

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

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PART 9

## CALL TO IMPROVE CRIMINAL JUSTICE SYSTEM

The first ever conference of Chief Ministers on administering Criminal justice, convened on 13-11-92 at New Delhi, expressed concern over the increasing criminalisation of politics and politicisation of criminals. The Conference adopted a unanimous resolution to improve the criminal justice system and a seven point programme intended to achieve this goal.

A four hour deliberation preceded the unanimous resolution and a decision to setup a Steering Committee under the chairmanship of the Home Minister S.B. Chavan to monitor the programme. Prime Minister P. V. Narasimha Rao set the tone for discussion & remarked that there is lot of criminalisation of public life and as such there is hardly any area of activity in the Country which can remain outside the pale of crime. He suggested that some serious thinking on the subject has to be done particularly in the area of election process to prevent further criminalisation of politics for electoral gains.

The U. P. Chief Minister Kalyan Singh endorsed the Prime Minister's suggestion that immediate action, on a non party level or at the all party level needs to be taken to stem the rot. He also suggested that the political parties must evolve a Common Code of Conduct to stop the criminalisation of politics. He further suggested that terrorism should be tackled with by nodal agency.

Interestingly almost all the Chief Ministers demanded stricter provisions in respect of the bail applications. The Conference urged a thorough review of the judicial system to meet the requirements of fast changing scenario of increased criminal activities and called upon for making time bound amendments to the law particularly concerning the criminal prosecutions.

The Seven point programme endorsed by the conference envisages amending the Criminal Procedure Code, Indian Penal Code and Evidence Act to remove the shortcomings in their application; improving procedures to expedite trials; setting up of directorates of prosecution to supervise investigation and prosecution; training of investigative officers, judicial officers and prosecutors at various levels, exploring alternatives to prison sentences by de-penalisation and de-institutionalisation; giving relief to the victims of crime & streamlining bail provisions to prevent the overcrowding of jails.

Many of the Chief Ministers felt that the present system of granting bails is too liberal & immediate amendments are required in this direction in the light of the increase in number of crimes against Women Children, the Schedule Castes and Schedule Tribes. The conference also noted with concern that in view of the fact that the police do not have adequate infrastructure to check the spread of crime the criminal cases are piling up in courts.

## Job Reservations Upheld

In a farreaching judgment delivered on 16-11-92 the Supreme Court upheld the decision of V. P. Singh government to reserve government jobs for socially and educationally backward classes with the provision that the well off among them be excluded. The Court simultaneously quashed the decision of the P. V. Narasimha Rao government to reserve additional 10% jobs for the Economically Weaker Sections among those not belonging to SEBCs, SC and ST. The Court ruled that barring exceptional circumstances the total reservation of jobs should not exceed 50% of jobs.

Significantly the Supreme Court also held the reservation should be a one time affair and such benefit cannot be extended to promotions. The Court also directed the Union Government to evolve criteria for excluding the "creamy layer" of the SEBCs from the ambit of job reservations within 4 months from the date of the judgment. The Government has also been further directed to take up and settle all complaints relating to exclusion or inclusion in the category of SEBCs eligible for job reservation. The Court ruled that if the government chooses to reject the advise of such bodies then it will have to specify reasons for doing so. A nine judge Bench delivered this judgment running to 912 pages. On various issues considered by the Court there has been divergent opinions. However, by

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## NEW CJI

Justice Lalith Mohan Sharma is appointed as the new Chief Justice of India in place of Justice M. H. Kania who retired on 18-11-92.

Justice S. D. Agarwal is appointed as the Chief Justice of Punjab & Haryana High Court. He was working as a judge of the Allahabad High Court.

## New Attorney General

Mr. Milon Kumar Banerjee has been appointed as the new Attorney-General of India in place of G. Ramaswamy who resigned recently. For the last 10 years Mr. Banerjee was functioning as the Additional Solicitor General & the Solicitor General.

## NEW LAW MINISTER

Mr. Harnahalli Ramaswamy has taken over as Law Minister in the recently sworn in Ministry of Mr. Veerappa Moily.

## Acharya Back as AG

On 20-11-92 Mr. B.V. Acharya was sworn in as the new Advocate-General of the State in place of Sri P.P. Muthanna whose resignation was accepted. This is the second assignment for Mr. Acharya as the Advocate-General.

## Editor Required

The Secretary, Karnataka Law Reporting Council, Bangalore (ILR) has called for applications from eligible candidates to work as Editor (Kannada) on a pay of Rs. 1750/- p.m. The applicants should have been lawyers for minimum period of seven years & should have thorough knowledge in Kannada. The appointment will be for three years. Applications should reach the secretary latest by 19-12-92.



*While it is desirable to inject justice into politics  
it is disastrous to inject politics into justice*

—N. A. Palkhiwala

## Social Philosophy and Justice

While recently inaugurating the All India Law Ministers Conference Mr. S. Bangarappa, the former Chief Minister of Karnataka, urged the Courts to interpret law with due deference to the Social Philosophy of the Government in power instead of following the law of precedents. He pointed out that the programmes and policies of the Government of the day should be taken note of by the courts from their utilitarian point of view. He also opined that the law must be considered as an essential instrument of social change and not an end in itself.

This takes us to the basic questions as to the concept of "the Government" and its "social philosophy". In a democratic setup the Governments are bound to change and they are expected to represent the people's prevailing will. Further the Government of the day is also expected to follow some social philosophy. When we talk of democratic Government we no longer consider the concept of the direct democracy of city states of Socrates. In an indirect democracy the people elect their representatives. Again due to the prevalence of party system the elected representatives of the parties elect (or select) their floor leaders. This need not always be the case since the High Commands of the parties do often thrust their choice on the elected representatives of the states. The leader of a single largest party or group of parties having a simple majority in the legislature would thus become the leader of the State. He constitutes his own ministry and start governing the State for an assured term if in the meanwhile the bickerings in the ruling

party/coalition does not reach serious proportions so as to endanger the stability of the Government. In this system of Government it is no longer a secret that an individual or a small coterie of persons representing the Government are taking decisions. Further there is no guarantee that all such decisions are for public good. The various checks and balances envisaged by the constitution to check the arbitrariness of the Government are no guarantee to prevent abuse of power by the persons representing the Government. We don't have to travel far beyond to find out examples of gross abuse of power by the persons representing the Government. The two years misrule of Mr. Bangarappa is in itself an example of this.

In our polity alliances and coalitions of various political parties with divergent social philosophies for the purpose of sharing power is not uncommon. One party rule need not always be the result of every election. In such a situation how to discern the social philosophy of the Government of the day. Even if one party rule is there the agenda for social change is mostly set by the whims of an individual or small group of individuals. Whenever there is a change in Government the social philosophy of the Government of the day is bound to vary. Thus Mr. Bangarappa want the Courts to follow these varying social philosophies in the dispensation of justice. Perhaps Mr. Bangarappa did not have in his mind the political witch hunting being followed by the Governments of the day against its opponents also to form the basis of social philosophy of the Government.

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## Winding up of Companies

Udaya Holla, Advocate

(from the last issue)

in any action brought against him in respect of a debt due from the company or iv) if in the opinion of the court, there was any matter rendering it just and equitable to wind up. This Act also provided for advertisement of petition.

In India an Act was passed in 1850 containing provisions similar to the English Winding-up Act of 1844. The Windingup Act of 1848 was amended in 1849 by the Winding - up Act of 1849 which extended the operation of the Act to all partnerships, Associations and Companies of not less than 7 persons whether incorporated or not. The power of the court to wind up unincorporated associations / bodies as found in Sec. 582 and 583 of our Act can be traced to this provision of British Parliament.

British Parliament thereafter enacted a statute known as the Joint Stock Companies Act, 1856 which improved upon the earlier Acts with regard to various aspects of company law including winding up of company. This Act inter alia provided for insolvency of a company on account of non compliance with the statutory demand. Further bankruptcy rules relating to fraudulent preference were also introduced. This Act also placed restrictions on the rights of the creditors to prosecute legal proceedings and to seek execution against the company after an order of winding up and for the first time permitted voluntary winding up. This English Act was followed by Joint Stock Companies Act, 1857, 1858 and 1862.

The English winding up Act of 1890 brought about further changes. The primary object of this statute was to assimilate procedure in winding up

with that of bankruptcy, automatic appointment of the official liquidator as the liquidator of the company on its winding up, public examination of directors and former officers of the company, constitution of Committee of Inspection etc.

In India we followed the English Acts and passed Winding up Acts of 1860, 1869 and 1882. Later the Companies Act, 1913 was enacted which ultimately gave way to the present Companies Act, 1956.

Section 425 of the Companies Act 1956 specify different modes of winding - up. It could be effected a) by the Court; (b) Voluntary action and (c) subject to the supervision of the Court.

The circumstances under which a company may be wound up by the Court is specified in Sec. 433 of the Companies Act, 1956. A company may be wound up by the Court (a) if the company has, by special resolution, resolved that the company may be wound up by the Court; (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting; (c) if the company does not commence its business within a year from its incorporation or suspends its business for a whole year; (d) if the number of members is reduced, in the case of public company, below seven and in the case of a private company, below two; (e) if the company is unable to pay its debts; (f) if the Court is of opinion that it is just and equitable that the company should be wound up.

For a practicing Lawyer, three of the provisions of Sec. 433 are important as company petitions filed for Winding-up of Companies are mostly

(to be continued)



## SEMINAR ON ENTRY TAX ORDINANCE

Mr. Justice N.Y. Hanumanthappa inaugurated a one day seminar on the Entry Tax ordinance recently promulgated by the State Government. Karnataka Tax Consultants Association had organised the seminar on 14-11-92 at Bangalore.

Mr. S. Narayana, Advocate, criticised the ordinance as it could not be implemented being replete with hurdles & contradictions. He pointed out an instance to show that neither the Sales Tax Act nor the Entry Tax Act of the State had defined the word "manufacturer" as has been done by the Northern States. He felt that this was going to create lot of problems for manufacturers. He also expressed the fear that the ordinance has given abnormal powers to the Government including the power to enhance the tax retrospectively.

Mr. E.R. Indra kumar, Advocate, opined that had the Government formulated the rules on the lines of the Tamilnadu rules which had a separate tax for mobilising resources for Municipalities, would have benefitted much. He said that the Government had overstepped its limits in bringing 103 items into the ambit of Entry Tax while the Supreme Court had allowed taxation on only textiles, tobacco and sugar products.

Mr. Gopalakrishna, the Commercial Tax Inspector, said that the Department had drafted the ordinance only after consultation with the trade bodies and tax consultants & if there are any minor discrepancies it could be rectified by mutual consultation.

Mr. N. Nagaraju, Addl. Commissioner of Commercial Taxes (Legal) defended the Ordinance and pleaded that atleast it should be given a trial for three months and in the meanwhile suggestions could be entertained by the

Department from various trade bodies and the tax consultants.

Justice N.Y. Hanumanthappa dwelt upon the role of revenue income in the welfare state and called upon all the concerned to voluntarily pay tax. At the same time he felt that the income tax laws should be further liberalised so as to encourage income earning and saving devices.

At the inception Mr. S.K. Nahar, President of KTCA, welcomed the guests and the participants. In the end Mr. B.P. Gandhi, General secretary of the Association proposed vote of thanks.

## Social Philosophy & Justice

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Law of precedents has been the hallmark of judicial system all over the world more so in the Indian context. Unlike the Governments if the Courts are not bound by its own precedents it is bound to result in uncertainty and chaos. A citizen can only hope for consistency and uniform treatment by the Courts as against the arbitrary actions of the mighty State. People of Mr. Bangarappa's ilk might have a short sighted and conceited notion of the efficacy of judicial system rather than that of a common man. Bangarappas may come and go a commoner still finds protection of law from the Courts on the basis of the tested principle of the law of precedents and as a result he has greater faith in efficacy of justice rather than the Governance or the misrule of the Government of the day.

## BLU Elections

The Annual General Body meeting of the Bangalore Literary Union and election of office bearers for the year 92 - 93 is scheduled to be held on Saturday the 12th December 1992.

## HUMOUR IN COURTS

□ Recently the Advocate-General had engaged a lawyer from Delhi to defend him before the Division Bench of the Karnataka High Court. A local lawyer who was present on the occasion was heard saying that while the State Government had appointed the Advocate-General to defend its cases the Advocate-General himself needed the defence from a General Advocate!

□ A Doctor who was discussing with a lawyer friend wanted to know the secret behind the letters patience vis-a-vis some boring clients. The Lawyers replied by saying that he will avoid such clients by sending bills for fat sums.

The Doctor highly appreciated the ingenuous method adopted by his lawyer friend and returned home. Next day he found a communication from the lawyer which contained an Annexure in the form of a bill for a fat sum towards his discussion the previous day he had with the lawyer!

## NEWS SPECTRUM

□ Recently a Chinese Court held that any one who wants to regard an old song praising the revolutionary leader will have to pay royalty to the composer's family.

□ Recently a US Court awarded compensation of 3,20,000 Dollars to two Children who suffered burn injuries while playing with a cigarette lighter. The Court found that the lighter could not be effectively put off before the children caught fire from it and in this view the manufacturer had not provided for adequate safe guard.

## Suffers Heart Attack

During the second week of Nov-92 the Chief Justice of Madras High Court Ms. Justice Kanthakumari Bhatnagar suffered heart attack while on a four day tour of Andamans.

## Views & Vignettes

□ In the name of enforcement of justice undertrials are incarcerated for longer period than the sentences they are to undergo incase they are to be convicted. There is limitation within which the cases pending before law courts should dispose of the cases. Can the members of the Bar do something in this regard?....S. K. Vaswani.

While addressing the members of AAB on the occasion of the Vivekananda Parikrama Yathra.

□ The licences of the STD/ISD Booths could be withdrawn if they charged the public more than the rates stipulated by the department....N.S. Ramachandran.

While responding to the remark of an advocate that such booths were collecting higher amount while the rate fixed by the department (for a local call) was only Re 1/-

□ After independence we have become a punishmentless society. Not only the Politicians, IAS and IPS officers go scot free even when their complicity in various crimes are established but also the judiciary is no better. Where a judge of the Supreme Court is facing charges of financial irregularity his colleagues in the Supreme Court refuse to take any action against him....Ajit Singh.

While addressing the members of AAB the speaker was referring to the State of health of the country vis a vis the politicians, administrators & judicial system.

□ I learnt that some members are talking lightly about me. I have two houses and two sites. I enjoy all the comforts. God has been kind to me. I am not interested in acquiring any site.....K. N. Subba Reddy.

While addressing the members of AAB in the extraordinary General Body meeting convened to consider the proposal to form an Advocates Housing Colony.



### News Focus

□ On 5-11-92 Mr. Ajit Singh, M. P. and President Janata Dal (A) and Mr. Trilok Thyagi, President, Yuva Janata Dal (A) addressed the members of AAB.

□ On 13-11-92 Justice K. A. Swami, the Acting Chief Justice, inaugurated the Dining Hall for Advocates at the High Court premises.

□ On 17-11-92 Prof. K.N. Vasvani, Vice President, Vivekananda Kendra, Kanyakumari addressed the members of AAB at the High Court Unit about the significance of Vivekananda Parikrama Yathra. Justice M. Ramakrishna presided.

□ On 19-11-92 AAB had organised an "open house discussion" on the various problems facing the Telephone users and aspirants. Mr. N.S. Ramachandran, General Manager, Telecommunications, Bangalore was the Chief Guest.

□ On 27-11-92 Sri Harnahalli Ramaswamy, Minister for Law & Parliamentary affairs addressed the members of AAB.

□ On 30-11-92 a symposium on the subject Impact of Granite quarrying on the Flora & Fauna of M. M. Hills and B. R. Hills forest area was held by the AAB. Mr. Yellappa Reddy, IFS, Conservator of Forests (Western Ghats) and Dr. H. Sudarshan, Hon. Secretary, Vivekananda Girijana Kalyana Kendra, B. R. Hills participated in the symposium.

□ On 2-12-92 Mr. Revanasiddaiah, IPS, IG of Police (COD) addressed the members of AAB on the subject Role of COD in investigating crimes.

### Job Reservations Upheld

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8 : 1 majority the Court ruled that the economic criteria for poverty cannot be the sole criterion for making reservations in government jobs for the Backward classes.

### Equal Pay for Equal Work

By a judgment dated 13-10-92 the Supreme Court declared that employees can demand equal pay for equal work through the courts as a matter of their fundamental right to equality. The Court ruled that even though this concept can be found only in the directive principles of state policy but as a fundamental right of equality the relief can be granted.

A Division Bench comprising of Justice Kuldeep Singh, Justice N. M. Kasliwal and Justice B. P. Jeevan Reddy gave this ruling in the case of State of Madhya Pradesh Vs Pramod Bharatiya.

### Miscellany

□ On 1-6-92 Rachuvachar & Mali Mariyappa opened their new law chamber at No. 2, Mourya Mansion, 1 cross Imain, Gandhi Nagar, Bangalore-560009.

□ By Government order dated 17-11-92 fourteen Advocates have been permitted to function as Notaries Public, within Bangalore Metropolitan Area.

□ On 6-12-92 Lahari had organised an excursion to Malavalli and Shivanasamudra.

□ M. Lokesh, Member, All India Bar Council, has been nominated as a member of the Governing Council of the National Law School of India University.

### Obituary

□ On 16-11-92 H. Basavaraj, Advocate (former Munsiff), died at Bangalore.

□ On 25-11-92 Rama Kamath, Advocate, expired at Bangalore.

□ On 8-12-92 B. S. Lakshminarayana, Advocate, passed away at Bangalore.

### MP High Court Creates History

Indoor Bench of Madhya Pradesh High Court recently ordered notice to its own Chief Justice on a public interest writ petition filed by one Mr. Sathyapal Anand. In the writ Petition the Petitioner has challenged the legality and propriety of the delays on the part of the judges of the High Court in delivering judgments even after the closure of hearings. The Petitioner contended that inordinate delays in pronouncing judgment would shake the confidence of the litigants in the Judiciary.

### Accused Attacked

On 5-12-92 Smt. Kanthamma, an accused before the Court of Metropolitan Magistrate, Bangalore was allegedly attacked with chopper in the open Court by one Narasimha Murthy thereby causing injuries on the head and shoulder. His wife one Parvathamma is the Complainant in the said case. Narasimha Murthy is reportedly working in the office of the Advocate General. The Police apprehended him and his wife Parvathamma and have registered a case against them.

### Book Released

Recently the Land Revenue Digest (Part I) consisting of reported cases on Mysore Land Revenue Code (from 1951 to 92), Karnataka Land Revenue Act. and Rules (from 1964 to 92) and Karnataka Land Grant Rules (with notifications from 1984 to 92) compiled by Prof. V. Narayana Swamy was released. The book is Priced Rs. 55/-

### ಸನ್ಮಾನ ಸಮಾರಂಭ

ದಿನಾಂಕ 29-11-92 ರಂದು ಕನ್ನಡ ಚಳವಳಿ ಹೋರಾಟಗಾರರ ರಾಜ್ಯ ಸಮಿತಿ ನಡೆಯಿಸಿದ 37ನೇ ರಾಜ್ಯೋತ್ಸವದ ಅಂಗವಾಗಿ ನಡೆದ ಸಮಾರಂಭದಲ್ಲಿ ರಾಜ್ಯೋತ್ಸವ ಪ್ರಶಸ್ತಿ ವಿಜೇತರಾದ ನ್ಯಾಯವಾದಿ ಕೋ. ಜೆ.ನಂಜಪ್ಪ ಹಾಗೂ ನ್ಯಾಯವಾದಿ ಪಿ.ಜಿ.ಸಿ. ಚಂಗಪ್ಪರವರಿಗೆ ಸನ್ಮಾನ ಮಾಡಲಾಯಿತು.

### Around the Courts

Civil Procedure Code, Order - 9 Rule - 7 ; small causes Court Act, Sec. 18 :

The High Court can interfere under its revisional jurisdiction under Section-18 of the Karnataka Small Causes Court Act, regarding imposition of costs by the Court of Small Causes. The trial court dismissed the suit for non-prosecution before the Defendant was served. Petitioner instituted Miscellaneous case to restore the suit. The same was allowed subject to deposit of costs of Rs. 100/-. The approach of the trial Court in awarding costs of Rs. 100/- to the Defendant even when he was not served is not correct. CRP allowed directing the trial court to restore the case and pass orders on merit.

CRP No. 3516/1987 DD : 25 - 8 - 1987 Mohammad Iqbal V/s. Abdul Khuddus by his L. R. S.

### Jamkhandi Bar Oppose

The Special General Body meeting of Jamkhandi Bar Association convened on 9-11-92 adopted unanimous resolution seriously protesting the action of the High Court of Karnataka and the State Government divesting the jurisdiction of Jamkhandi Civil Judge concerning Civil disputes of Bilgi Taluk and vesting the same in Bagalkot Civil Judge. It was also resolved that a delegation of the Bar Association should impress upon the Government and the High Court to change this decision and restore status quo ante.

### Office Bearers

In the election held on 18-10-92 for the Young Advocates Forum the following office bearers were elected : M. Lokesh, President ; C. Srinivasa, Vice-President ; S. Doreraju, General Secretary ; H. C. Ravindranath, Joint Secretary ; S. Jayanna, Treasurer.