

## Volume 10

## December 1998

## Part 9

### Court Vacations

By the notification dated December 14, 1998 the High Court of Karnataka has declared the under mentioned periods as vacations during the calendar year 1999:

Summer Vacation: 19-4-99 to 23-5-99 [b.d.i]

Dasara Vacation: 20-10-99 to 22-10-99 [b.d.i]

Winter Vacation: 20-12-99 to 31-12-99 [b.d.i]

Note: 1) 8th, 10th, 11th, 12th November will be non-sitting days for the judicial work of the High Court.  
2) 5th June 24th and 31st July, 18th September will be sitting days for the judicial work of the High Court,  
3) 9th January will be working day and 16th January declared holiday for all the sub-ordinate courts in the state.

### Elevated

Mr. Justice Umeshchandra Banerji, Chief Justice of A.P. High Court has been elevated as a judge of the Supreme Court during the second week of December 1998. In a sudden development Mr. Justice Manmohan Singh Liberhan, Chief Justice of Madras High Court, was transferred as the Chief Justice of A.P. High Court, during the third week of December 1998. Mr. Justice Shivaraj Patil, Senior most judge of the Madras High Court has been asked to officiate as the Chief Justice of the same High Court until further orders.

### Miscellany

Wednesday edition of the Asian Age has introduced a column titled "Land Law". Prof. V. Narayanaswamy, Advocate, will be answering the clarifications of the readers.

During March 1998 Mr. H. Gangadharaiah, Advocate, joined Buddhist Order of Monks and is rechristened as Damma Deepo.

### Narayanan Cautions Against Judicial Adventurism

President K.R. Narayanan cautioned the legislature, executive and the judiciary not to encroach upon hi-jack functions of the other and said, judiciary had often gone beyond that and had indulged in "judicial activism" verging upon judicial adventurism. Inaugurating a two day seminar in New Delhi on December 5, 1998 the president said in a democracy judicial activism rarely should adventure beyond certain limits, as ultimately it is the legislature which is accountable to the people, whose will is sovereign. In India the judicial activism brought to the fore the principles and objectives which the executive, for one reason or the other had been unwilling to implement in practice, Mr. Narayanan said, describing the public interest litigation [PIL] as innovation in judicial system.

Quoting Justice Douglas of the United States, the President said the judiciary was to provide "the sober second thought". "the cooling period" or "the contemplative pause" against the excesses of the legislature or the executive. "PIL has extended the scope of judiciary to an array of issues which remained hitherto beyond the reach of the citizen." Mr. Narayanan said, calling for judicial restraint to curb frivolous and indiscriminate litigation being admitted by the courts.

Expressing concern, at the rising cost of litigation, the president said PIL had made law and justice more accessible to the common man whose simple post-card was being treated as a writ petition. Regretting delay in justice delivery, Mr. Narayanan said intricacy of procedure, ingenuity of lawyers in prolonging cases, indifference of judges and the unending process of appeals besides low ratio of judges to the population had led to the piling up to 30 million cases in the Indian Courts. "Now that the real power for the appointment of judges is in the hands of judiciary itself, unfilled but sanctioned posts of judges can be filled by the initiative of judiciary itself", he said.

Calling for reforms in laws affecting women and weaker sections of the society, the president said law in India was tilted against women. It

was not easy for a woman to prove that she had been victim of rape, he said.

In his presidential address, Chief Justice of India Mr. Justice A.S. Anand underlined the need for amending section 155(4) of the Evidence Act which favoured the rapist if the woman was shown to be of loose moral character. "Rape is not merely a physical assault, it often distracts the whole personality of the victim" Mr. Justice Anand said, calling for amending laws for providing strict punishment for child abuse and trial of rape case incamera. He said the huge backlog of pending cases only reflected the faith of the people in judiciary, but called for a proper study to workout infrastructure requirement and number of judges in the country on the basis of pendency, rate of inflow of cases into the courts and the estimated growth of litigation in future.

Speaking on the occasion Attorney General of India Soli J. Sorabjee expressed concern over huge backlog of cases in the courts. The seminar was organised by Advocates on Record Association of the Supreme Court of India.

**Read  
Communique**

### Around the Courts

PIL-consequences of failure of litigation include defraying cost escalation:

In a significant judgment delivered on 13-12-98 a division bench of the Supreme Court comprising Ms. Justice Sujata V. Manohar and Mr. Justice B.N. Kripal, has ruled that public interest litigants and private parties obtaining stay against implementation of projects should be made liable for cost escalation of the project if ultimately the petitions fail in court. The bench observed that "when such a stay order is obtained at the instance of a private or even at the instance of a body litigating in public interest, any interim orders which stops the project from proceeding further must provide for the reimbursement of the costs to public in case ultimately the litigation started by such an individual or body fails."

IVR Constriction Ltd., an unsuccessful bidder for contract of supply of large pipes and tanks to Khaperkheda Thermal Power Station, had challenged the award of contract to Raunaq International Ltd., by the Maharashtra State Electricity Board before the Bombay High Court and obtained the stay order.

### Kabaddi Tournament

Sri D.R. Sundaresha, Chief Judge, Court of Small Causes, Bangalore, Inaugurated a Kabaddi Tournament sponsored by Advocates Association Bangalore Kabaddi Club on Thursday, the 17th December 1998 at the Government Arts College Ground, Bangalore. In the valedictory function held on 18th December 1998. Sri K. Sreedhar Rao, Principal City Civil and Sessions Judge, Bangalore was the chief guest. Hoody Kabaddi club won the tournament while Advocates Association Bangalore Kabaddi Club were the runners up.



## Kolar Diary

□ On 30-11-98 Abdul Hafeez Former President of TMC, Kolar, Advocate and Notary passed away at Kolar.

□ In the annual general body meeting held on 10-12-1998 Advocates Association, Malur, elected the following persons as office bearers for the coming year:

President: Mr. K. Ramaiah; Vice-President: Mr. D.R. Anand; General Secretary: Mr. D. Narayana Swamy; Joint Secretary: Mr. S.V. Sridhar; Treasurer: Mr. M. Muniraju; Executive Committee Members: Mr. K.M. Guru Murthy, Mr. S.A. Rahman Khan, Mr. N.G. Ravi Kumar, Mr. D. Muniraju.

□ In the annual general body meeting held on 18-12-1998 Advocates Association, Srinivasapura unanimously elected the following persons as office bearers for the next year:

President: Mr. M.V. Sudhakar Reddy; Vice President: Mr. T. Venkataravanappa; Secretary: Mr. G.N. Aswatha Reddy; Executive Committee Members: Mr. K. Shivappa, Mr. K.V. Narayanaswamy, Mr. K.R. Muralidhar, Mr. Srinivasappa, Mr. N.V. Jayaram Gowda, Mr. N. Sampath Kumar, Mr. K.N. Chandrashekar Reddy.

## Enhancement of Allowances

A bill seeking to enhance house rent allowance and pension for judges of Supreme Court and High Courts and to provide them some other benefits was introduced in the Lok Sabha on December 10, 1998. Keeping in view the steep increase in the rent of houses the bill proposes to raise the HRA to Rs. 10,000/- a month. Currently Supreme Court judges are getting Rs. 2,500/- a month and High Court judges Rs. 3,000/- a month as HRA if they are occupying official residences. The rates of pension of judges was last revised in November 1986. Subsequently the Fifth Central Pay Commission had recommended revision in the pensionary benefits of the central government employees. Consequently the revision in the rates of pension of the judges had to be revised, the bill states. The bill was adopted by the Lok Sabha on 21-12-98.

## News Panorama

□ A bank robber imprisoned in Kentucky has made an official request for a pardon from US President Bill Clinton on the grounds that his "uncontrollable sex drive" drove him to the crime. William Arthur Burchett said in his petition for commutation of sentence that he and Mr. Clinton were "in the same boat" - that personal lust had been the reason for each man's downfall.

Burchett explained in the petition that he robbed the bank because he thought that if he had money, the wife who had divorced him would come back. He then gave Mr. Clinton an incentive to pardon, saying, "the Bible tells us to do unto others as we would have others do unto us".

□ On November 30, 98 the court trying the sensational corruption and sex case against the ousted Malaysian Deputy Prime Minister Anwar Ibrahim ordered that one of his defence Attorneys should undergo sentence of three months imprisonment for contempt of court. Mr. Zainur Zakaria, a prominent lawyer in Anwar's defence team, was ordered to surrender himself before the police by 4.00 p.m. local time.

Subsequently the police also paid the office of one of the lawyer Pawanchek Merican defending Anwar Ibrahim.

## Campus Watch

□ On 21-12-98 the Forum for Social Action, University Law College, Bangalore, had organised a lecture by Sri R.N. Narasimha Murthy, Senior Advocate, High Court of Karnataka. The topic of the lecture was "confrontation between the judiciary and legislature."

□ The Law Commission has suggested incorporation of the concept of political parties in the Indian Constitution, Law Commission Chairman Mr. Justice B.P. Jeevan Reddy disclosed. Speaking after inaugurating the workshop on electoral reforms organised by the National Law School of India University at Bangalore on December 24, 1998 Mr. Reddy said that the Law Commission has also suggested to increase the number of seats in the Lok Sabha and the State Assemblies by 25% and to fill these additional seats on the basis of "List System."

Our Opinions are at best provisional hypotheses

-Learned Hand

## Is it Seetha and Urmila or Seetha vs Urmila?

-H.S. Dwarakanath, Advocate

Immediately after Urmila got married to Lakshmana it was time for Rama to leave for vanavasa. Along with Rama, Lakshmana also left to forest. From the time Lakshmana left, Urmila did not enjoy the comforts of palace, she lived like a saint, lost her youth without comforts and marital pleasures. She did not become the queen either. In contrast Seetha went to forest but she had marital pleasures, an army of monkeys and Lakshmana to attend to her requirements. There is no equal to the sacrifice of Urmila. Urmila was no less respectable than Seetha.

Present day Seetha is judiciary. Present day Urmila are the members of the legislature. Urmila was powerless. But what about legislature? Before we look into the legal position let us summarize the row between judiciary and legislature.

The high court granted stay of a denotification. The legislators on the floor of house allegedly made contemptuous remarks on the high court judges. The reaction to the alleged act of the legislators as found in paper reports is that Mr. Justice Saldanha said, "after all what is the qualification of these people (MLAs) to comment on the judiciary. Are these MLAs discharging their duties sincerely and spending the public money properly. The bills passed by this legislature are also horrible."

T. Issar demanded an apology from Assembly Speaker Ramesh Kumar. T.J.S. George wrote in Indian Express that the Speaker instead of acting like an "umpire" acted like a "prompter". Senior members of Bangalore Bar have urged the public and legal fraternity to stand up against the attack on the Judiciary by MLAs in the Assembly. A section of city advocates submitted a memorandum to Governor requesting him to get the official version of the proceedings of the Legislative Assembly.

According to paper reports the Chief Justice said that, "We don't need to establish our credentials as we function openly in court halls and not in closed chambers. People know

what we are and we don't need to prove it." Are the above reactions lawful can be known by a glance at the law of parliamentary privileges.

Any act or omission which obstructs or impeaches the legislature in performance of its function or impeaches a member in discharge of his duty or which has a tendency directly or indirectly to produce such results is contempt of the house. Indignities offered to the house, reflection upon members, the particular individuals not being mentioned any words spoken or written published, reflecting upon the house or its proceedings which has a tendency to bring the house into odium of ridicule, threatening a member with the possibility of a trial at future time for an action in the house, proposing to visit a pecuniary loss to a member on account of his conduct in the house, attempt to intimidate a member in his parliamentary conduct, any act which may tend to deter a member of the house from doing his duty in future is contempt. Persons have been committed for bringing civil actions against officers in execution of their duty. Arrest of persons soliciting business before the house, challenging them the fight, bringing an action for libel alleged to have been contained in a petition to house in respect of professional conduct before a committee of the house is contempt.

If a person is committed by the legislature, the extent of interference by courts is almost nil and it is incompetent for the courts to enquire further into the nature of contempt if the form of warrant is general.

Warrant issued by order of legislature is not vitiated for irregularities of form. The courts are duty bound to presume the orders of the house to be in accordance with law. Warrants of the house are treated as Writs of superior courts and not as warrants of magistrates. The house has all the power to protect itself from obstruction and insults and to maintain

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## Is it Seetha and Urmila or Seetha vs Urmila?

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its dignity and character. Causes of committal by a house cannot be enquired by courts of law. No court can discharge or bail a person committed by the house as if it is a court of appeal. The house has privileges conferred by law as well as custom. Publication outside the house of proceedings and debates in Parliament is breach of privilege of the house.

It is held in 1993 AC 593 the judges conceded that the courts remain jealously in protecting parliamentary privileges. It is held in 1995 1 AC 325 that the courts will not allow any challenge to what is said or done within the walls of parliament.

The power of committing is treated as the Keystone of parliamentary privilege and has been exercised when its authority is challenged or its privileges infringed or the house is offended.

The house has even proceeded against judges for overruling the plea of officers of the house to the jurisdiction of the courts (1683-89) 12 State Tr 821; CJ (1688-93) 227 and the houses have acted against the lawyers for assisting in the conduct of actions against officers. LJ (1767-70) 185, 187, 197; CJ (1737-41) 620, 623.

Each and every reaction referred to earlier including demand of Advocates for details of the proceedings offending the privileges of the house is contempt. If Advocates and Judges do this, it would not be in the interest of democracy. If the legislature has violated its rules the Governor may take note of it and send report. The President may take note of it. The Union Government may take note of it. If they are convinced that conditions required for imposition of President's rule is satisfied then act accordingly.

No doubt the law in India is different and can be summarized as follows;

"a. A Petition under Article 226 of the Constitution of India would be maintainable even against the legislature of the state as legislature is within the definition of the term

'State' in Article 12 of the constitution;

b. The freedom of speech in the legislature of every state is absolute and it is not controlled by Article 19(1) (a) of the constitution. It is unfettered or absolute subject to the limitation in Article 211 of the constitution, which provision insulates judges of the High Courts and Supreme Court acting in the discharge of their duties, against discussion by the legislature;

c. The law made by the legislature under Article 194 (3) of the constitution defining the powers, privileges and immunities of a house of the legislature, of the members and the committees of the house of such legislature can not contravene fundamental rights. It is open to the court to examine the validity of a plea that such laws are void to the extent they infringe the fundamental rights of the citizens;

d. The rules framed under Article 208 of the Constitution for regulating the procedure of a house of the legislature and the conduct of its business are liable to judicial review if there is a case of infringement of the fundamental rights;

e. Till the legislature framed laws to define powers, privileges and immunities those asserted and recognised in the House of Commons in the United Kingdom as on the 26th January 1950 will be in force;

f. In regard to such powers, privileges and immunities as are mentioned in (b) above it can not be said that whenever there is a conflict between them and the fundamental rights in Part III of the constitution the latter will yield to the former. An examination may be called for in respect of each of such fundamental rights asserted to determine whether it will survive against such powers, privileges and immunities.

g. The fundamental rights guaranteed under Article 19(1) (a) of the constitution will not so survive, but fundamental rights secured to citizens under Articles 20 and 21 will survive.

h. The immunity envisaged in Article 212 (1) of the constitution

is restricted to a case where the complaint is no more than that the procedure was irregular. If the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law."

In spite of the law being such, whether the observations of Justice Saldanha and reaction of some Advocates is to be appreciated has to be decided by each individual. Probable reaction of legislatures to the question of Justice Saldanha and Chief Justice may be as follows:

Regarding the question of Justice Saldanha "What are their qualifications?" Answer is "Qualification is what the Indian Constitution provides for". If the implication of the remark is that the members of legislature are not properly qualified it is an insult to the constitution of India and means to state that it has not prescribed the required qualification.

Regarding Chief Justice's remark the probable reaction of the legislatures may be that the same is true with all democratic organs. Legislature functions openly and not in closed chambers. People do know what they are doing. While judges need not prove what they are doing, the legislatures have to prove their work which is an onerous responsibility.

Everyone is called upon to show "restraint". I am very sure that legislature has shown very great restraint in exercise of its privileges and in not punishing people for contempt of house. I hope that it would continue to show such restraint and it would drop the privilege motion against Justice Saldanha which has been presently deferred. I am afraid that if others do not reciprocate the restraint exhibited by legislature they would be forcing legislature to give up its restraint. Let us not mistake its goodness to its weakness.

I have absolutely no doubt that the judiciary is as sacred as Seethadevi. But let us not forget that the legislature is Urmilala, the goodness of sacrifice, which has sacrificed all its powers in the name of "restraint" which makes it deserve nothing but show of respect.

## Judicial Academies Needed

Supreme Court judge Mr. Justice B.N. Kripal stressed the need for establishing judicial academies to impart training to judicial officers at state, regional and national levels. Inaugurating the "National Consultative Activity on Judicial Education and Training and Information and Technology for the Judiciary" jointly organised by the First National Judicial Pay Commission [FNJPC] and the Indian Institute of Management Bangalore [IIMB] at Bangalore on December 12, 1998 Justice Kripal said, while state academies should concentrate on training judicial officers at the lowest level regional academies should concentrate training district level judicial officers and national academies should train the higher judicial officers. He observed that it is better to keep vacant posts than filling them up with newly recruited judicial officers who are not given enough training.

Speaking on the occasion Karnataka High Court Chief Justice Mr. Justice R.P.Sethi said Indian judiciary has fulfilled expectations of people as subordinate courts are successful in disposing off good number of cases. Though the idea of providing extensive training is a welcome move, lack of funds hamper the programme he lamented.

IIMB Director Dr. Rammanohar Rao said though the performance of judiciary is satisfactory it is lagging behind in administration and court management. Proper utilisation of information and technology could mitigate this problem, he said. FNJPC Chairman Mr. Justice K. Jagannath Shetty, Law Commission member Dr. Madhava Menon and IIMB Professor Vaidyanathan were also present on the occasion.

### Steno Wanted

Wanted a part-time stenographer conversant with court work. Contact Mr. P.V. Kittur, Advocate, No. 10, Corporation Complex, Near Devaiah Park, Bangalore-21. Phone: 3370038 or 3424822.



## Congratulations



Ms. Namrata Kolar, a final year student of National Law School of India University, Bangalore was adjudged the best Lady Student Advocate and has been awarded Best Performance Award, 1998 at the 15th All India Inter-University Moot Court Competition-1998 conducted by the Bar Council of India Trust, New Delhi. The Inter University Moot Court Competitions were held at ILS Law College, Pune in November 1998. The Award carries a scholarship of Rs. 750/- p.m. till the completion of the law course. 26 Universities from all over India participated in the said Moot Court Competition. Mr. Namrata is the daughter of Sri Jayavittal Rao Kolar and Smt. Keertida Kolar, Advocates and Company Law Consultants, Bangalore.



Ms. M.R. Kruthika D/o. M.R. Rajagopal, Advocate, has secured 4th rank in the state level hindi prathama examination held during February 1998. She has been selected to receive the award in the function scheduled to be held at Kuvempu Kalashetra, Bangalore, on 9th January 1999.

## Weddings

- On 6-12-98 Mr. S. Raju, Advocate from Bangalore, married Ms. R. Anurupa at Ramanagaram.
- On 10-12-98 Mr. Harsha, Advocate and S/o. D.S. Joshi, Advocate, married Ms. Chandrakala at Bangalore.
- On 13-12-98 Mr. Y.V. Subba Reddy, Advocate from Bangalore, married Ms. T. Nagaveni at chandapura, Anekal Taluk.

## Proposed amendment to Stamp Act Salem V. Subramanyam

Chapter IV of the Karnataka Stamp Act, 1957 confers powers on the registering authority (a) for making reference to the district registrar and (b) the district registrar for determination of true and correct market value of the immoveable properties, as postulated u/s, 45A. Vitrally, there is a deterrant provision for recovery of duties and penalties u/s 46 of the said Act to be read with the Karnataka Stamp Amendment Act, 1991. The procedural aspect is incorporated under Karnataka Stamp (prevention of undervaluation of instruments) Rules, 1977. The machinery provided under the Stamp Act is enough to check the likelihood of evasion of duty. The government is fully aware of the fact that the number of litigations is on account of the arbitrary and whimsical market value adopted in excess of the real price and unless the notified guidance value or market rates are reduced, the ordinance would act as derogatory. Mere marginal reduction does not achieve any object in view of the global economic recession by sixty percent in the property and real estate values. The proposed ordinance suggesting a threat of amendment to section 45A of the Stamp Act remains only as subjective phenomenon without any material result meaningfully. It is also a fact that all the cities in Karnataka are experiencing a radical fall in the property rates and perhaps it continues further up to 2001 A.D. as economists predict or till the law is formulated bearing in mind Kautilya's canons of taxation viz. tax-duty is convenient, economic and easy to bear by the citizens.

The second aspect of the matter is in respect of the expanding litigation by creating additional forums of appeal i.e., initially before the district registrar and thereafter before the divisional commissioner in the proposed amendment. when more teeth to bite is provided in the prevailing provisions of the Stamp Act by the empowered officers, further amendment by an ordinance would complicate the issue more than rationalising and simplifying the law. Will the proposed amendment move in a converse direction of publicising rampant corruption and litigation at the time of conveyancing in the sub-registrars/district registrars offices? The Revenue Ministry alone could explain for this controversy mooted. If not, the registration and assurance department will not only be a den, but a link in a chain of corrupt transactions.



A scene of the inaugural function of the third Lahari Book Fair recently held at Bangalore.

## Lahari Advocates Forum

- Mr. K. Sreedhar Rao, Principal City Civil and Sessions Judge, Bangalore, inaugurated the third Lahari Book Fair on December 14, 1998 in a simple function held at City Civil Court Complex-Annexe. Sri K. Ramanna, Principal District and Session Judge, Bangalore Rural District and Sri Jawad Rahim, I Addl. District and Sessions Judge, Bangalore Rural District were the guests of honour at the function. The book fair lasting from 14th to 19th attracted thousands of book lovers. On the concluding day Mr. Justice Y. Bhaskar Rao visited the book fair.
- The annual genral body meeting of the Lahari Advocates Forum was held at the AAB Auditorium on December 16, 1998. Mr. N.S. Satyanarayana Gupta was unanimously reelected as the president of the Forum for the period 1998-2000. In the election held on that day S/s. Aravind Kumar, T.S. Mahanthesh, Bharath Kumar Mehta, K.R. Dinakar, E.R. Diwakar, B. Prasanna, Shanunkha Sampige and Sampige C. Mahadevamurthy were elected to the managing committee of the forum.

## Humour in Courts

A drunkard went to a bank seeking loan;

Manager: Do you possess any liquid assets?

Drunkard: Yeah, two bottles of scotch!

## Obituary

- On 4-12-98 H.K. Srinivasa Murthy, Freedom Fighter and advocate, passed away at Bangalore. He was 81.
- On 5-12-98 K. Vittal Shetty [62], Advocate, passed away at Bangalore.
- On 8-12-98 D.A. Narayan, Advocate, passed away at Bangalore.

## News Focus

- On 1-12-98 Sri B. Basavannappa, Hon'ble Minister for Food and Civil Supplies, Government of Karnataka, addressed the members of AAB, City Unit on the topic "price rise". He also distributed ration cards to some Advocates.
- On 4-12-98 a procession of Advocates was taken out to the office of the Bangalore Mahanagara Palike under the banner of Forum of Bar Associations in Karnataka demanding immediate repairs to be effected to the roads of Bangalore.
- On 11-12-98 Sri B. Somashekhar, Minister for Revenue, Government of Karnataka, addressed the members of AAB City Unit, on the subject "Working of the Revenue Department and proposed amendment to Land Revenue Act."
- On 18-12-98 a symposium on "Role of Legislature, Judiciary and Executive" was inaugurated by Mr. Justice M. Rama Jois, Former Chief Justice, P & H High Court and Senior Advocate, in Bangalore. Mr. R.N. Narasimha Murthy, Former Advocate General and Senior Advocate, delivered key note address. Mr. S. Vijayshankar, Advocate General in Karnataka and Mr. K.N. Subba Reddy, president AAB, also spoke on the occasion. The symposium was held under the auspices of the Karnataka Labour Representatives Forum, Bangalore.

## Foreign Tour

- On 20-12-98 Mr. D.H. Mokhashi, Advocate, left Bangalore alongwith his family for two weeks tour of Singapore, Thailand and Hongkong.

## Wanted

Mr. D.S. Joshi, M.A., B.L., Advocate, 107/B, 24th Cross, 2nd Block, Rajajinagar, Bangalore-560 010, requires the services of an Advocate or two Trainee Advocates. Contact personally or over Phone: 3325248.