ್ವಲ್ಪ ನ್ಯಾಯಾಂಗದ

'ಖಾರ'

ಎಂದರು ಸಭಿಕರೊಬ್ಬರು.

—ಹಾ. ರಾ.

### Need to Educate Lawyers and Judges

The recently concluded three days' seminar of the International Commission of Jurists in Bangalore felt that there was a need to create awareness among Judges and Lawyers about their role in realisation of economic, social & cultural rights of the people. The participants in the seminar agreed that an action plan should be chalked out as to make the Jurists a greater contribution towards the goal of achieving those rights. About eighty foreign delegates and a few Indian delegates participated in the Conference.

### Seize the Opportunity

One vacancy is available in the office of Mr. S. Basavaraj, Advocate, No. 40, 2nd Floor, A. S. Char Street, Bangalore-53. Phone : 2203171.

Newly enrolled Advocates may apply.

### Vacancies Available

Two vacancies are available in Advocate's Office. Lawyers with two years experience and ability to independently draft may apply to Mr. P. A. Kulkarni, Advocate, No. 47, 57th 'A' Cross, IV Block, Rajajinagar, Bangalore-10. Ph : 3304331.

### Opportunity Available

One vacancy is available in Advocate's Office. Lawyers wellversed with Court procedure and serious in profession may apply to Mr. K. V. Bhuvanendra, Advocate No. 406, Commerce House, Cunningham Road, Bangalore-560 052. Phone : 2202016.