

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY.

Volume 8

December 1996

Part 9

## Cauvery Tribunal Gets New Chairman

Justice N.P.Singh a sitting Judge of the Supreme Court has assumed the charge of Chairman of the Cauvery Water Disputes Tribunal Justice N.P.Singh succeeds Justice Chittatosh Mukherjee who had earlier resigned on personal grounds.

## ILR Subscription

Annual subscription of the ILR (Karnataka series) has been revised for the year 1997. The revised subscription will be Rs.400/- for copies to be despatched through certificate of posting and Rs.624/- for copies to be despatched by registered post.

## Court Vacations

By a notification dated: 5.12.96 the Karnataka High Court has announced that Court will be closed for vacations as specified below during the year 1997: Summer Vacation: 21.4.1997 to 25.5.1997 (bdi)

Dasara Vacation: 03.10. 1997 to 09.10.1997(bdi)

Winter Vacation: 21.12.1997 to 31.12.1997(bdi)

## SC orders Notice

Mr.N.Babu Puttanna, a Trainee, Advocate from Bangalore, has filed a writ petition before the Supreme Court of India challenging the vires of the Rules prescribing apprenticeship to Law Graduates before their enrolment as Advocates. The petitioner argued his case personally before First Court and notice was ordered to the Bar Council of India and Bar Council of Karnataka. The case is likely to come up before the Court for further hearing during January 1997 along with other similar writ petitions. Mr.Babu Puttanna, is the proud son of Prof.V. Narayanaswamy, Advocate and Principal of BMS Law College.

Wishing the Readers  
Happy 1997

## No SC Bench to South – R.D.Khalap

Bangalore, Dec.14: In the priorities of UF Government setting up of a Bench of the Supreme Court in South India is certainly not there. There are such demands from other regions as well. Once your demand is conceded other regions of the country will pressurise the centre with similar demands. In fitness of things it is impossible that the judiciary would agree to your demand. However, I will convey your demand to the Union Government, declared the Union Minister for Law and Justice Mr. Ramakrishna D.Khalap while inaugurating the Southern State Bar Councillors Meet at Bangalore hosted by the Karnataka State Bar Council on the 14th instant.

Mr. Khalap maintained that with the advent of the United Front Government at the centre democratic functioning has improved as also the expectation of the people have gone up. He further maintained that the important problem faced by his Ministry is to find out means of reducing pendency of cases. In this regard alternate Dispute Redressal Mechanism will have to be strengthened and the co-operation of Lawyers is very much essential. Mr.Khalap also said that PIL has assumed large proportions and something has to be done to discourage the same.

Earlier speaking to press persons Mr.Khalap said that the proposal to have a Bench of the High Court at Hubli is presently referred to the Karnataka High Court for seeking its opinion. He also informed that the Union Government is shortly introducing a Bill to amend the Criminal Procedure Code to achieve speedy and efficient trial of the cases.

Justice P.Viswanatha Shetty as the Chief Guest of the Meet underlined the need for greater professionalism among Advocates coupled with

education. He wondered about the continuation of three years law course at this juncture.

Legal Practice should Form Part of Curriculum

The State Bar Council strongly favours inclusion of Legal Practice as one of the disciplines in the curriculum for law students. This view was expressed by Sri.S.S.Patil, Chairman of KSBC on the occasion of a Seminar on Legal Education organised by the Council on 15.12.1996 at Bangalore. Justiced R.P.Sethi, the Chief Justice of Karnataka High Court, who inaugurated the Seminar emphasised the need to have a good command over language.

Justice S.Rajendra Babu, who was the Chief Guest at the seminar called upon the Bar Council to set up a forum of experts from various fields to guide the Young Advocates. Justice G.P.Shivaprakash expressed displeasure over the location of law colleges in Bangalore while speaking at the valedictory function. Several eminent personalities including the Senior Counsel Sri.A.N. Jayaram and the Advocate General Sri.S.Vijayashankar participated in the seminar.

## Lokpal Bill A Welcome Move

– Dr.N.R.Madhava Menon

Bangalore, Dec-19: There is a steady decline in the control of the Executive by the Legislature. Judiciary has obvious limitations in taking active role to prevent Executive excesses. In this background the institution of Lokpal can play a vital role in checkmating the illegal activities of the functionaries holding higher positions at the centre. In this background the Lokpal Bill 1996, with all its inadequacies is welcome step in the right direction and the present Union Government headed by the Prime Minister Sri.H.D.Deve Gowda requires to be complemented. These remarks were made by Dr.N.R.Madhava Menon, Director NLSIU, while speaking on the Lokpal Bill 1996 as a part of the inaugural function of Lahari on the 19th instant.

Tracing the origin of Lokpal to the office of Ombudsman prevalent in the Scandinavian Countries hoped that unlike the earlier six attempts by the Union Government in the past the Parliament would pass the Bill in its present form and or with required modifications. He felt that the important inadequacies in the Bill can be cured by subsequent amendment in the light of the experience in the functioning of the Lokpal.

Dr.V.Vijaya Kumar, an Associate Professor of NLSIU who also spoke on the Lokpal Bill provided a critical analysis of the proposed Bill. He was of the opinion that the present Bill serves no purpose in as much as it is an attempt to whitewash the rotten corrupt systems and the part of a larger conspiracy to keep the politicians out of the purview of the Prevention of Corruption Act.

(Continued on page 3)



*Even the fixing of a tariff rate must be moral*  
— Ida Tarbell

## Steep Hike

The Karnataka Law Reporting Council has announced that subscription of the Indian Law Reports, Karnataka Series, for the year 1997 is fixed as Rs.400/- According to the Council increase in subscription was necessitated on account of the overall increase in the price of printing paper, printing and publication charges. While it can be appreciated that there is overall increase in the cost of production of the Law Reports the steep increase in subscription from Rs.250/- to Rs.400/- at one stretch appears to be unreasonable.

In 1990 subscription of ILR was Rs.84/-. In 1991 it was increased to Rs.115/-. In 1992 it was fixed at Rs.145/-. During 1993 a marginal increase was made and subscription was fixed at Rs.150/-. During 1994 and 95 it was raised to Rs.200/-. However, during 1996 the subscription was fixed at Rs.250/-. It is clear from the scrutiny of these figures that for the first time the subscription has been increased so steeply for the year 1997. Secondly between 1990 and 1997 [7 years] subscription of ILR has been increased almost five fold.

Needless to state that ILR enjoys official patronage in as much as it is virtually a publication of the High Court. Hon'ble Chief Justice is the Chairman, Registrar General is the Secretary and other members of the Council include a Judge of the High Court, the Advocate General and three Senior Advocates. Avowedly the publication is brought out to help the legal fraternity to update its knowledge and information about the cases decided by the High Court, occasionally the Supreme Court, apart from providing a medium for interaction among the Advocates and the Judges. In this sense ILR enjoys a unique position in Law Reporting and the Law Reporting Council enjoys the monopoly of the

publication. At the same time the Law Reporting Council has taken upon itself the responsibility to provide copies of ILR to its subscribers at a comparatively cheaper price unlike other commercial publications. Therefore it is not unreasonable to expect that the publication should also have an element of subsidy being a part of the overall production cost.

No doubt ILR is rendering service in dissemination of legal knowledge amongst the legal fraternity. Besides the publication being an official venture also enjoys universal acceptance. In this background the publication of ILR is always taken to be service oriented rather than a commercial venture. Nevertheless an average subscriber is unable to appreciate such sudden and steep increases in subscription rates. This is because no authentic information regarding pricing of the publication is available to the subscriber. No doubt the Law Reporting Council comprising eminent personalities would have considered the cost factor before increasing the rate of subscription. However, it is worth for the Council to reassess the cost factor and on such review find out whether the rate of subscription could be brought down. By so doing the Council will be helping the subscribers to secure the publication at reasonable and affordable price.

### Lahari Foundation An Appeal

Lahari Foundation, Bangalore, seeks donations for augmenting its financial base. This foundation is providing assistance to lawyers for health reasons. The donations you make now will be of immense help to some one who needs it.

— Trustee

## COPY RIGHT

*A. R. Srinivasa Rao, Advocate.*

(from the last issue)

In Glaxo Operations U.K.Ltd., and others Vs. Samrat Pharmaceuticals (A 1984 Delhi 265), plaintiffs filed the suit for infringement of trade mark and copyright and prayed for injunction to restrain the defendant from selling glucose powder in cartons having similar features and colour-scheme as those of Glaxose-D and Glucon-D of the plaintiff. Plaintiffs are registered owners of both trademark and copyright of their said carton. Defendant also got his infringing carton registered as copyright. Court held, that Delhi court had jurisdiction to entertain the suit as plaintiffs carried on business in Delhi; that combining of the two causes of action of copyright and trade mark was in accordance with law; Further held that registration as such does not confer any right and who got registration earlier or who is established to be earlier user can be presumed to be the author or original creator of the artistic work Injunction was granted.

Exceptions to Infringement: The Copyright Act lays down a number of exceptions to the rules of infringement. A fair dealing of the work is permitted for research, private study, criticism or review or for reporting current events in a newspapers or periodicals, or broadcast, or in a Cinematograph film, or in a photograph, Section 52 of the Act enumerates a number of works the reproduction of which are permitted such as judicial Proceedings, for use of members of legislature, certified copies granted according to Law, for teaching or examination purposes, in news papers and magazines, for use in Public Libraries, certain Government Publications and so

on.

Criminal Offenses: In addition to Civil remedy, the Copyright Act enables the owner of copyright to take criminal proceedings against the infringers. The offence of infringement of copyright is Punishable with imprisonment which may extend from a minimum period of six months to a maximum of three years and with fine of the order of rupees fifty thousand to two lakhs;

A Police officer of the rank of Sub - Inspector and above is given the power to seize without warrant the infringing copies of the work and accessories for making infringing copies wherever found, to be produced before the Magistrate.

The Copyright requires certain particulars to be displayed on records and video films or containers thereof. These include the name and address of the person who has made the Record; Name and address of the owner of the copyright, and Year of first publication; and in the case of video films, a copy of the certificate granted by the Board of film certification for the cinematography film, the name and address of the person who has made the film, and the name and address of the copyright owner. Any person, who publishes as Record on a video film in contravention of the above requirements will be punished with imprisonment which may extend to three years and with fine.

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class can try an offence under the Act.

(Concluded)



## Supreme Court Bench in South India

T. P. M. Ibrahim Khan

Advocate & Senior Central Govt. standing Counsel, Cochin

*Mr. Ibrahim Khan read this paper in the recently held Southern State Bar Councillors Meet at Bangalore, Considering the importance of the topic excerpts from the paper are published in Communique.*

— Editor

Recently the Indian Parliament honoured the remaining surviving members of the Constituent Assembly after five decades. Still many of the aspirations of the architects of our Constitution remains unfulfilled. While discussing Article 130 of the Constitution, Dr. Ambedkar visualised a situation when more than one bench of the Supreme Court may be required. Our endeavour is to reiterate the visualization and aspirations of the framers of the Constitution. Considering the changing phenomenon we had amended our Constitution time and again. Some of them were basic and fundamental. Still we are reluctant to open our eyes to the desires of no less than a person, the architect of our Constitution, Dr. Ambedkar.

The demand for a bench of the Supreme Court in South India is not new. Constitutional experts and various civic bodies have been making this demand from time to time. But there has not been a collective bargaining. It was often misunderstood as selfishness of lawyers. The real picture is otherwise. My humble view is that this is a Constitutional mandate. If Article 14, Article 130 and directive principles of States Policy enshrined in Article 38 (2) are read together and understood, the establishment of the bench of the Supreme Court in South India or even North East will become a Constitutional Mandate.

About 40 percent of the pending cases in the Supreme Court are from southern states. The self extended jurisdiction of the Constitutional Courts assume importance at this juncture. Every body is looking upon judiciary with a fervent hope of purifying and strengthening other two pillars of

the administration namely Executive and Legislature. If the apex court is kept away from the common man of South India, at a distance of about 2500 Kilometers, it will remain as a mirage for ever to the litigant public.

The purpose and motive of this meaningful session of the Lawyers of South Indian states is to draw attention to the entitlement of the Southern States and its citizens to have a bench of the Supreme Court in any suitable part of the Southern States. There are innumerable reasons in favour of the Constitution of a Bench of the Supreme Court in South India. It is true that for any proposal there will be arguments

both for and against. But as the Chairman of the Action Committee constituted for the purpose of ensuring steps for the establishment of a Bench of the Supreme Court in South India, I am constrained to say that it is a constitutional right of the Citizens of South India to have a Bench of the Supreme Court in any part of the Southern States. Even though the constitution of a Bench of the Supreme Court can be justified from various angles, I am limiting my arguments purely from the constitutional view. Without intending to be exhaustive, but only illustratively, I would like to submit the following reasons:

The First Indian Law Commission was constituted during the year 1834 under the Charter Act of 1833. Lord Macaulay, who was the President of the First Law Commission stated that the Principle in elucidating the task before the Commission as follows:

"Uniformity when you can have it. Diversity when you must have it, but in all cases certainly."

(to be continued)

## Around the Courts

➤ Section 138 of the Negotiable Instruments Act, 1881 : while disposing of a Review petition, recently, a Division Bench of the Supreme Court comprising Justice.B.P. Jeevan Reddy and Justice.S.B.Majmudar modified its earlier order dated May 1, 1996 and held that the offences under Section 138 of the NI Act will be exempt from purview of its earlier judgment directing the closure of criminal cases where trial had not commenced for over a year. The Court further directed that the Accused already discharged or acquitted pursuant to its judgment dated May 1, 1996 are liable to be proceeded against for such offence pursuant to the latest order by reopening the cases suo motu or on an application made by Complainants within 3 months of the receipt of the clarificatory order by reissuing Summons or warrants to such discharged or acquitted Accused.

➤ Section 2(22) of the ESI Act, 1948, OT payment form composite wages :

In a recent judgment delivered by the Division Bench of Supreme Court comprising Justice. K. Ramaswamy and Justice.G.B.Pattanaik it has been held that overtime remuneration constitute composite wages and employers are bound to pay their contributions for such payments under the ESI Act. Rejecting the contention of the Indian Drugs and Pharmaceuticals Ltd., that unless overtime remuneration was part of the contract of appointment, it came outside the definition of wages, the Judges held that whatever remuneration paid or payable for overtime work formed wages under an implied term of the contract. The Judges further held that the present case is squarely covered by the Court's Judgment in Harihar polyfibers case.

➤ Section 3 of The child Labour [prohibition and Regulation] Act, 1986 : In a judgment dated 10-12-96 a 3 Judge Bench of the Supreme Court comprising Justice Kuldeep Singh,

Justice.B.L.Hansaria and Justice.S.B.Majmudar, held that the employers are liable to pay compensation of Rs.2000/- for every child employed by them in violation of the prohibition contained in Section 3 of the Child Labour [Prohibition and Regulation] Act, 1986. The Court directed that the Labour Inspectors would see that for each child employer concerned pays Rs.2000/- which would be deposited in a fund to be known as "Child Labour Rehabilitation cum Welfare Fund". The liability of the employer would not cease even if he would desire to disengage child presently employed by him. The court gave these directions while disposing of a public interest writ petition filed by the noted environmentalist Lawyer M.C.Mehta.

## Lokpal Bill A Welcome Move

(continued from page 1)

Earlier Sri. K.N.Subba Reddy, President of AAB, inaugurated the activities of Lahari., for the years 1996-98 by lighting the ceremonial lamp. He lauded the activities of Lahari all along and hoped that under the leadership of Sri.N.S.Satyanarayana Gupta Lahari will provide good programmes to Advocates.

In the beginning Mr.N.S.S. Gupta welcomed the participants. Former President Mr.P.G.C. Chengappa introduced the Speakers on the Lokpal Bill. In the end Ms.H.R.Rada, committee Member, proposed vote of Thanks.

## Impart Legal Knowledge to people

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the past record. In the beginning Mr.C.G.Gopalaswamy, Secretary of the Union, welcomed the participants. In the end Mr.H.C.Narayana, the Treasure, proposed the vote of Thanks. Sri.Shimoga Subbana and his companions provided Melodious musical entertainment on the occasion



## News Focus

On 31-11-96 Kannada Rajyotsava was celebrated under the auspices of the Karnataka Judicial Department Employees Kannada Sangha, Bangalore. The Principal City Civil and Sessions Judge, Bangalore Sri.Patibasavana Goud inaugurated the function. The Principal District and Sessions Judge, Bangalore District Sri.B.S.Srinivas Rao and noted play back singer and Advocate Sri.Shimoga Subbanna were the Chief guests.

On 11-12-96 Hon'ble Mr.Justice S.Rajendra Babu released the books titled "The Administrative Law" and "The Karnataka Court fees Act" written by Sri.R.B.Guttal, Advocate. The function was organised by AAB, Bangalore.

On 19-12-96 Justice.R.P. Sethi, the Chief Justice of Karnataka High Court inaugurated the Rajyotsava celebration organised by the Karnataka High Court employees Association. He also released a book "Tayi nadu" written by Sri.G.Lingaiah, Registrar of the High Court on the occasion.

On 21-12-96 Justice. R.P.Sethi, the Chief Justice of Karnataka High Court, inaugurated Janata Brihath Nyayalaya at Hassan. The function was presided over by the Karnataka Minister for Law and Parliamentary Affairs Mr.M.C.Nanaiah.

On 26-12-96 Chief Justice of the High Court of Karnataka Justice R.P.Sethi inaugurated the Third District Level Lok Adalat at Shimoga. Mr.M. Lakshminarayana, the Deputy Commissioner and the District legal Aid Committee presided over the function. The District legal Aid Committee and Shimoga Bar Association had jointly organised the Lok Adalat.

On 29-10-96 Second All India Notaries Meet and the Thirteenth Karnataka Notaries Conference were held at Hotel Govardhan, Mysore.

## Miscellany

On 8-12-96 Mr.B.S.Prakash Naik and Mr.Shivaramaiah, Advocates, opened their new law chamber at No.122/2, II floor, Mahesh Market, (Next to Udupi Krishna Bhavan), Balepet, Bangalore-560 053.

On 8-12-96 Mr.B.Subba Rao, Advocate, opened his new chamber at No.122/21, II floor, Mahesh Market (Next to Udupi Krishna Bhavan), Balepet, Bangalore-560 053.

## Judicial Officers Retired

Bangalore, Dec.11; The Governor of Karnataka has ordered retirement of the following Judicial Officers in public interest so as to take immediate effect :

Mr. R.G.Sejekan and Mr.S.A.Deshpande, members of Karnataka Appellate Tribunal and Mr.Wahiuddin Ansari, Principal Training Institute, City Civil Court, Bangalore.

## Retirement

Mr.Y.S.Venkata Rao, District Judge working as VI Addl. City Civil and Sessions Judge, Bangalore, retired on 31-12-96 on Superannuation.

## Moves to Chennai

On 13-12-96 Justice K.Bhaktavatsalam, Judge of the Karnataka High Court, took over as the Vice Chairman of the Central Administrative Tribunal, Chennai.

## Foreign Tours

Mr.M.N.Satyaraj, Mr.V. Gopinath, Mr.G.K.Suresh and Mr.S.Basavaraj, Advocates, left Bangalore on 20-12-96 for eight days tour of Thailand and Singapore.

## Shares Alloted

The Committee Meeting of the Advocates Co-operative Society Ltd, Bangalore, held on 18-12-96 has admitted 107 new members and alloted them five shares each.

## Impart Legal Knowledge to people

— H.S.Parvathi

Bangalore Dec.13 : Common people lack legal knowledge Lawyers must try to educate them. An average man fails to understand the reason for delay in disposal of cases by the Courts and as a result he tends to compromise the case rather than wait for Courts to decide his case. Lawyers must take time of from professional matters and record their experiences in writing so that the common man may be benefitted from it, said Smt.H.S.Parvathi, the noted Kannada writer and broadcaster. She inaugurated the activities of the Bangalore Literary Union for the year 1996-97 before addressing its members.

Expressing satisfaction over the increase in the number of Women Lawyers entering the profession, the Speaker called upon the Lawyers, Women Lawyers, in particular, to be more active in preventing and or getting redressal to women who are the victims of atrocities from the men. Smt.Parvathi also called upon the Lawyers to bring social reforms. Sri.K.N.Subba Reddy, President of AAB, who spoke on the occasion wished all the best to the new team of office bearers headed by Sri.C.H. Hanumantharaya. He said that Literary Union being more than 130 years old is doing a good job. Mr.N.S.Satyanarayana Gupta, President of Lahari said that all frontal organisations of Lawyers have a common object amongst them viz the overall development of Advocates. He extended fraternal greetings to the Literary Union on behalf of Lahari and assured full co-operation.

Mr.C.H.Hanumatharaya, President of the Literary Union in his Presidential address explained the ambitious programme he has chalked out to be implemented during the year and appealed to all Advocates to positively respond. He said that during the year members can see resurgence of Literary activities Vis-a-vis

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## Lahari Officers Bearers



**N.S.S. Gupta**

The following Advocates have been elected as office bearers of Lahari for the period 1996-97 to 1997-98: N.S. Satyanarayana Gupta, President; P.R.Mohan Rao, Vice President; P.H.Ramalingam, Secretary; T.S.Mahantesh, Joint Secretary; Shanmukha Sampige, Treasurer, Bhakthavachala, Bharat kumar Mehta, K.R.Dinakar (Co-opted) V.Jayalakshmi and H.R.Radha are the members of the Executive Committee.

## Lahari Foundation

In response to the Foundations Appeal the following donations have been received :

Mr.N.S.Satyanarayana Gupta Rs.5000/-, Mr.B.R. Aswatharam Rs.2000/-, Mr.N.P.Kallesh Gowda Rs.1000/-, Mr.D.H.Mokhashi Rs.1000/-, Mr.R.Pushpahasa Rs.1000/- and an Advocate Rs.500/-.

## Campus Watch

On 3-12-96 Kannada Vaibha-96 was celebrated in the University Law College. Sri Sri Sri Balagangadharanatha Swamiji inaugurated the function and delivered a speech. Dr.N.R.Shetty, Vice Chancellor, Bangalore University, hoisted the flag. Other guests included cline actor Ambarish, B.V.Synicate member Puttanna, BJP MLA M.Srinivas, Dean, Faculty of Law, Prof.K.M.Hannu mantharappa.

Ms.Anu Changappa, a Second year student of University Law College, Bangalore secured first prize in the Inter Collegiate English Debate on the topic "Television Viewing is a Brain Drain". The Competition was held in Bangalore on 28-11-96 and sponsored by ISKCON, Bangalore.