

2015



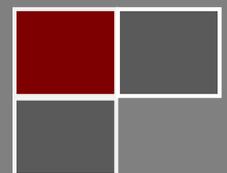
INDIAN  
NATIONAL  
BAR  
ASSOCIATION



# A Report on - INBA Celebrated 66<sup>th</sup> National Law Day An International Conference on Law and Policy Issues

26<sup>th</sup> November, 2015

Shangri-La's Eros Hotel, New Delhi, India



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## *DIGNITARIES GRACES THE OCCASION*



**Inaugural Ceremony**



**Hon'ble Shri Vijay Sampla, Ministry of State for Social Justice & Empowerment, Govt. of India**



**Panel discussion on Public Policy, Regulatory Compliance & Ease of Doing Business**



**H.E. Mr. Stephen Pelham Pound, Member of Parliament, Ealing North, United Kingdom**



**Shri KTS Tulsi, Sr. Advocate, Shri Ram Jethmalani, Sr. Advocate, Axel Heck, Esq., Attorney-at-Law**



**Awards presented by INBA to In-House Counsels**

## ***ESTEEMED SPEAKERS & GUESTS***

Name	Designation
Hon'ble Mr. Vijay Sampla	Minister of State for Social Justice & Empowerment, Govt. of India
Hon'ble Mr. P.K. Malhotra	Secretary of Legal Affairs, Govt. of India
Hon'ble Ms. Meenakshi Lekhi	Member of Parliament, Lok Sabha
H.E. Virendra Kumar Sharma	Member of Parliament for Ealing Southall, United Kingdom
H.E. Mr. Stephen Pelham Pound	Member of Parliament for Ealing North, United Kingdom
Mr. Ram Jethmalani	Senior Advocate & Member of Parliament, Rajya Sabha
Mr. KTS Tulsi	Senior Advocate & Member of Parliament, Rajya Sabha
Dr. Subhash C. Kashyap	President, INBA
Adv. D. Bharath Kumar	General Secretary, Rashtriya Adhivakta Parishad
Mr. Pankaj Mohindroo	National President, Indian Cellular Association
Ms. Lata Krishnamurti	Attorney-at-Law (SC), India
Mr. Sumes Dewan	Managing Partner, Lex Favios
Mr. Sandeep Menon	Managing Director, Vastu Housing Finance Corporation Limited
Mr. Anurag Batra	Chairman, Businessworld
Mr. Sunil Thakur	Director, Quadria Capital Investment Advisors Pvt. Ltd.
Axel Heck	Esq., Attorney-at-Law & INBA Int'l Sec. Chair, Germany
Mr. Oliver Alexander	Attorney-at-Law, Germany & Qatar
Mr. Pranav Mago	Head, SE Asia, Singapore International Arbitration Centre
Mr. Manan Singh	Director of India Practice, Brown Rudnick LLP
Mr. Ajay Thomas	Director & Registrar, London Court of International Arbitration (India)
Mr. Manas Kumar Chaudhuri	Partner, Khaitan & Co. LLP
Mr. Pulin Kumar	Director Legal and Regulatory compliance, Adidas India
Mr. Sudhanshu Pandey	Joint Secretary, Ministry of Commerce & Industry
Mr. Mukesh W Tyagi	CEO, Global Energizer
Ms. Kavitha Gupta	Sr. Counsel, Asia Pacific, Hitachi Consulting & Co-chair of Bangalore Knowledgenet, IAPP
Mr. Tabrez Ahmad	Secretary General, OPPI
Mr. T.N. Tiwari	Additional Secretary, Ministry of Law & Justice , Govt. of India
Many more...	

# Supporting Organizations



Academic Partner

Magazine Partner



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Euclid University

[www.euclid.int](http://www.euclid.int)

**WITNESS**

INDIA'S FIRST MAGAZINE ON LEGAL  
AND CORPORATE AFFAIRS

[www.witnesslive.in](http://www.witnesslive.in)

## Media Partner



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## Knowledge Partner



## *Executive Summary*

26 November was spread the significance of the constitution and to spread ideas and thoughts of Dr. Ambedkar. November 26, 1949 was the day on which the general population of India provided for themselves the select composition to oversee their national life i.e. the Constitution of India. This document was delightfully intended to make this nation a democratic republic to be administered by Rule of Law to proceed with it as one huge country with its astounding and inimitable unity in diversity.

To correspond with the Law Day celebration INBA organised International conference, titled INBA's International Conference on Law and Policy Issues. The reason for the conference was to give stage to Legal Community in organization with industry and to talk about and purposeful on a few essential national and universal legitimate issues

The programme started with welcoming all the guest from abroad and from India and other Hon'ble members by Shri Subhash C. Kashyap, Mr. Vijay Sampla, Hon'ble Minister of Social Justice and Empowerment, Mr. P.K. Malhotra, The Union Law Secretary and Mr. Virendra Sharma. Followed by the national anthem. Mr. Subhash C. Kashyap, President of INBA and Mr. Kaviraj Singh, General Secretary paid homage to martyrs and victims of 26/11 of Mumbai & 13/11 Paris terrorist attack victims. Furthermore, they presented the Annual Report about activities of the Indian National Bar Association.

The seminar was started with the first session which was focused on "Capital Markets – Alternate Capital Platform Raising". The session was chaired by Mr. Sumes Dewan, Managing Partner, Lex Favios and had three speakers. This session was mainly focused on alternate methods of raising capital fund & the challenges that are confronted by the organization in today's reality and by what means can these be succeed. The next topic of the session was Private Equity Players (PE) add value to the company by playing a key role in making strategic decisions and hiring executives etc. So is that true?

All the three panelists shared their views on all of the topics which were followed by a question-answer session where in distinctive individuals keen on contributing and raising assets, tackle the perspectives of the specialists, with the goal that they have the capacity to work bitterly in their everyday lives and make benefit wherever and at whatever point conceivable

The Second session which continued, was chaired by Mr. Manas Kumar Chaudhuri, Partner, Khaitan & Co. LLP and had four panelists. The session was mainly focused on "New law

enacted in 2002, became active in 2009 and its impacts on business. To make the session interactive it was divided into two topics the, Competition law and completion law in comparison to other law concentrates more on Intellectual property law. There were other issues also that were discussed in the session like the challenges come before MNC's and law placed in Competition Law. Many other questions were discussed upon and the views of all the panelists were taken on different issues. All this continued and there was also a question-answer session at the end for the clarification of a plethora of doubts of the advocates and these were answered and explained by the panelists keeping in view the background of law

The third Session titled “Do we need a Differentiated Approach to IPRS while Addressing Different Sectoral Innovations or the same Approach is Sufficient?” Was chaired by Mr. Calab Gabriel, Managing Partner, Lex IP Care. This session focused on two main points. First was. The role of Intellectual Property Rights in technology transfers in the Environment Technology industries which were discussed by three panelists. This Session covered many important issues like significance of IP, Relevance of IPR in Green Technology, Importance of IPR in all sectors and need to protect the inventions through IPR. Many other questions on uniqueness of environmental technology, existent legal stringencies, obstacles faced by Indian practitioner were answered. It was much knowledgeable session. Second part the relevance of Patents in ICT and the uniqueness of the sector considering its significant role in 'Digital India' including its 'Make in India' aspect. Continued under the same title was discussed by two panelist they both gave ample knowledge about the same by discussing key factors of the topic.

The next session titled “Public Policy, Regulatory Compliance & Ease of Doing Business” was chaired by Mr. Tabrez Ahmad, Secretary General, OPPI and had 6 Panelists. Since they all have succeeded in their work, they all have critical thinking and have great art of observation and they are well experienced so one could imagine to what extent the session had gone to.

Followed session titled “Africa – Bridging the Gulf.” The session discussed description of the season of the African events followed through by the African heads of state. The session was concluded by stating the fact that India has been playing a big and an important role in the massive development of Africa.

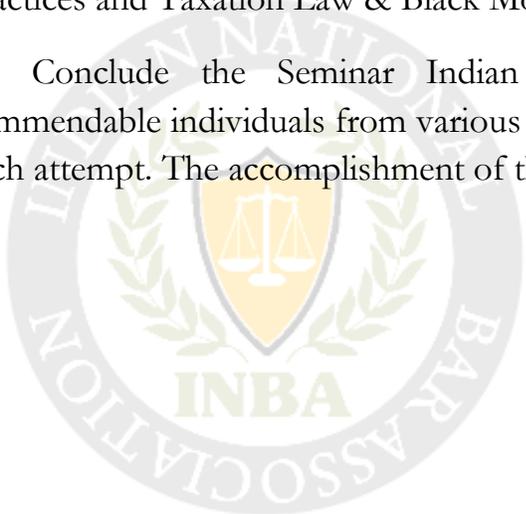
The next Session titled “European Union & India.” Ms. Ms. Srita Heide, Indo European Business Advisor, Germany & India & Axel Heck, Attorney-at-Law & INBA Int'l Sec. Chair, Germany were the moderators. Three experts have shared their views and opinions on the same.

The next followed session was focused on “International Commercial Arbitration” which was chaired by Mr. JEANFRANÇOISLE GAL, Partner, Brown Rudnick LLP, United Kingdom. Four panelists were there and their main objective of discussion was to put stress on the Indian Arbitration law to meet international standards with a view to ensuring better prospects of future investments while simultaneously maintaining the existing ones.

Then the second track was devoted to the theme “Arbitration & Mediation” which was chaired by Mr. Axel Heck, Esq., Attorney-at-Law & INBA Int’l Sec. Chair, Germany. There were 5 Panelist and the main focus of the session was International commercial Arbitration. The Commercial Dispute Division & commercial Appellate of High Court (2015) was another was another topic discussed.

Last three sessions was focused on “Evolving Cybercrimes & Increasing Data Breaches – An Holistic Review, Data Security Compliance: Key Elements, Challenges & Leading Practices and Taxation Law & Black Money.”

To Conclude the Seminar Indian National Bar Association gladly congratulated commendable individuals from various circles, for example, Law and Social Justice in its first such attempt. The accomplishment of this occasion goes to the dedicated group of INBA.

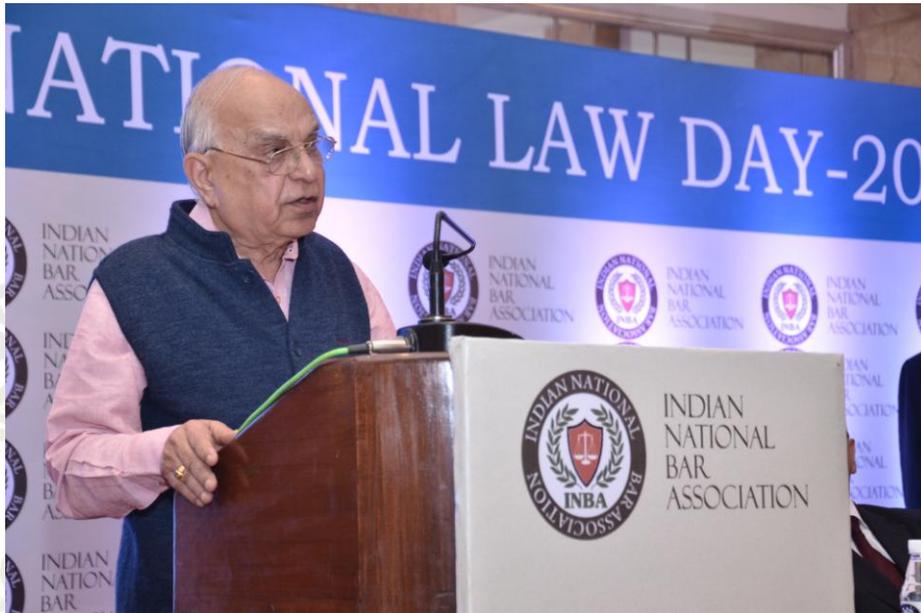


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## Welcome Address

Shri Subhash C. Kashyap, Mr. P.K. Malhotra, The Union Law Secretary and Mr. Virendra Sharma were invited for enlightening the lamp and then after followed the national anthem with all the dignitaries on the stage.



**Dr. Subhash C. Kashyap, President, Indian National Bar Association**

The session was started by the president of INBA **Dr. Subhash C. Kashyap**. He greeted the distinguished guests from abroad and from India and other Hon'ble members from legal fraternity friends. He started with looking at the scenario of 1949, that the people of India in our constituent assembly resolved to adopt, enact and to give ourselves the Constitution of the independent India. We have been celebrating this day every year as the Constitution Day. Since the Constitution is the basic law of the country and establishes the basic rule of law, we are also called it often as **“Law Day”**. The Government must be complemented for declaring 26<sup>th</sup> November to be henceforth celebrated every year all over the country as the Constitution Day.

He even notified that the first two days of the winter session Parliament will be devoting their time discussing the working and the achievements of the Constitution. He then drew attention of the gathering towards the chairman of the drafting committee Dr B.R. Ambedkar and the president of the constituent assembly Dr. Rajendra Prasad on 25<sup>th</sup> and 26<sup>th</sup> November 1949. Then he quoted the words of Dr. Ambedkar by saying *“however good the constitution may be, it is*

*sure to turnout bad because those who are called to work it, have been to a bad lot and however bad the constitution may be, it is sure to turnout good because those who were called upon to work it turn out to be a good lot, Who can say how the people of India and their parties will behave.”*

Then he said what Dr. Rajendra Prasad said in his concluding speech said “if the people who are elected are capable and are men of character and dignity, would able to make the best even of the defective Constitution. If they are letting these, then the constitution cannot help the country. India needs today nothing more the effect of honest men of character and strong vision men who will not sacrifice the interest of large for the smaller groups and areas.” He continued by saying who all had made up the constituent assembly like great scholars, patriots, lawyers, jurists etc. They accomplished a tremendous work by making the constituent assembly only for the benefit of the large population of the country.

The Constitution drafted by these great people was finally signed on 24<sup>th</sup> January and the largest ever sovereign republic was born on 26<sup>th</sup> January 1950 due to which it is regarded as the REPUBLIC DAY throughout the country. Then he gave importance on the Part IV of the Constitution which starts with Art 51(A) that describes about the duties of each and every citizen towards the country which says that ‘everybody should abide by the laws and rules written in the Constitution but lamented on the uneducated portion of the population who do not know about the ideals and instruments of the Constitution’. Democracy and freedom are much related to each other and people must know about the constitutional rights and for which it should look after how the people of various state can be educated regarding all this so that complete population of the nation understands what its constitution is all about and work according to it. It should be turned into a movement regarding the national awareness of the constitution.

Then he discussed about the constituents, the text of the Constitution and its importance. Framing of constitution is not very easy, its making is a continuous process and the constitution has undergone many amendments since its enactment according to the requirement of people. It is considered as a basic structure of the political system of the country. It is divided into three parts that is the legislative, the executive and the judiciary with their power, functions and responsibilities which is mentioned in the Constitution.

The constitution of the country may also be described as the foundational law which ordains the fundamentals of the quality and for which all of the other laws will see their legitimacy from the constitution of the country. Preamble embodies the philosophy of the Constitution which is further explained under Fundamental Rights, Fundamental duties, etc of the Constitution. The Preamble value of the sovereignty, equality, liberty, fraternity democracy, republicanism, secularism and above all dignity of the individual and unity of the nation are

supposed to permeate entire Constitution. Universal adult Franchise, distribution of powers between the Union and the states, etc. all flow from the Preamble. In the last 65 years, there has been almost 100 amendments in the Constitution contributing to the fact that on an average our Constitution has been amended in every 7 months .Most recently the ninety ninth amendment for the appointment of rational judicial appointment commission for the selection of the Supreme Court and High Court judges have been held unconstitutional by the Supreme Court on the grounds of violation of privacy of the judiciary. The Indian Constitution has been framed by looking towards various constitutions of other countries like the parliamentary form of government has been taken from British Constitution , many parts have been taken from US constitution, etc.

It is a culmination of ideas of various constitutions. We have written Constitution, in which each of the powers and functions of the organs are mentioned in the constitution. There is no question of any organ being sovereign and supreme rather all stand at equal footing with all their functions given equal importance. We are governed by rule of law and judicial review of legislation and administrative actions is an essential part of rule of law. Our framers of law have decided not to take US constitution's "due process of law" rather to take "in accordance of law". But the Supreme Court, by its creative interpretation got the "due process of law" by the backdoor. Our constitution discusses absolute judicial review of the US Constitution but provides only the limited judicial review for our constitution thereby protecting the law making and constituent powers of the Parliament.

The judiciary has the power to declare the law but if it tries to change the law by interpreting it in a different way or by any other action then it is completely unacceptable. If the apex court itself goes against the rule of law or against the constitutionalism of the Constitution then, it can be disregarded for the reason of being going against the basic principle of the Constitution. Many people talk about impeachment of judges but in reality there is no provision for impeachment of judges in our Constitution. Impeachment is only for the president of India and for the judges, there is removal of judges. But this myth goes and similarly many others.

We are very proud of our constitution, it's the reason for which our country still stands united even when there is diversity in each and every corner of the country and it is that reason for which we could stand through each and every problem that comes across us or getting abrogated or taken over by undemocratic forces. But still there exists a negative side of the Parliament the House gets ended without any actual transaction. After looking at both the sides of the judiciary Mr. Subhash C. Kashyap pledged "It shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institution, the national flag and the national anthem that is the fundamental duty no 1 of the constitution."

After the end of his speech, felicitation programme started in which President of INBA felicitated other dice dignitaries on the stage.

Then **Mr. Vijay Sampla (Hon'ble Minister, Ministry of State for Social Justice and Empowerment, Govt. of India)** took up the dice though he was running out of time because of his prior arrangements, still he managed to convey some of his ideas on Law Day.



**Hon'ble Mr. Vijay Sampla, Ministry of State for Social Justice & Empowerment, Govt. of India**

He started with thanking Dr. B.R. Ambedkar, the maker of the Constitution, because in his words Constitution has made him what he is today. From working as a helper to a plumber to an electrician working 11 hrs in Saudi Arabia, now today he has become one of the very famous ministers of the country. He had told about his success story of how he has become a minister from a helper to a plumber to electrician to a minister. When this news came in newspaper, then accidently publishers of two newspapers raised a question 'what difference did you find between Saudi Arabia and India?' and he answered 'In India a tea seller can become a minister but this thing cannot happen in Saudi Arabia,. This can clearly explains the complete difference between both the countries. He again thanked Dr. B.R. Ambedkar for framing such kind of Constitution and because of which he is standing as a minister now which would have been impossible without him. He apologized for not able to spend some more time since the Parliament was going to start today and because of that he had left early.

## *Key Note Address*

Then the dice was taken by Hon'ble Mr. P.K. Malhotra, Secretary, Dept. of Legal Affairs, Govt. of India addressed the dice dignitaries, delegates and everyone present over there. According to him this was very auspicious day not only because of the Law day but because of 125<sup>th</sup> birthday of Dr. B.R. Ambedkar. This was a very special year for celebrating due to which this day should be regarded as Constitution day and not as Law day. Every year this day should be celebrated in every schools, colleges and institutions reciting the Preamble of our Constitution and discussing and understanding the importance of it so that everyone knows about their own rights and privileges.



**Hon'ble Mr. P.K. Malhotra, Secretary, Dept. of Legal Affairs,  
Govt. of India**

Then he discussed about how our constitution was framed, being the biggest constitution and the largest democracy. He made it clear that constitution was not only framed by the constitution of the constituent assembly but it was framed long before that, though some of the provisions of the Govt. of India Act were also included in it. The constituent assembly had almost 389 members in it. It is not that only those provisions were added but many other provisions were added in it. The Framing of the Constitution has been started long before. The first session of the constituent assembly was on 9th February 1946. He then started explaining the importance of Preamble and then praised Mr. Subhash C. Kashyap for his Excellency in the field of Constitutional law and that he was feeling lucky to share the dice with him and further stated that whenever there is any kind of problem in the constitutional interpretation, he will be always there to help him out.

Then he had asked a question like how many people know about the basic principles of the Constitution and further said that he will be putting this question in his law ministry also. Then he talked about the Constitution stating that Constitution is the living document.” It is Bible, Geeta, and Quran for all of us”. Then he said that those who are in the profession of law it is there bounden duty to be well aware about the provisions of law. Then he again said that it is the duty of people like us to make people aware about the provisions of the constitution to the common people and mainly their fundamental rights. Then he explained how the purview of the articles of the fundamental rights have been widened through these days by giving the example of Article 21 of the Constitution by stating how the right of privacy, right to shelter, right to move, etc. have been added under the purview of Article 21. This has been able to be added because of the interpretation of many jurists, delegates and also the framers of the constitution. This shows that our requirements are changing day by day and the courts and the judges are aware of our requirements.

He then cited a landmark case i.e. the case of Shankari Prasad in the year 1950 which all made the constitution for the welfare of the social cause then referred to the Golaknath’s case where the doctrine of prospective was overruled and the power of the Parliament to amend the law was proposed in the year 1964. Then he mentioned the case of Keshavananda Bharati Case which laid down the theory of basic structure. Remembering some part of his experience in the this field, says that when some practitioners are questioned about where the basic structure of the Constitution lies, the answer comes that it is in some article of the Constitution. He feels very unfortunate for this kind of answers that he receives.

He says that if this is the position, then it is a very good opportunity and duty of the legal fraternity to make people know about the basic structure and the importance of the Constitution on this Constitution Day. Then he mentioned very famous fundamental rights cases that is Maneka Gandhi’s case, Minerva Mills Case, the Judges case where by how the Constitution has been interpreted regarding the appointment of the judges. As discussed by Mr. Kashyap. After discussing the judges’ appointment case, he could conclude that the three organs of the Constitution the legislative , the executive and the judiciary all derive equal power from the provisions of the Constitution.

The Constitution is supreme and due to which without ant problem the elections are held every 5 years consistently. Even when there is a change in government, it happens so smoothly and this shows how well the democracy works in our country and we should carry this forward so that this system works well.

Then he talked about Keshavananda Bharati Case which was a progressive judgment and the other being the A.D.M. Jabalpur’s case which says that a person has no fundamental rights

during emergency period which was later corrected. He thinks such kind of changes happen because of the fact that our constitution is an evolving one and the judiciary is vibrant. With all this he ended up his speech and he was felicitated with a book on medical legal issues so that he can consider the suggestions for which proper legislations are still not there.

Adv. D. Bharat Kumar (Akhil Bharatiya Adhivakta Parishad) & Mr. Kaviraj Singh (Secretary General, INBA) started by saying that he is from South India and feels difficult in speaking in North India's language of hindi but he can speak in the national language of hindi. He went to Gwalior yesterday on Constitution Day. Chief Justice Dr. Maheswari born in the same place as by Dr. B.R. Ambedkar in Madhya Pradesh and him feels that actual tribute has already been given after meeting her.

He described the life of Dr A.P.J. Abdul Kalam and he gave all the credits to the working of the Constitution from being a fisherman to becoming the President of the country. Then he said about the J&K separation from our country even though its included in our country like it has two flags in the state one that is Indian flag and the other being J&K's flag. If someone goes and marries over there, their children cannot buy a property at any place rather than J&K. this is the anomaly here.

The second issue is when the parliament constituent assembly was debating over national language; we have no national language other than an official language as Hindi. But still everything is done in English, exams judgments, etc. A client comes to court and his lawyer argues in English, after he come out and the client asks what did he argue and etc. So the second issue was regarding the fact that local languages should be given primary place in the courts. Coming to the third issue he said about the minority rights that is social legislation like right to education is not given to the minority institutions.

At the end he asked the team to discuss about these issues and the session ends here.

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# Technical Session

## Track - 1

### ✚ CAPITAL MARKETS – ALTERNATE CAPITAL PLATFORMRAISING

#### Session Moderator:

- **Mr. Sumes Dewan**, Managing Partner, Lex Favios

#### Session Panelists:

- **Mr. Anurag Batra**, Chairman, Businessworld
- **Mr. Sunil Thakur, Director**, Quadria Capital Investment Advisors Pvt. Ltd.
- **Mr. Siddharth Mukherjee**, Chief Executive Officer of MNC Advisory Service



#### Capital Markets – Alternate capital Raising Platform - Session

The session will tell us about the alternate methods of raising capital fund. According to Mr. Anurag Batra, private equity has become the norm in raising money for new generation companies. Funding depends on what stage the company is in. Mr. Anurag is a first generation entrepreneur and has had 3 experiences of raising capital. He funded his startup 15 years back from a high network individual just like an angel investor. The second times he acquired

business world and he got money again from a high networked individual but who had his own office and his office invested for him.

The third time, he invested himself and became an angel investor for many companies like Zopper, etc. This showed he had 2 experiences of raising capital and multiple experiences of investing capital.

He also has a joint venture along with Sri Adhikari Brothers where he has been told several times that he has a debt aversion mentality. He should not be selling equity every time, to which he answers that every startup has its own capacity to raise debt. Not all startups have the availability of debts as they do not have many assets and such companies normally start up in India and for such companies there is a limited availability of debt. Luckily there is an involved system of incubators. Raising capital is like love, when to get married, whom to get married to, etc., angel investors are normally angels. (There may however be exceptions)

### **3 rules that every company shall follow for raising capital are:**

- a) Understand the motivation of who is investing in the type of company.
- b) How will the investor get an exit?
- c) He/she needs to look at how much needs to be raised now and how much to be raised a little later?

Party comment is that raising capital depends on the needs and the individuals and today is a very well laid out ecosystem for the same.

Mr. Sunil Thakur continued and discussed about challenges that are faced by the company in today's world and how can these be overcome.

He is of the view that the companies normally face a less oiled ecosystem. The company, the investor and the banker, are the three main elements that are involved in the process of funding. The company and the promoter know what their business plan is and should try to articulate it in front of the investors in the right way.

The second component being the banker who serves as an intermediary and should understand the focus of investors towards investing and which means marrying the right company with the right partner.

The third is the investor pool and is basically involves the time that they spend in knowing and analyzing the company and can be magnified with the paucity of good advisors. Things have improved but there is still lot of distance to be covered.

The discussion continued with Mr. Siddharth Mukherjee who starts by telling that he has been in banking industry for 20 years and has been a part of ICICI Bank as well. He says, the word angel is truly angel and explains the fact when you want to startup and when you need money, there is no money and when you don't need any, the financiers are after your lives, to take money. That is where angels play a huge role though these are hard to find. We need a platform for the same thing and the investors should know the person or should have a strong reference and this is where the link is missing.

He further stated that the success ratio for the angels can be quite high and huge round of funding can happen once a suitable platform is established which still is a challenge. There are a lot of good people in India, having a fire in belly but are not able to raise money through angel investors. The place where it does not click is when the people do not have a good rapport with the investors or there is no reference.

The next topic for discussion stands that Private Equity Players (PE) add value to the company by playing a key role in making strategic decisions and hiring executives etc. So is that true?

Mr. Anurag starts the discussion by telling that increase in valuation would happen only from a better quality of Investment Memorandum (IM) and better quality of diligence.

Mr. Sunil was further asked to generate his views on what timelines does he look at when he invests in companies?

In India, private equity mainly takes 4-6 months and that is the time which the company prepares itself to get the money. The Investment Memorandum should be clear and the company shall make sure that everything is on board. The energy and the integrity of a promoter is the right point of a private equity investor.

Then is the point of introducing the business model. The time the company takes to prepare itself, depending upon its stage can take 5 months to about a year. For an investment to come in, it takes 4-6 months once the company is prepared.

According to Mr. Siddharth, it depends upon, however, the scale and that the company has crossed the proof of concept. And so the discussion continued on various other points of how the capital markets are making their mark in today's world and so on.

All the three panelists shared their views on all of the topics which were followed by a question-answer session where in different people interested in investing and raising funds, take on the views of the panelists, so that they be able to work in a better way in their day to day lives and make profit wherever and whenever possible.

## IP & COMPETITION LAW

### Session Moderator:

- **Mr. Manas Kumar Chaudhuri**, Partner, Khaitan & Co. LLP

### Session Panelists:

- **Mr. John Ramirez**, Director Econ One (India)
- **Mr. Pulin Kumar**, Director Legal and Regulatory compliance Adidas India
- **Mr. Ashish Chandra**, Head Legal, Snapdeal
- **Mr. Ravi Shekhar Nair**, Partner, Economic Law Practices



### IP & Competition Law - Session

The session will tell us about the new law which has been enacted in 2002 but the law has become active in 2009 and it impacts business. So according to Manas Kumar Chaudhuri: as to make the session more interactive rather than monologue so the topics of discussion has been divided in two sessions as one on Competition Law and other on how Competition Law overlap with the other law, more specifically concentrate on Intellectual Property because recently there are lots of litigation going on between High Courts and Competition Commission. So what would be the way for all of them and there is a global trend happening across the Globe between IPR and Competition Law. Manas Kumar Chaudhuri asks Pulin Kumar – Being in a subsidiary and that to at very fast moving consumer goods “Adidas”. How does Pulin view this new law in India with regard to his business activity in India? So

according to Mr. Pulin Kumar, we have to first see the what are the issues, as he is into the retail business, wholesale cash and carry business so earlier it was bit difficult to operate but now it has become much easier to operate in India with this new law.

There are certain things he need to be very conscious about as we are aware of the fact that the multinational companies faces challenges with the activities relating to these issues and over a period of time the activities of MNC's have been grown tremendously and the structure of companies also became very complex and the subsidiary company becomes the very integral part of the company. So according to him these are the issues which all multinational companies face in India.

He would also touch upon the basic issues with regard to the law which is placed in the Competition Act and also doing business. He divides these issues in 3 aspects: Firstly, the whole Law part, Secondly, the execution the Law and lastly, the main problem which he faces is the advocacy part of it. Earlier, when the competition act came in force so it has to be come with all the policies and the document but unfortunately, these policies has not seen the light of the day. If the policies be placed then there would be more clarity to the issues, so he always see the aspect as could what will be the interpretation while doing the business in this country.

So this issue always remains in the grey area and is the biggest problem he faces on the business. So, as franchise company 'Adidas' in India, whenever he see the issues which are crossing the line or fall within the mischief of law then he used to look back as what are the judgments relating to this issue and as well as the competition act is concerned, say it's a new Law or Promo gated law in India and it has not seen the many judgments thing which according to him is lacking here.

We are also waiting for the policies and the document to come up with force. Now coming to the market activity, as a law mandate he use to see the consumer interest but at the same time we also have to see the partners interest, for a franchise partners interest. If we only look at partners interest, then we may cross the limitations and this will affect the consumer interest at it may questioned by the authority. So he has to make a balance.

Now, Mr. Manas Kumar Chaudhuri agrees to Mr. Pulin issues as how the MNC's are facing the issues in India because whenever a new regulation comes up. The Industries faces firstly, also the industrialist believe that perhaps, there is an additional compliance. So as new jurisdictions there are many hiccups and how does company mitigate these hiccups. As this is interesting and new phenomena so Mr. Manas Kumar Chaudhuri asks to Mr. Ashish Chandra as How the E-Commerce is different or it is similar to normal business?

According to Mr. Ashish Chandra: He talks about the consumer industries and mentions that if we people see this industry with a tagline and go to any promoter and who has heard what the venture capitalists have been talking. So the main thing which any promoter say is that he will be going to do which is very disruptive, which is going to disrupt the entire market and going to challenge the status through and hence we invest multi million dollars and become a unicorn which mean 1 billion plus dollar in about 1 to 2 years time, So that kind of innovation is itself is disruptive and would mean that it would face a challenge to status through, it's going to give the new ways for people to consume the data, to do commerce and to engage with each other. Thus, the intent is to disrupt the existing status through.

Many other questions were discussed upon and the views of all the panelists were taken on different issues like would all the legal monopoly created by the IPR'S for a limited period, be considered an abuse of dominance, importance of R&D, the amount of costs in an organization and many such topics, on which they expressed their varied explanations.

All this continued and there was also a question-answer session at the end for the clarification of a plethora of doubts of the advocates and these were answered and explained by the panelists keeping in view the background of law, as they had to speak up in the context of law firms and lawyers as they were talking on the overall topic of IP & Competition Law and also on the occasion of National Law Day.

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✚ **“DO WE NEED A DIFFERENTIATED APPROACH TO IPRS WHILE ADDRESSING DIFFERENT SECTORAL INNOVATIONS OR THE SAME APPROACH IS SUFFICIENT?”**

**Session Moderator:**

- **Mr. Calab Gabriel**, Managing Partner, Lex IP Care

**a) The role of Intellectual Property Rights in technology transfers in the Environment Technology industries**

**Session Panelists:**

- **Mr. Nitya Nanda**, Fellow Teri & Convener, Centre for Global Agreement Legislation & Trade
- **Mr. Yohei Sugahara**, Director JETRO Delhi
- **Dr. Vijaya Sarathy**, India IP Leader & CoE Manager - Business PACE, GE

Mr. Gabriel started the session by talking about the significance of IP which today is no more restricted to just Pharma and has rather penetrated through other sectors as well. He talked about how IPR is a business asset, which in turn makes it even more significance, given the recent development of intangibles. It needs to be created, protected and conserved. He emphasized on the need to discuss the new prospects with respect to IPR. He quoted the example of ‘trade secrets’. He said that in India, these are envisaged by the Contracts Act, while in UK, a separate legislation governs them – thereby implying to the fact that is there a need for similar dynamism in IPR spheres.



**"Do we need a differentiated approach to IPRs while addressing different sectoral innovations or the same approach is sufficient?" - Session**

Mr. Yohei Sugahara, in his answer to the moderator's question that whether IPR is relevant to 'Green Technology' said that 'green technology' is very important in order to tackle the global environmental issues. He enlisted four kinds of technology transfers, them being – Imports, Foreign Direct Investment, Technology License and bottom line Research and Development. This leads to further complexities in the realm, thus creating a need for IPR, especially patents, he concluded. Mr. Nitya Nanda continued the discussion further by stating that IPR is not just restricted to only one sector. It is a necessity in today's times. However, he noted that at times IP can act as a barrier in technology transfers, given the primary distinction between 'innovation' and 'transfer' and hence same tool might not be equally good or bad for both of them.

Pertaining to compliance with the current WTO standards that the signatories need to follow, he pointed out that the differentiated approach shouldn't be restricted to just one sector rather

we should aim for all-pervasive flexibility. Further, Dr. Vijaya Sarathy, with the help of statistical data, showcased that IP is indeed important and apparently the only way through which the innovations could be protected. Mr. Gabriel said that both the sides of the coin need to be taken care of. Nobody is against inventions, we indeed need to create and generate, but the issue is – whether we need to protect it through the means of IPR.

On the question of uniqueness of environmental technology, Mr. Yohei Sugahara said that it covers a lot of patents by pointing out that the complex parts of its components themselves engulf a lot of patents. Compound types of silicon and solar power are a few examples of the same. Mr. Nitya Nanda's point of view was that, today, there's nothing as such that could be excluded from the contours of environmental technology, because again, everything these days is intended at better environmental condition. However, he pointed out to the not-so-developed stage of Indian companies in the area of environmental technology.

The question was raised with respect to the existent legal stringencies that exist – are they apt for protection of the creativity and innovation in today's time. Mr. Yohei Sugahara started the discussion by pointing out to many obstacles that create friction in filing applications in India. Mr. Nitya Nanda however countered by presenting the argument that the present laws are fine enough and less tested, given that they're still new. Dr. Vijay Sarathy carried forward the discussion by presenting the point of view with respect to obstacles faced by an Indian Practitioner. The law per say, seems to be okay but the practices associated with it seems to be a problem. Some laws date back to 1970's and seems orthodox and obsolete. He further pointed out to lack of trade secrets protection and securities.

## **(b) The relevance of Patents in ICT and the uniqueness of the sector considering it's significant role in 'Digital India' including its 'Make in India' aspect.**

### **Session Panelists:**

- **Mr. K. Subodh Kumar**, Head of IPR, TCS Corporate Group
- **Mr. Subhadip Sarkar**, Senior Director, Cognizant Technologies Solutions

Mr. K. Subodh Kumar, with reference to the current IT industry, talked about the great growth aspects that India can envisage in current circumstances. He emphasized that the key differentiator in the area of IT growth, given the broad parlance of increasing competition and enormous potential that can be visualized, are the Intellectual Property Rights. Mr. Subhadip Sarkar further emphasized upon the current scenario where he noted that we need IP furthermore, because the dynamic world that we live in is evolving. All the companies work upon both enhancement and creation of new technologies thus such protection of innovation is necessary. It may have services, products and consulting. Working at many levels further

creates a challenge for the same, as said by him. Mr. Subodh Kumar further elaborated that technology's life cycle vis-à-vis the life term of a patent is a topic to be pondered upon. Moreover, interdisciplinary approach that's going on is again a dynamic challenge.

He commented that the current laws are indeed commendable in India; but from the IT perspective the interpretations necessary. It's the jurisprudence and clarity of the section that plays an important role. Adding further, Mr. Sarkar commented that the laws are fine, but the procedure needs to be clear enough to match the changing patterns. We need improvement in efficiency and procedural administrative matter, thereby smoothening the area of working.

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## **✚ PUBLIC POLICY, REGULATORY COMPLIANCE & EASE OF DOING BUSINESS**

### **Session Moderator:**

- **Mr. Tabrez Ahmad**, Secretary General, OPPI

### **Session Panelists:**

- **H.E. Mr. Virendra Kumar Sharma**, Member of Parliament for Ealing Southall, United Kingdom
- **Mr. Sudhanshu Pandey**, Joint Secretary, Ministry of Commerce & Industry
- **Ms. Shobha Mishra Ghosh**, Sr. Director, FICCI
- **Mr. Suhaan Mukerji**, Partner, PLR Chambers
- **Mr. Rajveer Singh**, Managing Director, Apex Cluster Development Services Pvt. Ltd
- **Mr. Prashant Tandon**, Founder & CEO, Healthkart

The session started with an introduction by Mr. Tabrez. He then went on to brief everyone with respect to the topic on which the panel discussion would proceed. He said that the discussion would focus on the various aspects of public policy and how they contribute to an easy flow of business and trade. He also specified the need to explain the scenario in Britain and compare the same with India in order to understand the differences better and also with a view to pointing out the problem areas that can be worked upon. India is now discarding its many archaic laws and instead giving way to self certification which allows easy access for doing business in India. However the main question he brought before the panel is that whether the steps being taken by the government are sufficient and also what further steps need to be taken. And last but not the least he left the question open as to which are the subjects the government needs to prioritize to improve its public policy and make our country

more viable in terms of doing business not only with ease but also with all the required compliances.



### **Public Policy, Regulatory Compliance & Ease of Doing Business - Session**

Mr. Prashant was asked to comment on whether the government is doing enough or there is a scope for improvement with respect to the public policy on doing business with ease. He initiated his talk by stating that there is an ever increasing need for entrepreneurship. He also stressed on the fact that in order to make increased entrepreneurial activities a reality there needs to be new and better policies in this regard and also more of transparency in the systems that are set up under these policies. These two major changes would prove to be a crowd puller towards entrepreneurship. He also put some light on the fact that there is a structural gap in the present system which is not much of an encouragement to the small entrepreneurs. As of now it is mostly only the influential ones that are able to get in touch with the authorities.

He also proposed that exemptions should be provided to small entrepreneurs as it would not only prove to be a significant incentive but also ensure that there are lesser demands and complaints registered with the government. He emphasized that the government must form a better understanding with the small entrepreneurs and engages more pro actively with them. And finally as to the question of what can be done in order to have a good policy he simply said that from now on things must be done differently and there should be better implementation of policies.

Mr. Rajeev Singh started his talk by discussing the increase in government's role in business. With liberalization, privatization and globalization from 1991, there is obviously a huge impact on business and every aspect involved with it. This has mainly attracted the need to lay down policies which enable the same. With the onset of globalization from 2006, small industries have also been hurled on to the international platform and this has left them with no choice but to compete with the big players. It is the duty of the government to intervene and protect the person of least efficiency.

In modern perspective and at an international level more focus is in on the regulatory part. However, there is a need to pay attention to the enabling part as well. Policies till date have had a partial impact and the aggregate of demand for more business remains largely untouched. Considerable work has been there is work and development on technology but not on new product development. Need to look at more enabling act then regulatory act.

Mr. Suhaan Mukerji talked about the need of structured reform in government. Need shift form command and control framework and more toward the liberal approach. There still in our country in wide range mentality of getting ruled by higher authority. There is need of the accountability. They need to address each and every sector.

Ms. Shobha Mishra Ghosh mentioned that problem arises when there are different stakeholders come in and have different stake in Public Policy. Whenever policies are formulated it takes long time to implement and when time to implement comes, the value of policy is already gone or degraded. Then she had given the example from her experience in, Pharma-medical sector that need to be sorted and health sector. She mentioned that policies are good but not implemented at grass root level or implemented very late. Deficiency is people are lacking trust. And inputs are not mentioned. Further question proposed that how can we have good policy was answered this way that because of lack good personnel in public policy technical thing. There are few who are really good in their respective technical field. To solve this problem there is need to have good university programmes.

H.E. Virendra Kumar Sharma did the comparison in the British and Indian system. He talked about that in India still the laws made by the British are followed and follows the tradition which was set-up by them. Constitution is about how we are affected by it, how it is practiced not how it was written. In Civil Society there are basically three components in which two components he has mentioned which were partnership and third sector. He mentioned in Indian first states get the money then they decided how they will utilize this money because of this there is rise in level of corruption.

Whereas in Britain, at state level it is decided what they want to do, in what area there is need of development and according to this national authority decided and spends money. He talked

about that there is need to strengthen the relation among the two nation and further mentioned children can get skilled anywhere but need to utilize their skill in their own country for development of their respective country.

Mr. Sudhanshu Pandey mentioned that public policy is divided in two process i.e. legal process and business process that is further divided into arbitration courts and commercial courts. In commercial courts there is judge with commercial background. Can appeal directly to commercial division specialize branch of High Court to its specialized division? But arbitration laws did succeeded in India. In Britain it succeeded as business community was need of fast and cheap decision making, they participated and cooperated and with time judiciary distanced itself and people also hardly applied for appeal. In India there is a need to have an Institutional Arbitration, self-regulatory, accepts as final. Further he talked about the need of transparency. Conditions need to be improved at local level. To improve the eco-system it does not mean to prevent growth but it is to conserve the forest.

## ✚ AFRICA – BRIDGING THE GULF

### Session Moderator:

- **Ms. Sunita Singh-Dalal**, Partner, Anjarwalla Collins & Haidermota (AC&H), UAE

### Session Panelists:

- **Mr. Atiq Anjarwalla**, Managing Partner, Anjarwalla Collins & Haidermota (AC&H), UAE & Co-founder of the Africa Legal Network (ALN)

**African legal network is run by Africans is consists of about 700 lawyers.**

Ms. Sunita Singh-Dalal will include in this session, description of the season of the African events followed through by the African heads of state. The main aim is to continue on the above mentioned fact and help the people to gain information who have their clients working in Africa, interested in Africa or indeed in the GCC region.

Mr. Atiq Anjarwalla explains the fact why he is in Africa, being an Indian, as his family faced an exodus in the late 1800s, and moved from Gujarat to Kenya. He is a 4th generation Kenyan.

The session started by explaining about how the ALN works and that the ALN has firms in about 13 countries across Africa. Currently, Mr. Atiq Anjarwalla has put up Dubai office to manage Africa from Dubai.



### **Africa: Bridging the Gulf - Session**

As almost all lawyers have been aware, still he wanted to showcase what actually is going on in the continent. So, he continued by telling that:

- a) Many African countries are leading in GDP.
- b) Large and Medium groups have witnessed the growth in Africa.
- c) Major FDI had been coming in from Western Europe and India, due to the opportunities that are being witnessed by the people around. In terms of GCC and Dubai, a lot of Indian investment comes through Dubai.
- d) A lot of Indian groups have head offices for Africa in Dubai. The GCC has created an enabling environment in terms of telecommunication and infrastructure, etc which allows for substantial investment to move from that region into Africa and this is the reason why the offices are opened there and also help in moving their investments across the continent.

He then explains that usually, people tend to view the whole continent as one and which turns out to be quite dangerous. There are 54 different countries and all the countries have different legal systems and that should be kept in mind. There were many European countries that had been ruling AFRICA. He also reveals that about year and a half ago, the law books were bought from India in Africa for the purpose of research. Also, the recognition of property rights is quite important and the bad period of 1980s and 1990s has been regarded by the Africans as the period to understand the importance of property rights. Also, there has been

an increase in the trade treaty rights where the goods can move around freely throughout the continent which has benefitted to bridge the gap.

He further added that many east African countries send their people for training to India in relation to tax laws. The lawyers always need to take care of the client's behavior. A lot of different taxes and laws are similar to African countries as compared to India. Mauritius has a favorable treaty network with India along with having a good network with Africa and there is seen a growth in the rates of INDIAN investment coming to Africa through Mauritius. There is also a fiscal play involved.

Anti-trust laws are well developed and are normally treaty-based in some countries. Environmental laws are also equally developed in many countries. A majority of laws are liberalized in many countries.

Ms. Sunita continued and said that things have come around a full circle and there is also seen a greater increase in the investments from Dubai to Africa. It has also helped in bridging continents from Asia to Europe or Asia to Africa. There has also been a talent pool for many international sectors. The competition has also been healthy. The client is conscious about when expanding to another region. There have been certain discussions for the same. Dubai has been a gateway for international training.

Dubai has also been called the game changer. It is home to largest free zones in the world. Most importantly, people interested in the judicial system, the Dubai Financial international centre is based on English common law and is easy for an Indian lawyer to work upon. LSIA Tribunal requires appropriate knowledge to be given to the clients about its importance. The Indian community is the largest of the exact community In Dubai. Dubai has become to be known as the 5th city of India.

Devaluation of one's asset can be freely done In Dubai if one is non-Muslim. Tremendous investor protector has been taking place and UAE is being used as a gateway which is an extremely easy system to navigate.

Then the session included, different examples based on the UAE and Kenya to influence and guide the clients and explain the similar laws related to it. Taxation point had also been reduced.

Also, trading of Indian companies with various African companies, Mahindra being a classic example showed that it works really well and it displays absolutely fantastic corporate lawyers. Setting up the hoarding company as a free zone, one can maximize their profitability by merging with countries with which the country has treaty networks, e.g., Mauritius. Double taxation treaty exists between UAE and Africa and repatriation of proceeds of the clients.

Advise clients to structure and ring fence the IPN therefore protect the role season of taxation attached to this role freeze in commercial environment.

The last was the question & answer session for the prospective Indian lawyers who might have an idea to work towards the treaties and the taxation between the Africa and the Gulf or any other country in the continent of Asia on the whole.

It was summarized by another speaker and who made the lawyers aware of the fact that India has been playing a big and an important role in the massive development of Africa and also categorized various other instances where Indians have been showing their best towards the development of say, West London, etc. (which he quoted as an example) and ended it by saying that:

**“THE WORLD NEEDS INDIA! ESPECIALLY, AFRICA NEEDS INDIA!”**



◆ **EUROPEAN UNION & INDIA**

**Session Moderator:**

- **Ms. Ms. Srita Heide**, Indo European Business Advisor, Germany & India
- **Axel Heck**, Attorney-at-Law & INBA Int'l Sec. Chair, Germany

**Session Panelists:**

- **Mr. Ashish Dasgupta**, Managing Director, YES Regulatory Healthcare Services India Pvt. Ltd.
- **Mr. Abhinav Gupta**, Director Commercial, Ambica Steel
- **Dr. Alka Kaul**, Director Horizon Industrial Products Pvt. Ltd

Ms. Srita Heide studied Politics, History, Philosophy and English Literature at the University of Calcutta (Bachelor of Arts). This was followed by Post Graduate studies of Industrial Relations & Human Resources. Her second university degree was on Knowledge and Information Management at the Technical University of Ilmenau, Germany. Later she joined London Business School for Executive Management Programme and completed her Executive MBA from ESSEC/Paris & MBS/Mannheim (Wharton, Tongji/Shanghai and Singapore).

The session started with her introducing the gathering about what European Union is. European Union is the economic and political partnership between 28 countries in Europe and was created after the Second World War to polish interdependency and to give an impetus to mutual cooperation, she said. After that, in 1958, European Economic Community was framed and the countries that participated were Belgium, Germany, France, Italy, Netherlands and Luxembourg and in 1993, this amalgamation swirled round the economic platform and imparted dynamism by adopting political colours to give more mobility and stability and to have a single currency within the European Union. This showcased a great degree of ‘Unity in Diversity’ bond, something that can be envisaged in India itself, thereby having a close reflection.



### **European Union & India - Session**

Mr. Axel Heck (co-moderator) continued the discussion by talking about how the European Union (EU) is functioning today and why India and EU should work together. Mr. Heck talked about how EU stabilizing the lives of about 500 billion people. He said that despite of not being a totally political union, it provides lucrative perks such as ‘freedom of movement’ in between the member nations. He further added that it’ll be even more helpful to have a more advanced political union. He praised Prime Minister Narendra Modi’s vision of reopening Indo- EU free trade deliberations, which will be good for both the parties. Ms. Srita further continued by talking about India – EU relations. She said that these relations were initiated in 1960’s followed by Joint Agreements in 1993 and 1994, whereby the trade between both grew from almost 30 Billion in 2003 to about 73 billion in 2014. The EU investment stock in India is approximately 35 Billion, she said.

Dr. Alka Kaul was asked about how India should prepare for the upcoming days when the trade links between EU and India are going to expand, given the current deliberations with respect to 'Make in India'. Dr. Kaul started by sharing her own experience in the field. She recollected the times when initially she joined in the export line and traded with Germany and Italy. Back then, she said, that India had an image of one not paying attention to quality, given the preconceived general notion of cheap labor-bulk production that was attached. But now, according to her, the notions have changed. Now, there isn't a need to prove that 'quality' products will be shipped from India and that India indeed will cater to the quality specifications of its international clients, however, punctuality with respect to deliverability is still a problem that is being faced. We need to be totally transparent and upfront with the international clients, she said and moreover the world needs to note that India has come a long way since past. This implies to the fact that the changed generations of entrepreneurs provides more technologically advanced minds therefore even the EU trade world needs to open up and give way to mutual trust. She further added that given the standardized format of European Union, it provides as a leveled play-field between both the entities to work together in a more uniform manner – given that though there might be disparities amidst the EU member states, but the standards bring them to an equal platform.

Mr. Abhinav Gupta was then asked about how he plans to expand his business in the European Union. Mr. Gupta gave a brief insight of Ambica Steels, the company was established in 1970 and deals in stainless steel and exports to about 50 countries, Germany and Italy being major locations of such exports. He gave a practical-approach laced answer as to how when a certain deal happens, the arbitration and legal parameters are defined, thereby keeping everything very transparent – again providing an impetus to the trade. He shared an anecdote as to how there still exist some friction with travelling within the European Union and suggested that there needs to be some relaxations with that regards for regular and frequent business partners.

Mr. Ashish Dasgupta talked about the pharmaceutical sector worldwide. He talked about how the company had a joint venture with a German company called YES Pharma Development in May 2013. He talked about strategic points so learnt via the joint venture, the first one being – to have a strong legal support system. This helped them to create the joint venture agreement with the entry and the exit clauses and the complex intricacies so required. The second one was with respect to the Banking and Regulations in India – How the FDI comes in, what are the clauses that need to be added and so on –this lead to realization of subtle non-communication within the government departments. He remarked that in spite of all these hurdles, the smooth functioning of RBI and their supportive aid facilitated the whole process which indeed is a positive step to be appreciated. He mentioned how RBI offered consultation

with respect to further FDI to be brought in order to avoid any more friction or delay. And then, he talked about the third most important point, that being the cultural distinction in working of employees in both the countries (Germany and India), for this, special workshops were conducted and the repercussions were fruitful. He noted that transparency and credibility by German employees to the confidential information so exposed to them, is indeed commendable.

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## INTERNATIONAL COMMERCIAL ARBITRATION

### Session Moderator:

- **Mr. JEANFRANÇOISLE GAL**, Partner, Brown Rudnick LLP, United Kingdom

### Session Panelists:

- **Mr. Sanjeev Kapoor**, Partner, Khaitan & Co. LLP
- **Mr. Sachin Mandlik**, Partner, Khaitan & Co. LLP
- **Mr. D. Baliga**, VP-Legal, Coca-Cola India
- **Mr. Rajat Taimni**, Partner, Tuli & Co.



**International Commercial Arbitration - Session**

Session introduced by Mr. Jeanfrancois Le Gal working in an American Firm. He said that the major focal point of the discussion would be international arbitration in India.

Mr. Sachin Mandlik is a part of dispute resolutions department of Khaitan involved in complex litigation and arbitration proceedings.

He started the discussion with the background of Arbitration Laws in India. He crisply and concisely covered the history of Arbitration Laws in India and traced through the various changes that came about with respect to the same. He firstly discussed that there are a number of stakeholders with respect to the arbitration laws and mentioned India ranks at 130 out of 180 countries in the World Bank's Ease of Doing Business List. Such dismal ranking will evidently hamper foreign investments in our country.

He stressed on the fact that it is peremptory for Indian Arbitration law to meet international standards with a view to ensuring better prospects of future investments while simultaneously maintaining the existing ones. He pointed some of the major flaws in the laws existing before the Amendment Ordinance which undeniable necessitated the welcome changes.

One major flaw which had plagued arbitration laws for decades was the penetrating intervention by courts. This was regularized to an extent by the Arbitration and Conciliation Act of 1996 though the menace was still lurking around in the corners. Another drawback was with respect to enforcement of arbitration proceedings.

There were a number of objections which would be often raised with respect to execution of an arbitration award and frequently it would end up being adjudicated upon despite the existence of an arbitration clause in the contract itself. Arbitration being a private form of proceedings was always looked upon with lot of mistrust which has been made obvious by various actions of the parties as well as the judiciary and this often leads to the arbitration proceeding being downplayed and further burdening an already overburdened judiciary with the same matter.

These are some of the prominent issues that plagued the arbitral proceedings in our country and the ordinance has tried to make amends for the same.

Mr. Sanjeev Kapoor is a partner in the international disputes resolution department of Khaitan. Mr. Sanjeev spoke on the major reforms brought about by the Arbitration and Conciliation (Amendment) Ordinance of 2015. The major amendments have taken place in Part 1 of the Arbitration and Conciliation Act of 1996 with respect to domestic arbitration and arbitrations seated outside India. Amendments of section 42 and 47 of the Act give direct power to the High Courts to enforce international Arbitration awards.

Jurisdiction of civil courts with respect to such enforcement has been completely done away with. Another very important change is restraining that has been ushered in by the amendment is limitation with respect to the scope of public policy.

As per the amendment Ordinance only that which has been specified as public policy will amount to the same and form an exception and will not be inclusive in nature according to the 1996 provision. Section 24 specifies that public policy will come into question only in case of fraud, corruption, violation of section 75 or 81 (conciliation) or in contravention of some fundamental policy of India. Another very important change which the speaker mentioned is with respect to section 17 of the Act which gives power to the arbitrator to pass interim orders in various respects and the same shall be enforceable as if it was an order passed by a civil court under Civil Procedure Code, 1908.

The ordinance limits the time for passing an arbitration award to 12 months and upto 6 months thereafter for passing an award. But this is in conflict with Schedule 6 wherein the arbitrator is bound to complete the arbitration proceedings within 24 months with further 3 months for passing an award. These provisions are prima facie conflicting and will in most likelihood lead to a number of future debates and issues.

The Amendment has been passed with very positive estimations now it has to be carried out in its true spirit as well for it to succeed.

Mr. D. Baliga restrained his talk to a very limited time frame. He intended to present some views and opinions on the Amendment ordinance and tried not to be repetitive. One major point which he observed is that this Amendment is in the form of an Ordinance and therefore, it has skipped the grueling parliamentary scrutiny and other related aspects involved in lawmaking process. This amendment is a major test for the arbitrators as to how well they are able to carry off the additional responsibilities that have been placed on their shoulders. And it is this test only that will be mainly decisive of the success or failure of this amendment.

Mr. Rajat is a partner at Tuli and Co. he led us towards the conclusion of the discussion by conveying as to how the ordinance might or might not be a useful tool to take the Indian arbitration to the next level. He started his discussion by talking about matters relating to fraud, misrepresentation, criminality etc. and as to whether they are arbitral or not. In the past there have been number of instances wherein serious allegations of fraud arises and such matters are promptly sent to courts despite the presence of an arbitration clause in the agreement between the parties.

For example in the IPL spot fixing and betting case wherein the IPL was under judicial as well as media scanners, there was a petition which demanded that the matter be dealt with publicly

in a court instead of abiding by the arbitration clause in the agreement. But the court in this case clearly said that an arbitration clause will be ignored only if it becomes inoperative or is invalidated due to any reason.

The court specified that serious allegations of fraud do not render an arbitration clause inoperative. He also highlighted the fact that lower courts often interfered with arbitration proceedings through a number of prominent cases. Section 8 of the Ordinance is thus relevant as it provides that if the requirements of the section are complied with then notwithstanding any judgment or order by the Supreme Court or any other court, the judicial authority may refer the parties for arbitration unless no valid arbitration exists.

## **CONCLUSION**

Ordinance is a game changer for arbitration in India. But a lot depends on how these changes are executed by the arbitrators as well as by the courts.



## Track - 2

### ✚ ARBITRATION & MEDIATION

#### Session Moderator:

- **Mr. Axel Heck, Esq.**, Attorney-at-Law & INBA Int'l Sec. Chair, Germany

#### Session Panelists:

- **Mrs. Lata Krishnamurti**, Attorney-at-Law (SC), India
- **Oliver Alexander**, Attorney-at-Law, Germany & Qatar
- **Pranav Mago**, Head, SE Asia, Singapore International Arbitration Centre
- **Manan Singh**, Director of India Practice, Brown Rudnick LLP
- **Ajay Thomas**, Director & Registrar, London Court of International Arbitration (India)



#### **Arbitration & Mediation - Session**

The session started with introduction of what Arbitration and Mediation is and what is the Indian Scenario. The focus of session was International Commercial Arbitration International commercial arbitration is the process of resolving business disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts. It requires the agreement of the parties, which is usually given via arbitration. The

Commercial Dispute Division & commercial Appellate of High Court (2015) was another topic discussed.

Under Arbitration, Agreement needs to be comprehensive. Substantive and procedural law should be applied. Section 11 and 12 of Arbitration act give power to Supreme Court to appoint the Arbitrator. For the enforcement of award Indian Arbitration system follows two conventions. Firstly, The New York Convention and Secondly The Geneva Convention. The cardinal principle governing enforcement of award in International Commercial Arbitration is; Principle of Reciprocity and India should be a signatory to any one of the above convention.

The speaker also discussed the validity of Foreign Arbitration under Indian Law. If in a situation an interim order of Foreign Arbitration case is challenged in India than the Indian courts will be reluctant to send the suit back. The provision of Section 94 of Code of Civil Procedure, 1908 states that:

On the question of use of regional language in Arbitration matters it can be concluded that regional languages will always be used in addition to official language i.e. English. If an Indian has any Arbitration matter outside India than International law of respective country will prevail only if International Arbitration by definition has been followed which include that Place of institution of suit is outside India and one party should be foreigner.

The second speaker for the session talked about the difference between ad hoc arbitration and Institutional arbitration. An ad hoc arbitration is one which is not administered by an institution and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, procedure for conducting the arbitration, etc. Provided the parties approach the arbitration in a spirit of cooperation, ad hoc proceedings can be more flexible, cheaper and faster than an administered proceeding.

An institutional arbitration is one in which a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that institution. It is pertinent to note that these institutions do not arbitrate the dispute, it is the arbitrators who arbitrate, and so the term arbitration institution is inappropriate and only the rules of the institution apply. It is said that the parties are the masters of the arbitration but in institutional arbitration, the institutions virtually acquire certain powers of the parties' such as appointment of arbitrators, etc. and are in a position to impose their will upon the parties.

This seems to be against the very spirit of arbitration and one may say that this is not arbitration in the true sense. Though ad hoc arbitration would then be preferred, it can be argued that in today's modern and complex commercial world, ad hoc arbitration is suitable

only to disputes involving smaller claims and less affluent parties and to domestic arbitrations, excepting where state parties are involved.

In the context of international commercial disputes, one may argue that institutional arbitration is more suitable, even though apparently it is more expensive, time consuming and rigid than ad hoc arbitration, keeping in mind the fact that it provides established & updated arbitration rules, support, supervision & monitoring of the arbitration, review of awards and most importantly, strengthens the credibility of the awards. In conclusion, it must be said that it is hard to claim that institutional arbitration is superior to ad hoc proceedings or vice versa.

The third Speaker A.K Thomas from London Court of International Justice talked about the prospects of international arbitration in India. Prospects in this sense meant the chances of success. The issues revolving around the topic was whether Institutional Arbitration is a Success or failure in India. The current statics shows that there are crores of cases pending in India.

There has been a great shift from traditional litigation to arbitration. Arbitration in India is not only followed in high level cases but also in small cause day to day cases. He discussed the example of O Calcutta restaurant valet parking. The receipt of valet parking provides for dispute resolution method. These examples indicate that there is a rising trend of Institutional Arbitration in India and to come into it one need opportunity which is already present in the country with various institutions and planning and action.

The fourth speaker highlighted the above topic and stated that in past 5 years there has been 200% increase in arbitration matters and 95% matters goes to Ad-Hoc Arbitration. Therefore the future of arbitration in India is very bright.

The last speaker talked about India Germany international Arbitration cases. In international arbitration substantive law is followed. Trend and increase in arbitration cases India has been from 85 cases in 2013 in 2013 to 35 in 2014. Therefore, this mode of resolution is at rising trend in our country.

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## ✚ EVOLVING CYBERCRIMES & INCREASING DATA BREACHES - AN HOLISTIC REVIEW

### Session Moderator:

- **Mr. Rajesh Kumar Viswanathan**, Co-Chair, Bangalore Chapter, International Association of Privacy Professionals (IAPP)

### Session Panelists:

- **Mr. T.N. Tiwari**, Additional Secretary, Ministry of Law & Justice, Govt. of India
- **Ms. Karnika Seth**, Cyber law expert & Corporate Head, Seth Associates Advocates
- **Mr. Anil Kona, Partner**, Ernst and Young, Forensic & Dispute Resolution
- **Mr. G.V. Anand Bhushan**, General Counsel, APAC, Cognizant Technology Solutions
- **Mr. Parag Deodhar**, Chief Risk Officer, Bharati AXA General Insurance Co. Ltd.



### **Evolving Cybercrimes and increasing Data Breaches – Session**

The session started with the introduction of the panel members and the session moderator. Then began the information about what actually IAPP means and how many professionals are employed by the IAPP. It is a NPO and is responsible for developing and launching the globally recognized certifications.

Coming to the main topic, cyber crimes was introduced by mentioning the biggest breach that happened in 2013 and went on with some more breaches that happened in US and many other countries. The reason why these breaches were highlighted was due to the pattern of these due to which were happening like the denial of services, etc.

One of the most important breach, is called Cammera which even FBI has not been able to control, had features of 3 components:

- a) It is a virus
- b) It induces the data breaches
- c) It takes ransom

**Technology has given way to the cyber crimes and data breaches.**

***DISCUSSION:***

**a) How do you see that these cyber crimes have evolved from being on a location centric that is, a conventional model to becoming a technology centric?**

Mr. Parag answers by starting with giving the background of technology and comparing it with the today's fast growing technology. Various clouds are being used by companies; there are people who connect their devices to the public wifi's like hotels, airports, etc. The social, mobile and cloud is being used by the companies, and this is the area where the ransom and malware gets an entry ticket. The company data cannot be protected on an employee's device as it can be protected on a company's device. And also, it is difficult to maintain the employees in the company and there is no surety that after leaving the company, the employees shall keep the company data intact and would not leak vital information.

**b) Has it becomes too easy for cyber criminals to get into higher integration?**

Ms. Karnika answered the question by telling that though social media has helped a great deal, similarly the criminals have found it quite easy to forge invoices and other important documents which go through the emails or other platforms of social media. The spoofing tools, fake email - id's and use of key-logger which are commonly being used by the cyber criminals. All these techniques are old but have grown over a period of time.

Mr. Tiwari added that cyber crime has become a very complicated affair and the corporate have to be cautious and take care of the information routers and that they are not misused by any of these cyber criminals.

**c) Advance Persistent Threats (APT)?**

Mr. Parag explains by telling that it is a targeted attack and there are criminals who target a particular entity or a particular employee in the entity. This is again due to a discrepancy in the human factor which is the weakest link in this area. Intelligence and Awareness in the system shall help you to know the specific attacks on your computers and might tell you from where the attacks are coming from. Security should not be reactive, rather should be pro-active.

Analytics and right set of tools should be used whether your company is being attacked and then to pro-actively stop it.

Mr. Karnika adds there is a term called smishing, fishing and whishing and explains these terms through proper examples.

**d) Are the companies lagging behind to implement the measures to handle the human error concepts?**

Mr. Anand Bhushan explains that there is always a threat and there is nothing that can be 100% accurate. Company understands only two terms, that is, risk and reward. The risk from a reputational standpoint is huge giving the examples of matrimony websites, etc.

Mr. Parag supplements it by telling that lower level employees shall also be taken care of. There is a need to implement certain controls. There are people who do not change their passwords and which is where the weak links come in and make cyber crime very easy. Company can go in for simple security and there should be continuous awareness. And this is not only the company data, the rewards will be on the personal side as well.

Ms. Karnika further added that companies are not sure of what kind of surveillance the company shall go in for, to keep a check on employees. The second point is that if there is a breach, does the company have a right to sue the employees or vice versa? And she answers that yes both the employees and the company have a right to sue both.

**e) The live action scenes seen?**

Mr. Anil agreed on the fact that 100% security is a myth and mentioned some of the incidents that he has gone through during his career. Also, he stated that every 40 minutes there are cases reported, related to Facebook. Further, there are 12000 cases reported everyday based on cyber crimes. He also mentioned some of the cases that gained much light in the previous years.

The session continued by all the panel members and was concluded by a question answer session which added to the knowledge of all the audience.

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## PRIVACY & DATA SECURITY COMPLIANCE: KEY ELEMENTS, CHALLENGES & LEADING PRACTICES

### Session Moderator:

- **Ms. Kavitha Gupta**, Senior Counsel - Asia Pacific, Hitachi Consulting and Co-chair of Bangalore KnowledgeNet International Association of Privacy Professionals

### Session Panelists:

- **H.E. Mr. Stephen Pelham Pound**, Member of Parliament for Ealing North, United Kingdom
- **Ms. Vidya Rajarao**, Partner, Grant Thornton India LLP
- **Mr. Anubhav Bathla**, Chief Information Security Officer at SDG
- **Mr. Joginder Yadav**, Director, Legal Services & General Counsel, India, Cisco Systems India Pvt. Ltd
- **Mr. Srinjoy Banerjee**, AVP (Intellectual Property & Data Privacy) & Legal Counsel, Genpact



### Privacy and Data Security Compliances - Session

Ms. Kavitha Gupta began the session by addressing how Vendor Management was known to be an integral part of data privacy. In her opinion, Companies will be held accountable and liable for its data service providers' security flaws in the coming days. She took a glance on the data protection laws around the country.

Mr. Stephen Pound continued the discussion while answering Ms Gupta's question on the US cyber law principles. According to Pound, it is the defense through the law that will make the system actually work. Every aspect concerning data security needs to be seen through the national security prism.

Following this, Mr. Anubhav Bathla took over. He began by saying that Privacy is not new but has evolved constantly in the last five to six years. Around 2011, the compliance practice became much prevalent when companies started with their privacy compliance departments of their own but they were not really aware of the functions and working of this part of the organization. He further said in the absence of regulations, there was no communication about what a Chief Privacy Officer did. In this way, he emphasized that there is a need to have a privacy department in place.

He made a point on how the Job description of a CPO should include knowledge of privacy, disaster control and compliance, understanding of the evolution of business risk. He also said IOT (Internet of Things network) in India was a far game. He further added that there was a big gap between the security and lawyer community.

On this, Mr. Joginder interjected by adding that it is extremely important to dwell on why privacy is becoming a concern today. Most of us struggle with drafting policies. Companies need to have privacy policies but it depends a lot the kind of company. Second important factor is to note is the jurisdiction, if it is foreign or single. He told even if India does not have a Data Protection Act, there are sufficient Constitutional and IT provisions in place.

He moved on to how the companies look at invasion of privacy differently depending on the agendas. There will be different issues that one needs to grapple with. For this particular purpose, one may take guidance from EU and EU set ups. Defining the technological measure is crucial coupled with the fact that the Personally Identified Information needs to be collected, stored and disposed of accordingly. He also underlined the importance of recruiting a Chief Privacy Officer.

Moreover, regular audits are pivotal to uncover violations. This should be followed by regular trainings of the employees, about do's and don'ts. To review policy management changes, macro landscape might change, he concluded.

Subsequently, Mr. Srinjoy Banerjee was asked about the best practices to be followed for LPO. Also, how internal policy and PII can be maintained. To which he answered, the differences in laws is a major factor. He further said that the onus has shifted from data controller to data processor now. There is a lot of outsourcing being done to India. One must

have tighter vendor management and an incident response plan. The deletion of data plan needs to be in place too.

Mr. Bathla highlighted the key concern surrounding the unawareness of laws. He asked Mr. Joginder if he hosted data outside his organization. At this juncture, Ms Gupta asked Ms. Vidya about the loopholes she had been exposed to. To which she replied, realization of data has been fairly late. There are fragmented responsibilities at the time of breach. Mostly, the Companies are really dormant and delaying the processes. There has to be technology conforming to the law.

Thereafter, Mr. Anubhav added about dark web contents which people today are not really aware about, wherein people's death time is decided. Upon the decision, people get bounty. The crux of his argument was that the web today is being employed for illegal motives' accomplishment. There is a silk route through which arms and ammunitions are being traded.

Mr. Joginder after taking over talked about shaping the technology policy and integration of legal communities. He also supported the idea of setting up of privacy committees. Towards the end of the session, there was a question on the fragility of the technology. Ms. Vidya answered that the relevancy of data determines the extent of security one should accord to it.

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## **INDIA IN TOP 50 BY 2017 - HOW TO ACHIEVE SUCCESS THROUGH MAKE IN INDIA**

### **Session Moderator:**

- **Mr. S. Ramaswamy**, Former, EVP-Group General Counsel, Escorts Ltd, Chairman, INBA, GC Section & Founder, Medha Advisors

### **Co-moderator:**

- **Mr. G. V. Anand Bhushan**, General Counsel, APAC, Cognizant Technology Solutions

## Session Panelists:

- **Mr. Badrinath Durvasula**, Vice President & Head Legal - Larsen & Toubro Limited
- **Dr. Akhil Prasad**, Country Counsel India and Company Secretary with Boeing International Corporation
- **Ms. Jayashree Swaminathan**, Director (CEO) at Dhir & Dhir Associates
- **Mr. Mukesh W Tyagi**, CEO, Global Energizer
- **Dr. Sanjeev Gemawat**, Senior Vice President, Legal & Secretarial, DLF Rentco Group



### India in top 50 by 2017 - How to achieve success through Make in India - Session

The session began by Mr. S. Ramaswamy addressing the gathering on the topic. He told how the topic was of relevance to the present as well as future generations. He went on to speak about how the vision of Make in India was introduced by Prime Minister Modi on 25<sup>th</sup> September, 2014 on how investment can be facilitated, the innovation can be fostered and Intellectual Property can be protected and how the best infrastructure can be built in the manufacturing sector. The ease of doing business in India needs consideration. He further said India should look forward to develop Make in India a reality and then while looking at its

workforce should work in fixing FDI. India according to him should strive for both Make for India and Make for the World. He further talked about the World Bank's 10 index parameters, namely, starting of business, getting election permits getting electricity, availability of land, getting credit, paying taxes, trading contracts, labour reforms, etc. He finally reflected on constitutional basis of all this.

He then invited Mr. Badrinath to express his views on the theme. He began by saying that he was speaking as a citizen of the nation and not in his personal capacities. He remarked that the Make in India is not just a vision statement but also a policy statement. To achieve the same as a platform, no government has vision statement yet. In relation to regulatory mechanism, a manufacturer's perspective should be incorporated in the framework. He further emphasized on the technology tie up, regulatory constraints and specifically spoke on how the sectors such as insurance, electricity, had major inconsistencies between the acts and rules. He drew a parallel with Singaporean law which gives quick approvals for setting up of business. The short point, he explained, is coverage of thoughts in policy framework rules. He concluded by making a point on the utilization of funds for exclusively the beneficiaries. Mr. Ramaswamy thanked Mr. Badrinath for setting the tone.

Later, Mrs. Jayashree spoke on the compliance and how the vision has been implemented so far. She asked the audiences if they know all the driving licence rules. She indicated that there is change happening. She further commented upon the trade license and the government monitoring on license and maintenance of files. Payment system needs to be improved as she pointed out.

Mr. Prasad on being invited began telling about the defence sector being the biggest beneficiary of Make in India along with the Oil and Gas sector, there is also huge dependency on imports as he added. He also gladly quoted how foreign companies such as Honeywell, Boeing are taking interest in the Indian Defence Procurement unit. He further stressed upon the need to have more clarity in the guiding principles of Defence Procurement Policy. He pointed out how there are anomalies and huge gaps in terms of decision making at the ministry level and how decision paralysis has affected the offset requirements. He explains how to get offset credit is a herculean task in itself. He further revealed how Boeing is coming up with Tata in its Joint Venture. He concluded by saying that we can always deliberate as we don't need the foundation for realizing the vision into reality.

On being asked Mr. Anand on what needs to be done in this regard, he responded by saying that demographic dividend/nightmare is a level of systemic reform which needs some focus. All issues whether political, social find their cause in youth unemployment. Hence, it is imperative that the youth is employed and skill is imparted. He envisages of the development

in respect of employment in India so there is no scope of economic and national insecurity. He puts how innovation needs to be unlocked.

Mr. Ramaswamy added to this how Mr. Mody has created ripple effects. Moreover, Mr. Bhushan added that there are fewer colleges that impart skills. Due diligence should be meticulously conducted and compliance should be in place in terms of people, process and technology.

Tyagi told how because of Make in India, Hollywood is coming to India. However, there is inertia in the mindset of India. Ignorance and resistance in the political and bureaucratic mindset has crept in. The momentum of Make in India is humongous in nature. He finally stated how there is a huge disconnect between vision and reality as there is no long term plan in place.

Last but not the least; Mr. Gemawat expressed his opinion on Make in India. He found this to be a philosophical topic. Throughout his speech, he nevertheless, emphasized upon producing entrepreneur in manufacturing as well as service sectors. He further recognized India as a market and as a great customer potential. To a question on electricity, Mr. Tyagi answered, *“India is shifting its thrust from fossilized to non fossilized fuels or renewable sources of power”*. The session concluded with the felicitation of the panelists.

## TAXATION LAW & BLACK MONEY

### Session Moderator:

- **Mr. Krishan Malhotra**, Head, Taxation, Shardul Amarchand Mangaldas & Co.

### Session Panelists:

- **H.E. Ms. Ishita Sethi**, Barrister, 7 Wentworth Selborne Chambers, Sydney
- **Mr. Maran Nandan**, Principal Solicitor, MARSH LAWYERS, Sydney
- **Ms Neha Malhotra**, Executive Director, Nangia & Co.

The session was started by Ms Neha. She began by asking if black Money was a Menace. She further told that the tax evaded money violated the constitutional right of equality. Further, she told about two types of black money, one is reasonable, while the other one is infected. According to her, infected black money leads to generation of black money. There are

numerous laws in place but the uncertainty is regarding how far we have gone to achieve the objectives. There is a need of a global architecture in this respect.

She then spoke about Ram Jethmalani filing a criminal writ petition to bring back the illicit black money calling it a game changer. She further told following this petition, there was an appointment of SIT in 2014 by the NDA government. She also briefed about the two distinct laws on black money, one on offshore account money and the other on, dubious domestic activities. In her opinion, domestic black money is much grave in nature.



### Taxation Law & Black Money - Session

Talking about the Benami Transaction bill which placed recommendations by SIT, she said it is much proposed that there should be a cap put on huge cash transactions. Highlighting the fact that terrorism is a fall back of black money, she spoke about how UN World bank and OECD are recognizing the menace. She then vouched for the automatic exchange of information signed by India. She ended by quoting OECD Secretary-General Angel Gurría “Tax fraud and tax evasion are not victimless crimes: they deprive governments of revenues needed to restore growth and jeopardize citizens’ trust in the fairness and integrity of the tax system”.

The second panelist, Ms Sethi rose to the podium to speak about, “Inbound investment into Australia”. She elucidated upon the various legal structures that are available to Foreign Investors in Australia. She further opined that, there must be broad choices to foreign entities investing in India in terms of vehicles such as the individual, trust or a partnership. She

further told the tax levy is 30% flat for NRI companies. Moreover, the entry of investors is through two modes, i.e. either Australian subsidiary or a branch of the foreign entity.

She also brought up the issue of Double Taxation Avoidance Agreement (DTAA) which restricts the activity on which Australia has right to tax subject to its own municipal law. She then cited the relevant section i.e. Article 7 of the DTAA between India and Australia governing the business profit derived by an Indian National who only be taxed on business profits to the extent of foreign company's presence. Further, in this regard, Article 5 stipulation of the specific circumstances in which permanent establishment can be established.

She also informed about Australia's law on taxing subsidiaries of foreign entity according to its worldwide income. She further told how parent entity's profit could be distributed as dividend, interest or royalty which was taxed subsequently pursuant to section 128 B of the Australian Income Tax Assessment Act of 1997.

Alternatively, the payment of management fee is not equivalent to withholding taxes provided that the management fee is charged at an arm's length rate. Before concluding, she spoke about the exit strategies and planning applicable.

The discussion was continued by Mr. Maran on Tax evasion in Australia. He talked how Base erosion and profit shifting was the appropriate term to describe Black Money in Australia. Further, the Australian Tax Office was working to ensure tax transparency in the country. Evidently, the tax evasion harms government because they have to cope with less revenue as a result. He also threw light on how lot of trial and error has been adopted and steps have been taken against evasion of taxes which significantly decreased the black money's power.

Mr. Krishan Malhotra took over and started sharing about the initiatives that have been taken. He expressed how tax terrorism, aggressive attitude have become the buzz words. He further told there is a lot of money locked up in appeals and tax litigations. He revealed how the FIIs are facing a lot of trouble for they are being taxed for their book profits even if they are not making profits.

He then went on to throw some light on the panel headed by AP Shah and the report so submitted. Subsequent to the report, no MAT (Minimum Alternate Tax) will be paid by FIIs prior to 1/4/2015. He also put forward his reflections on the budget to be proposed on 28 February, 2016. He also called Vodafone case order by the Bombay High Court as non application of mind. He also said that Companies want to come to India for the quantum of business market and not the tax benefits. The mechanism for "Aayakar Seva Kendra" reduces unmindful orders, litigations and frivolous demands.

In the end, there was a question posed on how to bring the stashed money abroad. The answer concentrated on revising the old treaties on exchange of information clause. In case of DTAA, there is no article for exchange of information about the black money being rotated.

## *Award Ceremony*

*Indian National Bar Association* proudly felicitated meritorious people from different spheres such as Law and Social Justice in its first such endeavor. Mr. S. Ramaswamy (Chair, General Counsel Section, INBA) started the ceremony by admitting that it's a proud moment for all to recognize such individuals who have been making exemplary contributions to their respective fields. The gathering was privileged to have the blessings and gracious presence of Sh. Ram Jethmalani. Other eminent personalities that adorned the ceremony were H.E. Mr. Stephen Pound (Parliamentarian, UK), Mr. Mukesh Tyagi (CEO, Global Energizers), H.E. Mr. Virendra Sharma (Parliamentarian, U.K.) and Mr. Kaviraj Singh (Secretary General, INBA).



**INBA Awards Winners**

The first award of **'Young Woman General Counsel of the Year 2015'** was bagged by **Ms. Kavitha Gupta**. Ms. Kavitha Gupta heads the legal for Hitachi Consulting Asia Pacific region, which encompasses India, Singapore, Malaysia, Thailand, Indonesia and Vietnam. She is an active participant of the Global Legal Compliance initiatives. **Mr. Rakesh Bakshi** was felicitated by the award for **'The General Counsel of the Year 2015 – Technology'**. Mr. Rakesh, with an experience of almost 23 years in the legal field, is currently and the Director and Head – Legal for Amazon in India.

The award for **'Corporate Counsel of the Year 2015 – Privacy and Data Protection'** was received by **Mr. V. Rajesh Kumar**, Lead Manager - Privacy & Data Protection at Infosys Limited.

He is also supporting initiatives that support emerging technology such as cloud, smart city and mobility. The award for **'General Counsel of the Year 2015 – Infrastructure'** was conferred upon **Mr. Badrinath Durvasula**, Vice President & Head Legal, Larsen & Toubro. Mr. Badrinath looks after matters like International Contracting, Litigation and Contract Management. **'General Counsel of the Year 2015 – Retail'** award was bestowed upon **Mr. Pulin Kumar**. Pulin Kumar is a Senior Legal Director, Group Legal & Compliance of Adidas India, looking after the legal and compliance functions of the group i.e. Adidas India and Reebok India. The mandate includes contract, compliance, litigation management and advisory of the legal commercial issues. **Mr. Karan Singh Chandhiok** was felicitated by the award for **'Young Emerging Lawyer – 2015'**.

Ms. Kalyani received the award on his behalf. Mr. Karan is a partner in Chandhiok and Associates and heads the firms Competition Law and Dispute Practices. **'Law Firm of the Year 2015 – Insurance'** award was received by **Mr. Rajat Taimni (Tuli & Co.)**. Mr. Rajat is a partner in Tuli & Co. and heads the Dispute Resolution Team. The firm's clients vary from automotive parts manufacturers, defense contractors, pharmaceutical companies, financial institutions and individual clients. **'Law Firm of the Year, 2015 – IP Practice'** award was received by **Mr. Saikrishna Rajagopal** (Managing & Founding Partner, Saikrishna & Associates). Mr. Saikrishna has worked extensively in the area of Civil and Criminal Intellectual Property litigation. And finally, **Ms. Prathiba M. Singh** (Senior Advocate, Supreme Court of India) was felicitated by the award for **'Women Lawyer of the year 2015'**.

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