

CBI Freed From Govt. Grip

The Supreme Court redefined the structure and functioning of the Central Bureau of Investigation [CBI] and the Enforcement Directorate [ED] in an attempt to infuse probity and accountability in public life and shield the agencies from political and bureaucratic pressure. In the 102 page judgement delivered on 18-12-97 on a PIL the division bench comprising Chief Justice J.S. Verma, Justice S.P. Bharucha and Justice S.C. Sen, quashed the 1969 directive under which Govt. sanction was required to be obtained by the agencies to investigate corruption charges against officers of the rank of joint secretary and above working in the Govt., PSUs and nationalised banks.

The court directed setting up of a system of checks and balances to ensure free and fair investigations under which the Central Vigilance Commission [CVC] has been asked to review CBI's work to bring about objectivity. It was also directed that the selection of the Central Vigilance Commissioner be made by a committee comprising the Prime minister, Home minister and the leader of the Opposition from a panel of distinguished civil servants to be furnished by the Cabinet Secretary. In turn the Central Vigilance Commissioner will head a committee that will recommend names for the appointment of the CBI Director. Other members of the committee will be the Home Secretary and Secretary [Personnel] and the Committee will consider the opinion of the incumbent Director. As far as the appointment of ED the revenue secretary will be on the Committee.

As per the scheme this committee shall draw up a panel of IPS officers on the basis of their seniority, integrity and experience in dealing with anti corruption cases. The final selection shall be made by the

Appointment's Committee. If none of the panelists are found suitable the reason shall be recorded and the committee asked to draw up a fresh panel. To ensure continuity and freedom of functioning the CBI Director shall have a minimum tenure of two years regardless of his or her retirement date. As far the transfer of an incumbent CBI Director the Selection Committee's approval is made mandatory.

Regarding selection or extension of tenure of officers up to the level of Joint Director of CBI the count has directed that it should be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary [Personnel] with the CBI Director providing the necessary inputs. The appointment of officers upto the level of Joint Directors, extension of service or selection will have to be approved by the Board. Apart from issuing a set of guidelines for improvement of Infrastructure and methods of investigation the count has also directed that the services of professionals from revenue, banking and security sectors should be inducted. The court further directed



Artist Ms. Nandini K. Mehta lighting the lamp at the inaugural function of the Festival of Gujarat hosted by Lahari Advocates Forum.

that a team of experienced lawyers should assist the agencies in prosecution of sensitive cases. In the event of discharge or acquittal of accused in each case responsibility for such outcome should have to be fixed within the CBI/ED. The count has asked the agencies to regularly publish reports to provide the public feedback on investigations and information for redressal of grievances. The court has also asked for setting up of a nodal agency to oversee the cases involving politician-bureaucrat-criminal nexus. This agency will be headed by the Home Secretary with Member [Investigation], CBDT, Director General [Revenue Intelligence], CBI and ED Director. The agency shall meet atleast once every month.

Interestingly the court refused to go into the validity of the appointment of the incumbent CBI Director R.C. Sharma even while observing that his appointment should not be extended beyond the period of his tenure which is to end soon.

Lahari Advocates Forum

- The Forum proposes to form a Kabaddi team. Interested persons may register their names with Mr. T.S. Mahanthesh, Advocate, on or before 31-1-98
- For the benefit of Advocates the Forum has opened a placement bureau. Advocates requiring the services of new lawyers and vice-versa may write to Mr. B.M. Shyam Prasad, Advocate, No. 2, 27th 'A' Main Road, IX Block, Jayanagar, Bangalore-560 069.

Wishing happy

1998

to all the readers

The execution of the laws is more important than the making of them

-Thomas Jefferson

Kolar Diary

■ The First District Lok Adalat at Kolar under the auspices of the District Legal Services Authority was held on 29-11-97. Mr. Justice A.J. Sadashiva, Executive Chairman, KSLSA, Mr. Justice P.V. Shetty and Mr. Justice V. Gopala Gowda spoke on the occasion. Out of 209 cases received 57 MVC cases and 11 civil and criminal cases were settled during the Lok Adalat.

■ On 14-12-97 Advocates Association Bagepalli and Rural Development Organisation, Gauribidanur had jointly sponsored a seminar on the topics "Code of Conduct to the Members of Bar and Bench" and "Women and Law" at Bagepalli.

■ On 17-12-97 Lawyers of Chikkaballapur Bar launched an indefinite strike seeking removal of Dy. S.P. of Chikkaballapur Mr. Krishna Raju. According to the Advocates Mr. Krishna Raju abused their colleague Raghuram in foul language for defending the members of *Shaktipath*, an organisation of Japan whose members claim to be the devotees of Sai Baba. However, according to the police Dy. S.P. only spoke to the Advocate over phone as per the instructions of his superiors as the members of *Shaktipath* were under scrutiny of Interpol.

Advocate Arrested

On 16-12-97 Virajpet police arrested the local Advocated Mr. K.B. Hemachandra for his alleged involvement in the violence that broke out in Virajpet on December 8th 1997. Subsequently he was remanded to judicial custody till December 29th, 1997. According to the police Mr. Hemachandra instigated the mob which later went on rampage and looting.

Lawyers Boycott Tribunal

Lawyers practising before the Industrial Tribunal, Bangalore, have been boycotting the proceedings of the Tribunal Since 3-11-97 on the ground that it was impossible to conduct cases of industrial workers before a judge who did not know Kannada. The Lawyers one demanding the removal of the Presiding Officer Mr. K. Mohanachandran who lacks the functioning knowledge of Kannada.

Campus watch

■ On 6-12-97 former M.P. Sri H.D. Kumaraswamy inaugurated the legal awareness programme at Bidadi, Ramanagara Taluk. Final year students of University Law College and Babu Jagajeevanaram Law College from Bangalore participated in the programme under the guidance of Prof. Ramaswamy.

■ On 9-12-97 "*Kannada Vaibhava-97*" a programme connected with *Kannada Rajyotsava* was inaugurated by Mr. Anantanag, Minister of State for Urban Development, Government of Karnataka, in the University Law College, Bangalore. *Kannada Balaga Vidyarthi Parishad* of ULC had organised the function. The programme was concluded by an orchestra of Madan Mallu and party.

■ Ms. S. Sapna D/o Sainath, Advocate, secured First Rank in final year LL.B. [5 years course] exam of Bangalore University held during April-May 1997.

New Office Bearers

The general body meeting of the Ramanagaram Advocates Association held on 3-12-97 unanimously

elected the following office bearers:

Mr. N. Subba Shastry, President;
Mr. T.R. Rangaram Gowda,
Secretary and Mr. S. Sidde Gowda,
Treasurer.

Consumer Notes

In a recent decision the Tamil Nadu State Consumer Disputes Redressal Commission has held that the postal department cannot be made to pay compensation in the case of delayed delivery or non-delivery of the speed post and the sender of the postal article cannot claim compensation in view of the provisions of Section 6 of the Indian Post Office Act. This ruling is based on the earlier decision of the National Consumer Disputes Redressal Commission in the case of Presidency Post Master General, Madras Vs. Dr. Shankar Rao. [11 (1193) CPJ 141 NC].

Accountability of Judges Crucial

Former Union Law Minister Mr. Shanti Bhushan said that Judges must be accountable to the people about their integrity, honesty and efficiency. He called upon the Bar to be vigilant about the role of Judges and their conduct. He said that the members of the legal profession have an important role in creating public opinion and awareness about the accountability of Judges. Mr. Shanti Bhushan was speaking at a seminar on judicial accountability in the Bar Association of Calcutta High court on 22-12-97.

Clearing Backlog Crucial

Huge backlog of cases, particularly in lower courts, should be reduced on priority basis to keep people's faith intact in the judiciary, said the senior lawyers taking part in

the seminar organised by the Senior Advocates Association of India at New Delhi recently, on the topic "Role of judiciary and good governance." Speaking on the occasion Mr. Justice G.T. Nanawati said that in a federal structure like ours we have accepted the theory of checks and balances and it is the role of the judiciary to ensure good governance. Expressing dis-satisfaction over the conduct of the government, he said, that "governments had lost their credibility, legitimacy and representative credentials. In actual practice we find that the fundamental principles are violated openly, daily and yet, people are unable to do anything about the same. The functioning of judiciary is much better compared to that of the other two organs. Judicial activism is necessary to correct the inadequacy of the legislature and executive."

Miscellany

- On 3-12-97 Mr. G. Narayana Hebbar, Advocate, opened his chamber at No. 146, 1 Floor, D.V.G. Road, Basavanagudi, Bangalore-560 004.
- S/s B.K. Murthiswaraiiah, Rudraiah, Shimoga Subbanna, M. Ramakrishna, N.S. Satyanarayana Gupta, H.R. Shankaranarayana and K. Suryanarayana Rao, Advocates from Bangalore attended the 66th *Kannada Sahithya Sammelana*, held at Mangalore between 11th to 14th December 1997.

New Diary Released

Sree Shakthi Publications,
No. 197 E, 18th Main,
Vijayanagar, Bangalore-40,

has published a new **Lawyer's Court Diary-1998**. The Diary contains useful information and it is quite handy. The publisher proposes to release the Dairy annually. The Diary is priced Rs. 90/-.

No Hard Labour For Undertrials

In a significant ruling the National Human Rights Commission [NHRC] has held that an undertrial cannot be put to hard work and directed the UP Government to pay Rs. 1,00,000/- Interim compensation to the parents of Ashok Kumar, an undertrial, who succumbed to injuries on 28-8-96 while carrying a load of wheat to the flour mill within the precincts of the prison at the behest of Rookee Sub-Jail Authorities. While taking note of the gross negligence in affording proper medical treatment to Ashok Kumar NHRC said that the state is under obligation to provide medical facilities to every prisoner. In case a prisoner suffers an injury he deserves prompt medical attention at a hospital with proper facilities at the hands of a proper physician.

According to the evidence Ashok Kumar was made to carry a heavy bag of wheat when he slipped and fell down with the wheat bag causing serious injuries including a fractured vertebral column. Criticising the poor quality and the lack of prompt attention the NHRC found that despite his serious condition Ashok Kumar was discharged from the Medical College Hospital, Meerut, and sent back to Civil Hospital, Roorkee, which had no facilities for treatment of such serious cases. The Commission asked the state Government to conduct an appropriate enquiry into the episode to fix responsibility on the officials concerned and recover the compensation from those found responsible for causing the death of the undertrial. The commission also issued show cause notices to the concerned doctors as to why they should not be held responsible for dereliction of duty in not affording the undertrial proper medical attention.

Notaries Elect Office Bearers

In the Thirteenth Annual Conference of the Karnataka State Notaries Association held at Hubli on 13-12-97 the following office bearers were elected:

President: Mr. H.S. Renuka Prasad, Bangalore; Vice President : Mr. Inamdar, Hubli; Secretary : Mr. Prabhakar Hegde, Udupi; Joint Secretary : Mr. S.S. Reddy, Yagiri; Executive Committee Members : Mr. M.G. Kerur, Banahatti; Mr. Gavi Siddappa, Ballary, Mr. Venka Reddy, Koppal, Mr. Ambli Brahmanand, Harappanahalli, Mr. D.K. Prakash, Bangalore, Mr. G.S. Narayan, Tumkur, Mr. Prem Kumar, Srirangapattana and Mr. Jayalingappa, Bangalore.

News Panorama

◆ For the first time after 1979 Islamic revolution in Iran the government has appointed four women Judges in December 1997. The appointments of women Judges have been made to the family courts in Teheran province. It may be noticed that the Islamic clerics had opposed the women taking up any appointments on the ground that their place is at home.

◆ Seventy four Americans sentenced to death penalty were executed in United States in 1997 according to the Death Penalty Information Centre. Texas accounted for thirty seven executions being the highest number compared to other states. Lethal injection was used in sixty eight cases of executions while the electric chair was used six times. All the seventy four were men. In 1996 there were forty five executions - thirty six by lethal injection, seven on the electric chair, one by hanging and one firing squad. Karla Faye Tucker, 38, the first woman convict since 1984 is waiting execution in the first few weeks of 1998.

Around the Courts

Sec. 11 of the Hindu Adoptions and Maintenance Act, 1956 - Prohibition of adoption of two children of the same sex-validity:

A division bench of the Bombay High Court comprising Justices A.A. Desai and S.S. Parkar, upheld the validity of Section 11 of the Hindu Adoptions and Maintenance Act, 1956 which prohibits the adoption of two children of the same sex. While disposing off a petition filed by a Pune couple, who wanted to adopt a second girl, through the judgement dated 3-12-97 the Judges refused the plea of the petitioners that the impugned provisions are illegal and held that the provisions are liberal enough to have extended the right to adoption of a female child. The Court observed that "The Act with its mythological and secular mission has stood the test of time for around four decades and has conveniently withstood the assault as attempted from time to time. We, therefore, refrain from examining the validity of the impugned provisions on the touchstone of Articles 14 and 21 of the Constitution of India."

(a) Sec. 3[4] of the Terrorists and disruptive Activities [Prevention] Act [TADA]-Absence of Mens rea-effect;
(b) Sec. 313 of the Code of Criminal Procedure [Cr.P.C.]-right of the Court to put questions - scope of:

In a recent judgment a bench of the Supreme Court comprising Justices M.K. Mukherjee and K.T. Thomas, ruled that mens rea [Intention] is an essential ingredient to be established against an accused involved in an offence relating to section 3[4] of the Act. If section 3(4) is understood as imposing harsh punishment on a person who gives shelter to a terrorist without knowing that he was a terrorist such an understanding would lead to calamitous consequences, the bench observed.

The bench also ruled that no trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused for giving an answer favourable or unfavourable. Thus the court held that the power of the court to examine the accused under section 313 or the Cr.P.C. is limited

to put questions on the basis of evidence on record and not otherwise.

Expressing dis-satisfaction over the designated Judge S.N. Dhingra's action for extricating one sentence out of two letters and using it against the accused Sabu V. Chacko, the Judges held that it was illegal on the part of the designated Judge to have used any part of the said letters when those letters were not adduced as evidence in the case. The bench observed that section 313 of Cr.P.C. is intended to afford opportunity to an accused to explain any circumstance appearing in the evidence against him, but not intended to be used as a tool for interrogation. The Apex Court through this judgment acquitted the former union minister Kalpana Rai, his private secretary S.P. Rai and the regional manager of the East West Airlines Sabu V. Chacko.

Secs. 3 and 4 of the Dowry Prohibition Act R/W the Foreign Exchange Regulation Act [FERA]-prosecution of girl's father offering dowry-scope of:

In a recent judgment a bench of the Supreme Court comprising Justices S.C. Sen and M.J. Rao, set aside the judgment and order of the Karnataka High Court directing to prosecute Mr. Nanda [Complainant] father of dowry victim Archana Ambati for offering dowry in violation of the Dowry Prohibition Act and FERA. Allowing a Special Leave Petition filed by Mr. Nanda the Apex Court held that the "Courts are supposed to take notice of Social scenario while interpreting and enforcing the reformatory statutory measures so as to further justice in the society instead of aggravating the agony of the victims of dowry. When the giver of dowry is treated as an offender it becomes difficult and impossible to prosecute the demander of dowry. When the Dowry Prohibition Act is read as a whole it becomes crystal clear that the Parliament never intended that the giver of dowry be prosecuted."

(a) Sec. 5(1) (a) of the Bombay Hereditary Officers Act, 1874-Alienation in the form of gift of watan properties beyond the life time of the donor is illegal and the donee holding over possession is a trespasser;

Contd. on Page 4

News Focus

- On Saturday the 6th December 97 judicial work in Karnataka High Court was taken up.
- On 15-12-97 Mr. H.T. Sangliana, Addl. D.I.G. and I.G. of Prisons addressed the members of AAB, Magistrate Court Unit on the subject "Crime and Its prevention."
- On 15-12-97 Mr. Justice Virendra Kumar Singhal was sworn in as a Judge of the Karnataka High Court. He was a Judge of Rajasthan High Court before his transfer to the Karnataka High Court.
- On 19-12-97 AAB had organised a programme of sitar recital by Mr. M.R. Rajashekar and party in the city Auditorium.
- An endowment programme of *Bhakti Sangeetha* by Sri Shimoga Subbanna was organised in memory Justice E.S. Venkataramaiah in Bharatiya Vidya Bhavan on 18-12-97.
- On 26-12-97 Mr. Justice H.N. Tilhari addressed the members of AAB, Magistrates Court Unit on the topic "The role of lawyers in the society."
- On 27-12-97 Chief Justice of India Mr. Justice J.S. Verma inaugurated the Computer Centre in NLSIU Bangalore.
- On 27-12-97 Chief Justice of India Mr. Justice J.S. Verma addressed the members of AAB, Magistrates Court Unit. He called upon the Advocates to educate the litigants about the steps being taken by the judicial administration in clearing the backlog of work.

- On 29-12-97 Karnataka Tax Consultants Association, Bangalore, had organised a talk on the topic "working of VAT system in European countries and USA and how it is beneficial to Karnataka" by Mr. Sudhir Krishna, Commissioner of Commercial Taxes in Karnataka. MR. K.N. Subbareddy, President, AAB, was the guest of honour. Mr. S. Narayana, Advocate, also spoke on the occasion. Mr. S.K. Nahar, President of KTCA, welcomed the participants. Mr. E.R. Indrakumar, Advocate, proposed vote of thanks.

Literary Union

- On 6-12-97 a *Kavi Sammelana* was organised for lawyers. 35 lawyers participated in the programme.
- On 16-12-97 under the joint auspices of the Literary union, AAB and Advocates Co-operative Society, *Kannada Rajyotsava* was celebrated at the AAB Auditorium. Mr. Santharasa, President, Karnataka Sahitya Academy was the chief guest. Mr. Justice V. Gopala Gowda was the guest of honour.
- On 18-12-97 Adarsha Sugama Sangeetha Academy presented a musical programme.

Point Blank

It is perhaps better to handover the police department to school children who will be able to perform its functions more effectively.

Mr. Justice M.F. Saldanha

Around the Courts

From Page 3 :

(b) Sec. 59 of the Watan Act, 1886 [Bombay]-- daughter not entitled for a share in the watan properties - a suit for partition by the daughter of the watandar not maintainable:

Whenever the watandar gifts a watan property such alienation after the death of the watandar becomes void and the heirs of watandar are entitled for reversion of the watan property. The possession of the donee after the demise of the watandar is illegal and the status is that of a trespasser.

It a Mohammaden watandar dies leaving a widow, a daughter and a paternal uncle, the daughter is not entitled under the watan Act to any interest in the watan lands she being postponed in the order of succession. The lands are divisible between the widow and paternal uncle as if the daughter was non-existent and the widow will take 1/4 share and the paternal uncle will receive 3/4 share. The widow will have take only a life interest in her share. In this view of the matter a suit for partition of watan lands by the daughter is not maintainable.

RSA No. 557/1983 DD 7-1-1997. *Toirabi Vs. Gouse Imam patil* by his LRs and others

Sec. 2[j] of the Industrial Disputes Act, 1947 whether the department of Telecommunication is an industry?:

A division bench of the Apex Court comprising Chief Justice J.S. Verma, Justice B.N. Kirpal and Justice V.N. Khare, has recently held that the department of Telecommunication is not discharging any of the sovereign functions of the state and it is in industry within the definition of Section 2 [j] of ID Act. It has also held that the decisions reported in JT 1996 [2] SC 457 Sub Divisional Inspector of Posts, Vaikom Vs. Theyyam Joseph and JT 1997 [6] SC 57 Bombay Telephone canteen. Employees Association Vs. Union of India does not lay down the correct law in the light of the Seven Judge Bench decision reported in 1978 [2] SCC 213 Bangalore Water Supply and Sewerage Board Vs. A. Rajappa.

New CJ for Pak

Justice Ajmal Mian was sworn in as the new Chief Justice of the Pakistan Supreme Court on 23-12-97. Acting President of Pakistan Mr. Wasim Sajjad administered the oath of office to the new C.J. Earlier the appointment of the previous Chief Justice Sajjad Ali Shah was declared as illegal and unconstitutional by the ten member bench of the Apex Court headed by Justice Saiduzzaman Siddiqui. The bench also declared that the orders passed by Justice Shah after 26-11-97 in his capacity as the Chief Justice was without legal authority.

Humour in Courts

■ Judge: Mr. Counsel, why don't you pay a little attention to the proceedings?

Counsel: Yes your Honour, I am paying as little as I can!

■ Accused: Your Honour, I confess that it took two decades for me to realise that I don't have ability to commit crimes.

Judge: Why don't you give it up and become a good citizen?

Accused: No your Honour, I can't afford to do it as it has become a part of my life!

■ Witness: I can't withstand this cross-examination. I didn't come here to be insulted.

Judge: Why, where do you usually go?

Courtesy: E.R. Diwakar.

Obituary

□ Ms. Nirmala [32], Advocate, W/o advocate Mr. Anand, was found hanging in her house on 17-12-97.

□ On 19-12-97 S. Ramaswamy Iyengar [64] Advocate, passed away at Bangalore.

Read Communique