

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 9

Laws Concerning Women Need Modification

—Justice Sujata Manohar

The first ever Karnataka State Lady Lawyers' Conference was recently held on 3rd and 4th December, 1994 at Dr. Mallikarjun Mansur Kalabhavan, Dharwad. The Conference was co-sponsored by the Dharwad District Lady Lawyers Forum in co-operation with the Karnataka State Bar Council and Dharwad Bar Association. Hon'ble Justice Ms. Sujata Manohar, Judge, Supreme Court of India inaugurated the Conference.

In her inaugural speech Justice Sujata Manohar opined that suitable modifications are required to the existing laws with a view to usher in social justice and providing equal rights in favour of women both in respect of social and economic disparities. She also expressed anxiety over the increasing atrocities on women. Her Lordship said that in the light of changes in the values of society a re-look at the existing laws has become imminent.

Justice G. T. Nanavati, the Chief Justice of the High Court of Karnataka who presided over the inaugural function called upon the conference to deliberate and recommend suitable changes which may be essential in the implementation of laws applicable to women. Sri B. V. Acharya, the Advocate General, who delivered the key note address felt that even though the Constitution provides for protection of rights of women the same has not been implemented properly on account of which the intention of the Constitution has not been

achieved. He suggested that on the lines of reservation of seats for women in the local bodies similar reservations should be provided in State and Central Legislatures apart from providing such reservation in Judiciary and other prominent wings.

Smt. Savitri Mahishi, President of the Conference Committee and Sri T. S. Kwatihalli, President of Dharwad Bar Association welcomed the participants. Chairman of the State Bar Council Sri S. T. Patil released the souvenir, Parliament member Sri D. K. Naikar and District Judge Sri K. Sridhara Rao and Smt. G. T. Nanavati were on the dias. In the end Smt. Mahananda Mudanagudi, Vice President, Dharwad District Lady Lawyers Forum, proposed vote of thanks.

Valedictory

Justices V. S. Malimath, member of the National Human Rights Commission, who delivered the Valedictory address called upon the women to effectively organise themselves in the light of increasing number of cases of atrocities on women. While Calling upon the women to acquire more and more Knowledge of laws Justice Malimath felt that lady lawyers must strive in this direction. Member of parliament Sri D.K. Naikar presided over the function. State Textiles Minister Sri H.K. patil, Rajya Sabha member Prof. I.G. Sanadl, Smt. Pramila Nesargi,

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Kania heads Law Commission

Government has Constituted the 14th Law Commission under the Chairmanship of the former Chief Justice of India Justice M. H. Kania. He succeeds Justice K.N. Singh whose term as the Chairman of the 13th Law Commission recently expired.

Retired Judge of the Delhi High Court Justice Rameshwar Lal Gupte, former president of the Income Tax Appellate Tribunal Mr. C.G. Krishnamurthy and research professor at the Indian Law Institute Prof. Alice Jacob have been appointed as full time members of the Commission.

HC get new Judges

District Judges Mr. M. B. Vishwanath, Mr. C. N. Aswathnarayana Rao and Mr. B. padmaraj have been elevated and appointed as the Judges of Karnataka High Court. District Judge Mr. H. N. Narayan has been appointed as an Additional Judge of the High Court. They were sworn in on 30-11-94 by the Chief Justice of the High Court.

Boycott Unconstitutional

By a Judgment delivered on 11-12-94 a Bangladeshi High Court has held that continued boycott of parliament by the three main opposition parties of the country as unconstitutional and therefore directed the leaders of those parties to attend the parliament during its next session. The opposition parties have Challenged this order before the Supreme Court of the Country and the impugned order has been stayed till 15th January 1995.

Campus Watch

□ On 25-10-94 Justice R.V. Raveendran inaugurated the cultural activities of the student's Association of BMS Law College. Sri Y. Ramachandra, Chairman of the BMS Education Trust presided. On this occasion medals were distributed for the students who secured highest marks in Hindu Law in memory of Advocate late Balasubramanyam. V. Shiva kumar of Vivekananda Law College, Bangalore secured gold medal; B.N. Gururaj of BMS College of law, Bangalore got silver medal, while B. Sundaravelu of Vidyavardhaka Law College, Mysore secured consolation prize.

□ In the first ever Karnataka State Moot Court Competition, 1994 organised by the NLSIU the National Law School team was adjudged as the best participating team. Vaikunta Baliga Law College team from Udupi secured second prize while Vivekananda Law College team from Bangalore got third prize. In the individual performance Ashish Ahuja of NLSIU; Sanjay Bavikatte of NLSIU and Ms. Ashwini of ULC, Bangalore, were declared as the first, second and third best speakers of the Competition.

□ Dr. N.R. Madava Menon, Director, NLSIU attended the UNESCO Regional expert Committee Meeting on Copy Right Law, as an Indian representative, held at Bangkok from 27th to 30th November 94. Among other things the meeting deliberated on a programme of action regarding teaching, research and training on Copy Right Law.

Doubt grows with Knowledge

—Goethe

Article 356 - Scope of Judicial ReviewJustice (Retd.) **M. Rama Jois**

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democratic values enshrined in our Constitution.

Thus far and no further

The recent stir by Delhi lawyers demanding action against a member of Lawyers Fraternity, a lady lawyer, for her alleged behaviour which is not conducive to uphold the dignity of the profession raises several questions of importance concerning the social/personal behaviour of a member belonging to our profession. The Lawyer concerned has reportedly allowed the photograph of her breast being published on the cover of a popular magazine and thereby caused concern among the Delhi Lawyers. The latter feel that her action in so doing has not only lowered the status of the profession in the esteem of the public apart from it being an act of professional misconduct.

Whether the action of the Lawyer constitute "professional misconduct" is a debatable question. The conduct of a Lawyer in his/her personal capacity which has nothing to do with the discharge of professional obligations does not ipso facto constitute professional misconduct — a section of the Lawyers argue. Besides the question of personal liberty of a citizen, notwithstanding that she belongs to Lawyers profession, is also involved according to them.

One cannot ignore the fact that personal behaviours have not remained universal or for that matter same throughout, even in the context of any given society. Fashion, which is undoubtedly part of human conduct, which is basically the foundation which results in behavioural changes is undoubtedly changing in terms of the progress of civilization and lapse of time. A few years ago an Indian would not have hoped that Indian women would participate in beauty pageants that too in a successful manner which of course involve a

certain set of social behaviour. A lot of liberalism has crept in our behavioural pattern when we accept these pageants as a point of fact.

It is further argued that in all cases of professional misconduct the Bar Associations do not promptly act. In such a situation why should a lone case of this nature be the cause for Lawyers agitation? Is it on account male chauvinism? the supporters of the lady Lawyer query. It is not to say that there are no equally vehement arguments opposing the personal behaviour of the lady Lawyer. Most important among them being that the Lawyers being members of an elite profession are expected to maintain certain standards of public behaviour which can hold them in high esteem by other sections of the society. No doubt the members of the Bar are not united in their perceptions in this regard and they are divided equally vehemently both for and against the conduct of the Lawyer concerned.

Be that as it may, the one important question which may concern all of us is that whether the Bar Association should take up cudgels against a member of the profession for his/her personal behaviour not resulting in professional misconduct as understood in the conventional sense? When we talk of professional misconduct obviously it has no reference to the moral aspect of human behaviour and the concept will have to be understood in a purely technical sense. Assuming that a section of the Lawyers want to register their protest against the episode on the ground that the action of the Lawyer concerned belittles the profession in public esteem

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5. 6-8-08 "To make the remedy of judicial review, on the mala fides a little more meaningful, it should be provided through an appropriate amendment that notwithstanding anything in clause (2) of Article 74, of the Constitution, the material facts and grounds on which Article 356 (1) is invoked should be made an integral part of the proclamation under that Article.

But nothing has been done in implementation of the recommendation.

The repeated exercise of power conferred under Article 356, cutting short the tenure of office of a political party elected to rule the State for five years by the Central Government had been causing great concern about the safety of our democracy. It ruins our economy in view of enormous expenditure incurred for frequent elections, creates tension and destroys feeling of fraternity and adversely affects the unity and integrity of the Nation. Instead of ensuring political justice to the people which is one of the objects of the Constitution as enshrined in the preamble, it denies it. Therefore we as responsible citizens can ignore these actions only at our peril. We should remember that eternal vigilance is the price which people have to pay to protect democracy, which has been reiterated by Justice Hegde and Mukherjee, JJ., in the case of KESHAVANANDA BHARATHI A.I.R. 1973 S.C. 1461 at 1629 Thus:-

"Human freedoms are lost gradually and imperceptibly and their destruction is generally followed by authoritarian rule. That is what history has taught us. Struggle between liberty and power is eternal. Vigilance is the price that we like other democratic society have to pay to safeguard the

Therefore in the interest of the future of our Nation certain safety measures against the abuse of power under Article 356 should be incorporated. They are :-

(1) Power under Article 356 (1) should be allowed to be invoked only when there is Persistent default on the part of the State Government, in carrying on the Government in accordance with the provisions of the Constitution.

(2) For approval, of the proclamation the same majority as prescribed in Article 368, for amendment of Constitution should be imposed, as has been done by inserting clause (b) into Article 352.

(3) Specific provisions should be incorporated in Article 356 to the effect that assembly can only be kept in suspended animation by the President, leaving scope for revival in the event of proclamation not being approved by the Parliament with two thirds majority.

(4) In the event of non approval of the proclamation by the parliament or if the proclamation is held invalid by the Supreme Court, Government shall stand reinstated as if no proclamation was issued.

(5) Right to appeal against the proclamation should be provided for to the Supreme Court with the condition that it could be filed within 30 days from the date of proclamation and if so filed it shall be heard by a Constitution bench or a Larger bench, and that such appeal shall be heard and disposed of within a period of three months from the date of filing of appeal.

(6) The Government should be required to produce all documents and records pertaining

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Artical 356-Scope of Judicial Review

(continued from page 2)

to the issue of proclamation before the Supreme Court notwithstanding any thing contained in Article 74 (2).

(7) If the proclamation is not challenged before the Court or challenged and upheld election should be held within six months from the date of proclamation.

Democratic spirit is inherent in our ancient Constitutional system which is our great heritage. Even when the Governmental system headed by a king had been provided for, under Rajadharma—the Constitutional law of ancient India, the Rajadharma laid down that King (Raja) should carry on the administration of the State according to the wishes of the people (Praja). This idealism which holds good for democratic system of Government has been beautifully summed up by Kautilya in his Arthashastra written in or about 300 B.C. Its English Version reads :

"In the happiness of the Subjects lies the happiness of the Ruler. In their welfare his welfare. Whatever pleases him is not good whatever pleases the people alone is good."

Let this ideal which is also the ideal of our Constitution guide the executive and legislature at least hereafter. If they fail to do so, the Judiciary has not only power but is a so under a duty to intervene and annual a proclamation which is not sanctioned by article 356.

(concluded)

Book Released

On 6-12-94 under the auspices of AAB Justice M. F. Saldanha released the books on the Motor Vehicles Amendment Act, 1994 written in English & Kannada. The books written by Mr. V. Markande Gowda, Advocate, is moderately priced at Rs. 15/-.

Thus far and no further

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they are free to do so by discussion, deliberation and passing of a resolution. However this cannot be a justifiable cause for the Bar Association to continuously agitate over the matter and or demand stern action against the lawyer. In matters of personal behaviour the professional bodies may not be competent to set standards or for that matter presume such standards of behaviour when the statute does not lay down such standards. Ultimately it is the personal conscience of the individual concerned which accounts for a certain behaviour but not an external pressure which can mould such behaviour.

ಲಿಟರರಿ ಯೂನಿಯನ್

□ ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘ, ಬೆಂಗಳೂರು ಲಿಟರರಿ ಯೂನಿಯನ್ ಮತ್ತು ಬೆಂಗಳೂರು ವಕೀಲರ ಸಹಕಾರ ಸಂಘ (ನಿ.) ಇವುಗಳ ಸಂಯುಕ್ತ ಆಶ್ರಯದಲ್ಲಿ ತಾರೀಖು 28 ಮತ್ತು 29ನೇ ನವೆಂಬರ್ 1994 ರಂದು ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವವನ್ನು ಆಯೋಜಿಸಲಾಯಿತು. ಇದರ ಅಂಗವಾಗಿ ತಾ|| 28-11-94 ರಂದು ಒಂದು ಕವಿ ಗೋಷ್ಠಿಯನ್ನು ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. ಪ್ರಾ|| ಸಾ. ಶಿ. ಮರುಳಯ್ಯನವರು ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿದ್ದ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ನ್ಯಾಯಮೂರ್ತಿ ಶ್ರೀ ಎ. ಜಿ. ಸದಾಶಿವರವರು ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು. ತಾ|| 29-11-94 ರಂದು ಸುಗಮ ಸಂಗೀತ ಮತ್ತು ಬಹುಮಾನ ವಿತರಣಾ ಸಮಾರಂಭ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿ ಪ್ರೊ|| ಎಲ್. ಎಸ್. ಶೇಷಗಿರಿರಾವ್ ರವರು ಆಗಮಿಸಿದ್ದರು. ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ನ್ಯಾಯಮೂರ್ತಿ ಶ್ರೀ ಎಂ. ಎಂ. ವಿ.ಧೇಯವರು ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು. ಬೆಂಗಳೂರು ವಕೀಲರ ಸಹಕಾರ ಸಂಘದ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ವೈ. ವಾಸುದೇವ ರವರು ಬಹುಮಾನ ವಿತರಣೆ ಮಾಡಿದರು.

ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವ

ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ನೌಕರರ ಸಂಘದ ಆಶ್ರಯದಲ್ಲಿ ನವೆಂಬರ್ ಎರಡನೇ ವಾರದಲ್ಲಿ ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವ (4ನೇ ಪುಟ ನೋಡಿ)

Stir by Delhi Lawyers

Third week of November 94 witnessed an unusual stir by Delhi Lawyers demanding action against a fellow Lawyer viz. Ms. Anjali Kapoor. The Delhi Bar Association has itself taken upon the cause of the Lawyers against Ms. Kapoor. According to reports the lady Lawyer who hails from Chandigarh has not even enrolled in Delhi and she has infact enrolled at the Bar Council of Punjab and Haryana. The cause for the stir is also unusual in as much as it concerns the personal attitude of the lady Lawyer. According to the Delhi Bar Council sources the lady Lawyer's action in giving her semi-nude photograph to be published on the cover of a fantasy megzine "Debonair" has resulted in belittling the image of Lawyers in public.

Humour in Courts

□ Amidst the trial of a case the Judge noticed a young man kept on moving in the visitors gallery, lifting chairs and looking under them.

"Young man" the Judge called out "you are making a great deal of noise, what are you about?" "Your Honour" replied the young man "I have lost my overcoat and I am trying to find it."

"Well" said the Judge "persons often lose the whole SUITS here, without making all that disturbance."

courtesy:S.Ratnamala,Advocate

□ "Why were you speeding Madam?" asked the traffic cop.

"Well Officer," came the reply, "my brakes are bad and wanted to I get home before I had an accident."

courtesy:K.R.Dinakar, Advocate

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Around the Courts

□ West Bengal Animal Slaughter Act, 1950-Section 12 :

Recently the Supreme Court held that "Slaughtering of healthy cows on Bakrid day is not essential or required for religious purpose of Muslims." The Court ruled that it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merits on Bakrid. The sixteen page Judgment held that "In our view the decision rendered by the Division Bench of Calcutta High Court under Appeal is unexceptionable and calls for no interference."

Dismissing the Appeals of the West Bengal Government and some Muslim Organisations the Division Bench of Justices Kuldipsingh, B.L. Hansaria and S. B. Majmudar referred to an earlier decision of the Constitution Bench wherein it was observed that "Total ban on cow slaughter did not offend Article 25 (1) of the Constitution."

Twenty seven persons representing the Hindu segment of society had filed a public interest litigation challenging the validity of exemption of slaughter of scheduled animal viz, cows from the operation of the West Bengal Animal Slaughter Act, 1950 on the Bakrid day. The petitioners had contended before the High Court that the West Bengal Government had wrongly invoked Section 12 of the Act by allowing the slaughter of healthy cows on Bakrid for religious purposes of the Muslim Community. A Division Bench of the Calcutta High Court on 20-8-82 had held that the slaughter of cows by members of the Muslim Community on Bakrid day was not a religious requirement and as such the exemption granted by the West Bengal Government was outside the scope of Section 12 of the Act.

Laws Concerning Women Need Modification

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Advocate, addressed the session. President of the District Lady Lawyers Forum Smt. Kusuma Mantur welcomed the participants.

Six working papers on "Equality before Law and How far it is achieved," "Landmark Judicial Decisions on Marriage, Adoption Succession etc., which affects the status of women," "problems in implementation of Civil laws," "problems in implementation of criminal laws," "problems of Women in Legal profession" and "Women and Legal Education" were presented during the subjects session.

The Conference adopted a number of resolutions and they include (a) Removal of defects in the implementation of the Family Courts Act so as to make those Courts function effectively. (b) Removal of defects in the matter of providing property right to women in ancestral properties by suitably amending the law after getting a report from a legal experts Committee. (c) Effecting suitable amendments in Hindu Adoption and Maintenance Act. (d) Introduce prohibition on consumption of liquor which is the main root cause for atrocities on women (e) Provide appointment to lady lawyers in state Government Departments, Semi Governmental Organisations and Corporations under a Special Recruitment Drive. (f) Appointment of Women Lawyers in District Consumer Forums. (g) payment of probationer's Allowance of Rs 500/- p m. to lady lawyers during period of five years of their initiation to the profession. (h) Increase in payment of Advocates fee from Rs. 500/- to 1500/- to the standing Counsel handling the criminal cases falling under IPC (i) provision of financial Compensation to the victims of the cases concerning atrocities on women and (j) provision of suitable representation to the lady lawyers in the Bar Council and Bar Associations.

Debt Recovery Tribunal

Debt Recovery Tribunal has been newly formed for Karnataka and Andhra Pradesh under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 with its office at Krishi Bhavan, Nrupatunga Road, Hudson Circle, Bangalore-2. Mr. Syed Nissar Ahmad, District and Sessions Judge has been appointed as the presiding officer of the Tribunal.

Compensation Awarded

Seven years after Kerala Advocate Rasheed was brutally murdered by three Karnataka Policemen the Supreme Court has ordered the State of Karnataka to pay Rs 7.5 lakhs as compensation to the victim's widow and three children. On the basis of a petition filed in this regard the Bench consisting of Chief Justice A. M. Ahmadi and Justice S. C. Sen directed on 15-12-94 the Karnataka Government to deposit the award amount before the Kerala High Court. Out of this amount the Registrar of Kerala High Court is required to deposit Rs. 7 lakh in a nationalised Bank so that the widow can draw quarterly interest. Rs. 50,000/- is permitted to be withdrawn by the widow of the victim. The Apex Court has reserved liberty to the Karnataka government to recover the compensation amount from the three convicted policemen.

Endowment Lecture

On 13-12-1994 under the auspices of the Advocates Foundation, Bangalore, B. N. Datar Centenary Inaugural Endowment Lecture was delivered at Bangalore by Rt. Hon'ble Sydney William Templeman, Senior Judge of the House of Lords, United Kingdom on the topic "Global Environmental Agenda on the threshold of Twenty First Century." Justice E. S. Venkataramaiah, former Chief Justice of India, Presided.

G. N. Sabhahit's Karnataka Rent Control Act, 1961 with Commentory

The much sought after book is now made available under the banner of

Lawyers' Law Book

848, 1 Stage, Subedarpalya, Yeshwanthpur, Bangalore-560 022 Phone : 365337.

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The Karnataka Acts and Rules, 18 Volumes
Price Rs. 250/- per vol.

The Complete digest of Karnataka Cases
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News Focus

On 17-12-1994 under the joint auspices of the AAB and Advocates Foundation, Bangalore, a seminar was held on the topic "Judicial Review V/s Nineth Schedule". Mr. M. C. Narasimhan, Advocate, inaugurated the seminar. Advocates Mr. S. P. Shankar and Prof. B. Veerabhadrapa presented papers. The speakers at the seminar were Prof. B. T. Parthasarathi, Advocate, Mr. P. Viswanatha Shetty, Senior Advocate and Prof. Ravivarma Kumar, Advocate.

Miscellany

With effect from 8-12-94 Mr. K. S. Karanth, Advocate, opened his Law Chamber at No. 137, 1st Floor, Kilari Road, Bangalore - 560 053.

Obituary

On 24-11-94 Senior Advocate V. Krishna Murthy died at Bangalore.

On 24-11-94 H. G. Hande, Advocate, passed away at Bangalore.

On 2-12-94 D.R. Satyanarayana Iyer, an Advocate from Magistrates' Court Unit, died at Bangalore.

Justice Bhat retires

Justice N.D.V. Bhat retires as a Judge of the High Court of Karnataka on 28-12-94.

Law Minister

Sri M. C. Nanaiah has been allocated the portfolio of Law and Parliamentary Affairs in the recent cabinet formation by Sri H. D. Deve Gowda.

ಮಾಸಿಕ ಪ್ರಕಾಶನ

ಶ್ರೀಮಾನ್ಯನಿಗೆ ಕಾನೂನು ಜ್ಞಾನ ನೀಡುವ ಮಾಸ ಪತ್ರಿಕೆಯಾಗಿ "ಕಾನೂನು ಪ್ರಪಂಚ" ಎಂಬ ಪ್ರಕಾಶನ ರಾಯಚೂರಿನಿಂದ ಕಳೆದ 4 ವರ್ಷಗಳಿಂದ ಬರುತ್ತಿದೆ. ಇದರ ವಾರ್ಷಿಕ ಚಂದಾ ರೂ. 45/- ಇರುತ್ತದೆ. ಚಂದಾದಾರರಾಗ ಬಯಸುವವರು ಎನ್. ಚಂದ್ರಶೇಖರಯ್ಯ, ನ್ಯಾಯವಾದಿ, ಎಂ. ಜಿ. ರಸ್ತೆ, ರಾಯಚೂರು-584 101 ಈ ವಿಳಾಸಕ್ಕೆ ಸಂಪರ್ಕಿಸಬಹುದು.

ಕನ್ನಡ ರಾಜ್ಯೋತ್ಸವ

(3ನೇ ಘಟದಿಂದ)

ವನ್ನು ಆಚರಿಸಲಾಯಿತು. ಮುಖ್ಯ ನ್ಯಾಯಾಧೀಶ ಜಿ. ಟಿ. ನಾನಾವಟಿ ರವರು ಸಮಾರಂಭದ ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು. ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಅನೇಕ ನ್ಯಾಯಾಧೀಶರು ಅಧಿಕಾರಿಗಳು ಹಾಗೂ ನೌಕರರು ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಭಾಗವಹಿಸಿದ್ದರು. ನೌಕರಸಂಘದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ ಕೆ. ಸಿ. ಸಿಪ್ಪೇಗೌಡರು ಎಲ್ಲಾ ಅತಿಥಿಗಳನ್ನು ಸ್ವಾಗತಿಸಿದರು.