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INDIAN
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INBA Celebrates 64th National Law Day - A Report on two day's International Conference on Law and Policy Issues

26-27 November, 2013 at India
International Centre, New Delhi, India





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DIGNITARIES GRACES THE OCCASION



Sr. Advocate Shri Ram Jethmalani with Ms. Meenakshi Lekhi, National Spokesperson, Bhartiya Janta Party



Dr. D. Purandeswari, Minister of State, Commerce & Industry with Subhash C. Kashyap, Former Secretary General, Lok Sabha



Ms. Nirmala S. Prabhavalkar, Member, National Commission for Women with Ms. Susanne Kumpfert, M.D., Pinkerton Healthcare Consulting, Germany



Mr. Bejon Misra, Founder at Partnership for Safe Medicine (PSM) India, International Consumer Policy Expert facilitating to Sr. Advocate Shri Ram Jethmalani



Hon'ble Justice Bisheshwar Prasad Singh, former Justice Supreme court of India



Axel Heck, Esq., Attorney & Counselor--at--Law, Germany

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Executive Summary

Ever since that auspicious day of 26.11.1949, when people of India had enacted, adopted and given to themselves the Constitution of India, which has been designated and celebrated as the National Law Day. Each year on November the 26th entire nation and more so the legal community celebrates the National Law Day to remind ourselves the importance of this day which has, in effect, constituted the nation that today we are: a Sovereign, Secular, Socialist and Democratic Republic.

So on the occasion of the 64th National Law day Indian National Bar Association, an apex body of national and international lawyers which also seeks inter alia to provide a forum for the lawyers to sit back and reflect upon the myriad challenges faced by the nation and give much needed organized voice to the legal community to contemplate on all the policy and law related challenges faced by the nation. So that the quality of life for the common man on the streets is better, organized a two day International Conference held at India International Centre, New Delhi to commemorate the spirit of the Constitution and seek ways to infuse that spirit into the national polity.

The Issues were many and it had to be a careful choice to make the best of the occasion. As the economy is slowing down, women folk feeling threatened at the work place and also on the streets, with retrospective amendments to the tax law touching a raw nerve with the international investor community, with justice delivery system being choked with colossal amounts of pendency. Therefore INBA planned the two days to have as many as ten technical sessions, on the most pressing concerns, spread over two days at peaceful and resourceful India International centre.

With inaugural session being addressed by none other than pre-eminent Constitutional Expert Dr. Subash C. Kashyap and joined in by Hon'ble Mr. Justice Bisheshwar Prasad Singh and Dr. Daggubati Purandeswari, Union Minister of State, Ministry of Commerce & Industry it could be easily gathered that it was going to be an enriching experience for everybody be it the students, academicians, intellectuals, lawyers.

The first technical session focused on 'Transparent & Effective Public Policy Making' with the illustrious panelists coming from the best of the institutions in the country and international lawyers in audience it had to be a truly fruitful session. The various aspects of Public Policy Making which

were discussed and debated were: the Improvements in the Public Policy Making Eco-System; Keys to Transparency-Professional Acumen and Lobbying as a Profession; What is missing in the 'Professional' aspect of public policy formulation?; Sensitivity and Sensibility towards the Needs of All Stakeholders is Needed; Conflicting Priorities needs to be done away with; There must be a well laid out process and finally the Necessity of seriousness in engagement on the part of policy makers.

The next session focused on the 'Emerging Issues in Taxation' which took an Overview of key international and national developments on Direct Tax front; the debates happening around transfer Pricing i.e. the need for a matured data base to compare margins; Critique of GST related Constitutional Amendment Bill; and finally the need for Improving Tax Administration and also as to how ill advised retrospective tax amendments struck a discordant note in a supremely fulfilling economic growth symphony.

'Investment Strategies' was the third session wherein Global Investment Trends, Investment Risks in the Developed Markets, ways to navigating those risks, the Challenges of investing in India and above all the importance of dovetailing of National Development Plans and Investment Strategies were discussed.

Next session concentrated on the 'Challenges in Doing Business Globally' in terms of Nature of the investment methods, structure of the direct investments, Issues related to the incorporation of businesses, the need and necessity of pre-emptive rights in shareholders agreements and the issues related to the cost of labor in terms of wages social contributions and taxes were pondered over by a gathering of national and international lawyers.

'Legal Challenges for the Rapid Economic Growth' was the last session of the day where Rule of Law Issues in Commercial Matters and the need for doing away with Uncertainty and making it easy to do business and the paramount of Legal Reforms in such a scenario was discussed by a pre-eminent panel drawn from corporate world and from the best law Firms.

Day II of the Conference started with the 'Young Lawyers Section' which is unique to INBA and it happened to discuss professional Opportunities for young lawyers, issues related to attitude and work Ethic and the constant need to upgrade the skill set was discussed.

Another related and the most fundamental aspect in making a lawyer what he is that is the 'Legal Education Section' was the next technical session where initiatives and opportunities in national and international legal educational institutions were the point of discussion.

'Women Empowerment in India' was the next session which discussed the need and necessity of changing mindsets for true empowerment.

And finally the last two technical sessions before the valedictory session discussed the Concept, Aspects and Issues in IP Eco System & Media & Entertainment Law and 'Government Procurement Policy' in the broader context of Public Procurement Bill 2012 respectively

The Valedictory session true to its intent and purpose was full of youthful charm by a young man of 90 years of age; a powerful speech by a strong yet graceful and wise lady seeking to infuse equal respect for women in our daily lives and by a man who has made it a mission of his life to pursue betterment of the common consumer and not bogged down by the disconcerting and loathsome disregard therefore by the rich and the powerful. The Young man was Mr. Ram Jethmalani, the Lady was Ms. Meenakshi Lekhi and the man with the mission was Mr. Bejon Mishra.

Inaugural Session

The best way to celebrate National Law Day: Not rhetoric or platitudes but a true reality checks of the issues



Dr. Subhash C. Kashyap, Former Secretary General, Lok Sabha

Dr. Subhash C. Kashyap, Former Secretary General, Lok Sabha, President, Indian National Bar Association delivered the Welcome Address to the congregation of national and international the Jurists, Scholars at the Conference He highlighted the role and importance of the Constitution by stating that the “Constitution establishes the basic structures of polity and provides basic principles of the polity” and sought to distinguish Rule of Law is diff. from rule of laws as he believed that laws become antithetical if they become restrictive; more so when micro regulating. Then he came up with his and INBA’s formulation on How to celebrate the law day? And the prescription was simple that not to indulge in rhetoric and platitudes but to do a true reality check on the legal and policy level challenges faced by the nation.

Ushering in Judicial Reforms



Hon'ble Mr. Justice Bisheshwar Prasad Singh, former Judge, Supreme Court of India

Reflecting on the state of nation, the need for judicial reforms and the part which the citizenry can play in bringing about those changes, Hon'ble Mr. Justice Bisheshwar Prasad Singh, former Judge, Supreme Court of India and Member, Indian National Bar Association, Advisory Board, sought to highlight the ills because of which the justice delivery system is choked up with massive pendency of cases.

And for that he believed the improvements needed at the lowest level: of judiciary was the need of the hour and also sought to highlight that it is the mismatch between no. of litigants, no. of judges and the necessary infrastructure that is responsible for the sorry state of affairs. And that can only be done if requisite reforms are brought in

Realising India's Economic Potential



Dr. Daggubati Purandeswari, Union Minister of State, Ministry of Commerce & Industry

Dr. Daggubati Purandeswari, Union Minister of State, Ministry of Commerce & Industry in her Keynote Address spoke about India's economic miracle, the challenges faced by the nation in realizing its true potential. The important points that she made in her speech and which are vital from the reformative spirit of the conference and this report are:

- ❖ **India's Incredible Economic Journey:** As per her India's economy has been remarkable despite two global slowdowns. The one, which started in 2008, was taken by the giant that India is, in its stride on the twin strengths of its conservative banking system and its own huge consumer market. But the second one which occurred in 2010 and is known by the name Euro zone crisis has hit us and we are yet to come out of its after effects. And the best way forward for us to tap the non conventional markets that of Latin America and Africa while not losing sight of



- ❖ **The three probable solutions for our CAD problem:** the huge current account deficit (CAD) of 5% plus, she viewed, as India's biggest economic challenge which needs to be overcome. And the probable method to do so may be the disinvestment route which at times leads to huge uproars against any such moves. As largely it is perceived as privatization which she observed was not necessarily the case and sought to bring; the second option is the invitation of a lot of foreign investment in the form of FDI which largely depend on the perception of our legal system as an investor protection friendly jurisdiction and best management practices; and the third option may be the and external borrowing, but she viewed this option as not a preferable one in the current circumstances.

- ❖ **Need to fight unfounded apprehensions:** Dr. Purandeswari, spoke about the apprehensions which people have whenever initiatives to deal with economic challenges are taken up. She urged the gathering and in turn the wider national audience that there are aspects to any initiative and one must remain prepared to make the most of the advantages one particular initiative brings while remaining committed to defang the risks. She took the example of issues involved in opening the economy to FDI in multi-brand retail. And wondered as to how the debate remained lopsided as only the loss to the Kirana sector hogged the limelight while the advantages to the farm sector and the entire value chain remained neglected in the entire debate. So the idea is to take up the challenges and fight them out only then we will be able to achieve the aim of inclusive growth for our huge population.

Vote of Thanks



Mr. Kaviraj Singh, Secretary General, Indian National Bar Association

Mr. Kaviraj Singh, Secretary General INBA, who was described as the ‘spirit behind the movement called INBA’ by Dr. Subhash C. Kashyap, thanked the dignitaries who delivered their respective addresses in the inaugural session. He informed the audience about the approach adopted by INBA in addressing various issues that is positively, apolitically while encouraging good practices in overcoming nation’s policy level challenges.

Technical Session I:

Transparent & Effective Public Policy Making



Chaired by **Mr. Tabrez Ahmed, Secretary General, Organization of Pharmaceutical Producers of India (OPPI)**, the first technical session titled 'Transparent & Effective Public Policy Making' sought to explore and analyse the public policy framing environment in the country. The Chair urged the panelists to figure out the present state of public policy framing in the country as well as its future on the twin touchstones of transparency and effectiveness.



Mr. Tabrez Ahmed, Secretary General, Organization of Pharmaceutical Producers of India (OPPI)

Improvements in the Public Policy Making Eco-System



Mr. Ranjan Negi, Partner, Amarchand & Mangaldas & Suresh A. Shroff & Co

Responding to the call of the Chair, Mr. Ranjan Negi, Partner, Amarchand & Mangaldas & Suresh A. Shroff & Co., viewed that the advent of Right to Information Act which has led to improved public access to public documents; Watchfulness of conventional media coupled with electronic media and ranks thereof having lately been joined by social media; Better Interaction between policy makers and stakeholders; the role played out by Comptroller and Auditor General of India has led to an overall improvement in the public policy making eco-system quite transparent.

Keys to Transparency: Professional Acumen and Lobbying as a Profession



Mr. Sundeep Kumar, Head- Corporate & Public Affairs, Novartis India Ltd

Mr. Sundeep Kumar, Head- Corporate & Public Affairs, Novartis India Ltd., while agreed with the proposition advanced by Mr. Negi, came up with the formulation that India's Public Policy making environment needs to be pepped up with professionalism. By professionalism, he meant that the people who are involved in the Public Policy making must have their educational qualifications in that domain. As he viewed that people with diverse educational backgrounds, especially in private organizations, are into public policy making due to which there is a dearth of commonality in terms of a common terminology and understanding of the issues. The other aspect which he believed would bring transparency in the process would be recognition be granted to the Lobbying as the profession. Such a move would bring in much transparency as it would eventually lead to the publication of the various agenda of the different lobby groups.

What is missing in the 'Professional' aspect of public policy formulation?



Mr. Anwar Shirpurwala, Executive Director, MAIT

Despite the progress was made in the public policy formulation and discussed by other panelists, Mr. Anwar Shirpurwala, Executive Director, MAIT. (Manufacturer's Association for Info-Tech) was of the opinion that what is missing is the code of conduct amongst policy makers. As there is a law maker and there is another party giving inputs and then we have a policy but is this group sufficient to take care of the interests of the entire social environment. So a 'progress' in these terms may be a desirable.

Sensitivity and Sensibility towards the Needs of All Stakeholders is Needed



Mr. Amitabh Baxi, Director Government Affairs, Abbott Healthcare Pvt. Ltd

As per Mr. Amitabh Baxi, Director Government Affairs, Abbott Healthcare Pvt. Ltd., undoubtedly with the proliferation of media and enactments like RTI Act the flow of information in the system has certainly improved. But the question remains whether that information is being put to the use in policy formulation with a touch of sensitivity and sensibility towards the needs of all the stakeholders in the ecosystem going to be affected by that particular policy. He sought to refrain from using the word ‘professionalism’, as highlighted by the other panelists being missing in the policy formulation process, in his view it was the maturity of the process where a policy is a product of a gradual, responsive and timely intervention making the best use of information flow in the best interest of all the stakeholders. He also advocated the need for timely review of all policies so that there do not continue policies which have become irrelevant and thought if a mechanism could be devised to do so then it will greatly help in having matured, responsible and responsive policies.

Public Policy Courses may be started within the curriculum of Existing Law Courses



Mr. Bikas Kr. Singh, Head- Government Affairs India Legal, Lenovo India Pvt. Ltd

Agreeing with the views of other panelists, Mr. Bikas Kr. Singh, Head- Government Affairs India Legal, Lenovo India Pvt. Ltd, proposed that INBA may take it up with the Bar Council of India to promote public policy courses which may be started within the curriculum of existing law courses to bring in more professionalism in the public policy formulation. What is needed may be the provision of benchmarks and codes of conduct may be the way forward for public policy makers as is done for other professionals like CSs or CAs.

Panelists' Deliberations on Improving the System

- ❖ **Why the Govt. should do it?** Mr. Sundeep Kumar (supra) speaking from his personal experience also wished to highlight the point that many a times people seeking change in the govt. policy do not have concrete suggestions for the govt. which may be built into a policy framework and that needs to be addressed. Mr. Bikas Kumar Singh (Supra), agreeing with



the Mr. Sundeep Kumar's position viewed that there must be a win-win situation for all the stakeholders.

- ❖ **Conflicting Priorities needs to be done away with:** Another difficulty as per Mr. Sundeep Kumar (supra) speaking again from his personal experience was the need to do away with the conflicting priorities in the policy space as the example which he gave was regarding a description of an official designated as “commissioner of excise and prohibition” which is nothing but an expression of the conflicting priorities on revenue and morality and which leads to a great confusion.
- ❖ **There must be a well laid out process:** The third aspect as per him, was the necessity of having a well laid out process for policy formulation otherwise the entire exercise depends largely on personal proclivities of the person heading the policy formulation process and which is not a desirable scenario.
- ❖ **There cannot be accountability when there is no consistency:** Mr. Anwar Shirpurwala, felt that there could not be accountability for a policy as people change and time is too long.
- ❖ **Inclusiveness or Cross stakeholder engagement:** Mr. Negi (supra) felt that there was also a need to defining the stakeholders so that whosoever wishes to be heard must be heard; and adding to the point of Mr. Negi Mr. Baxi viewed that the ‘inclusiveness’ must mean elimination of exclusion. The aspirations of all the diverse sections of society need to be taken into consideration to bring in true inclusiveness, he further stated.
- ❖ **Necessity of seriousness in engagement on the part of policy makers:** Mr. Sundeep Kumar (supra) highlighted the necessity of seriousness on the part of policy makers as he gave the example that in seminars where policy alternatives are discussed and debated by the time stakeholders speak the policy makers are gone after delivering their key note address!
- ❖ **What are the costs of not having good policies:** The Chair added another dimension to the debate by asking the fellow panelists to shed light on the costs of not having good policies. Mr. Negi opined that the determination of losses is a difficult exercise as the estimation may be questioned besides one may be able to quantify the economic losses but social losses may be extremely difficult to quantify. The key, as per Mr. Bikas Kr. Singh, is to mitigate the chances of having bad policies. And that in his opinion can be done by having appropriate benchmarks, time frames and milestones in the entire policy formulation



process. As per Mr. Shirpurwala that the good policies may be done in by the bad implementation. Market distortion, as per Mr. Sundeep Kumar, is the biggest cost that a bad policy imposes. According to Mr. Baxi viewing policies as good or bad would not serve much purpose as they are essentially trade offs between various demands therefore problems are bound to be there but important thing was that there should be policy review mechanism to do away with a policy which does not serve the intended purpose.

Question and Answer Session

- ❖ **Would it not be correct to have an impact analysis before formulating a policy?** To that question from Mr. Pranav Mehra, Managing Editor, Conspicuous Competition, Mr. Sundeep Kumar responded that indeed that was a much needed and desired thing and by urging the bringing of professionalism in the process he meant that only.
- ❖ **James P. Duffy's observation on the policy formulation process:** congratulating the panelists for such an engaging discussion, Mr. James P. Duffy, III., Esq., New York, shared the policy formulation process followed in USA. There are two stages therein, he said, one is investigative phase (where the problem which needs policy intervention is studied thoroughly and all the likely stakeholders are allowed to make a point therein. The second phase is the legislative phase where again all the stakeholders are allowed to make suggestions. All the deliberations are widely disseminated so that there is a consensus around us. He said, the problem is not in committing mistakes in policy formulation, which every democracy by its very essence is bound to do, but the problem is not correcting the mistake when the same is realized.
- ❖ **Given the conflicting interests, is it really possible to make 'please all' policy especially when it the process consumes too much time and costs much?** Asked by a girl student who did not identify herself, the Chair viewed the situation as a cost of democracy especially when we are such a diverse country, so he viewed that one should not worry too much about the time taken. Mr. Sundeep Kumar added to the answer stating that, please all policy should not at all be considered in the first place as it will end up achieving nothing. So what may be done is to have an objective that a particular policy will try to achieve and there must be a clear and transparent process for the formulation thereof as it will at least bring in acceptability, if nothing else.

Technical Session II:

Emerging Issues in Taxation



Mr. Sujit Ghosh, Partner & National Head Tax Controversy & Litigation

Mr. Sujit Ghosh, Partner & National Head Tax Controversy & Litigation, Advaita Legal, chaired the session and put the issues which the session sought to deliberate upon very briefly as he viewed that country's taxation policy is rooted in the Constitution and stated that given the entire scenario taxation can be called legitimate evil.

Overview of key international and national developments on Direct Tax front



Mr. Krishan Malhotra, Head Taxation, Amarchand & Mangaldas & Suresh A Shroff & Co

On the invitation of the Chair, Mr. Krishan Malhotra, Head Taxation, Amarchand & Mangaldas & Suresh A Shroff & Co. presented an overview of key international and national developments on Direct Tax front. According to him all the developments one way or the other has been a product of global fight against scourge of Tax Evasion and Avoidance and prevention of tax base erosion. So be it strengthening tax information exchange across jurisdiction or G 20's Endorsement of BEPS Action Plan to arrest erosion of tax base and profit shifting especially in a digital economy scenario or achieving International coherence in corporate income taxation. And further he saw the re-evaluation of Mauritius route and introduction of the concept of TRC (tax residence certificate) to get any benefit under DTAA as a part of the same exercise to fight the menace. In that regard he viewed that initiatives, at home, like Safe Harbor rules in Transfer Pricing; and firstly the introduction of GAAR and later on its withdrawal which will now to come into play from 2015-16;

the Notification of Cyprus under section 94a of the Income-Tax Act, 1961 declaring all Parties to the Transaction with a Person in Cyprus shall be Treated as Associated Enterprises and the Transaction shall be Treated as an International Transaction resulting in Application of Transfer-Pricing Regulations Including Maintenance of Documentations. In Mr. Malhotra's views all these have been aimed at bolstering source base taxation. And he viewed that in view of Base Erosion and Profit Shifting Profits (BEPS) Action Plan which aims at (i) Establishing international coherence of corporate income taxation (ii) Restoring the full effects and benefits of international standards (iii) Ensuring transparency while promoting increased certainty and predictability (iv) From agreed policies to tax rules: the need for a swift implementation of the measures there is increasing co-operation amongst various jurisdiction against tax evasion and avoidance like Sweden, UK, UAE, Australia etc.

Transfer Pricing Debates: Matured Data Base Needed to Compare Margins

Agreeing with the overview of Mr. Malhotra, the Chair, felt that TP was one area which was going to have a lot of litigation and would be debated thread bare as despite a lot of scientific approach in the exercise but a lot of subjectivity also creeps in while comparing margins due to the inappropriate data base. As a result an aircraft company may be compared with a tractor manufacturer in accepting whether the margins are appropriate or not. And he hoped that the data base for comparing margins matures in the process of these debates etc.

GST related Constitutional Amendment Bill: Critiquing key proposals



Mr. Pratik Jain, Partner, KPMG

On the indirect taxation front, which in view of Mr. Pratik Jain, Partner, KPMG and a panelist, is one of the most radical tax reforms in the form of Goods and Services Tax (GST) which having been mooted in 2007 and being aimed at bringing into effect across the nation by 2010 still remains in the works. He sought to critique crucial Constitutional amendments which are sought to be introduced to make GST a reality. The key issues under consideration have been: Defining GST in the Constitution; inserting a new Article i.e. 246-A therein to empower state and the central Govts. to apply tax simultaneously on all the transactions; provide for a GST council to make recommendations on GST related issues to be headed by Union Finance Minister and having representatives from all the states; provide for a dispute resolution body to settle disputes and decide propriety of the recommendations of the GST Council; provision for the levying of integrated GST on the inter-state transactions; excluding petroleum products from GST regime as it leads to market distortions.

But the Standing Committee of the Parliament, in its August 2013 report, has done away with the requirement of having a dispute resolution body and GST Council must decide all the issues but such a measure in the opinion of Mr. Jain would lead to a lot of litigation as there remains no mid level body to settle disputes and an already inundated Supreme Court will further be flooded with tax disputes once the GST Act gets enacted and notified absence of such a mechanism will cause a lot of hardship more particularly in the context of levying on services as they are difficult to trace so much so that even European Union hasn't been able to get it correctly. Another recommendation, he did not agree with, is the proposed exclusion of the petroleum and alcoholic products from GST regime as believed that it is simply illogical or a counter logic to the rationale of having GST in the first place as 30-40 per cent revenue was is derived from these products and would lead to distortions. Another recommendation is the provision of GST monitoring cell to monitor the impact of GST on the various indicators of macroeconomic environment in the country. One more recommendation relates to providing discretionary flexibility within a prefixed range to the states in the rates of GST levy. Though the Standing Committee has recommended promotion of harmonized structure of GST yet it has not specified as to what this expression means as a result needless vagueness may be there.

Session Chair Dissects Constituents of Delayed Tax Justice in Tax Administration

- ❖ **Sending explorer mission to Mars is Fine but Improving Tax Administration would be even finer!** Expressing his anguish at the state of affairs in the tax administration in the country, the Session Chair, described the situation as very disconcerting and made the above stated comment. Being a taxation Lawyer himself, the Session Chair, found the situation of tax administration woefully inadequate as on the one hand you have a robust economy where a lot of money is being made on the other there is a highly sophisticated and very well equipped revenue department which can serve show cause notices running into hundreds of pages containing statements which sound like confirmation of the alleged facts but to settle the tax disputes huge amount of time and money is needed to be spent. And it is on account of two reasons, one is that at the level of department all the revenue authorities are revenue minded, so not more than one per cent of the disputes are decided the favour of the assesses at that level but the exercise eats up at least one or two years of time. Then one reaches the Tribunal but it remains inundated in the mindboggling number of pending matters. So he found huge variance in what Constitution in terms of tax administration promises and what



one gets in reality. So he wondered Sending explorer mission to Mars is Fine but Improving Tax Administration would be even finer! And that may be done by improving the number of tax tribunals to deal with the situation.

- ❖ **Reluctance of legal fraternity to take up tax practice:** Another aspect of the, he believed, was that not many were willing to move from the bar to the bench and secondly not many lawyers were willing to become tax lawyers. Otherwise all the effort and energy would go down the drain as he thought that for a country with a billion plus population with economy growing @ of 6.5% having just four Tribunals for indirect taxation was grossly unfair, at the level of high courts there were not more than two tax benches at that level.
- ❖ **Only one bench of Authority for Advanced Rulings!** The chair found the situation as appalling which fails not just the commonsensical disproportionality of demand-supply situation, being met with just one bench, but also it fails the rule of law promised canon of certainty. At least there should be one Authority for each Zone.
- ❖ **Retrospective Amendments to Tax Law:** The Chair viewed such move as hugely counterproductive. Because, though the power of the Parliament is not in question here. But for what purpose such power is being exercised and who is going to benefit from it needs to be given a serious thought. Otherwise businesses would be unsure of themselves which is not at all a desirable situation.

Question and Answer

- ❖ **What is the likely impact of GST Regime on the economy?** The Chair believed that if the entire world was doing it then there must be some reason. He believed that it will unlock a lot of capital and would lead to further creation of wealth and revenue in the same process. It will also help in dealing with the black money. Mr. Jain (supra) substantiated the argument of the Chair as he stated that GST is estimated to give an incremental benefit of .9 to 1% per annum to the economy. It would make the exports competitive. It will eliminate inefficiencies in the supply chain.
- ❖ **Would GST lead to Job losses?** The panelist viewed that instead of any job losses it will add at least 20 million jobs in the economy. And the existing revenue personnel would get redeployed as GST officials.

- ❖ **Will GST have any negative impact on States' fiscal autonomy?** Instead of affecting the fiscal autonomy of the States it would rather generate huge revenue for them, responded the panelists.

Technical Session III:



Investment Strategies

Mr. Ashok Lalwani, Partner & Chair, India Focus Group, Baker & McKenzie who chaired the Session started off by sharing the Global Investment Trends with the audience



Mr. Ashok Lalwani, Partner & Chair, India Focus Group, Baker & McKenzie

Global Investment Trends

- ❖ **USA:** In the first half of 2013 FDI inflows remained sluggish; Private investment is being attracted by the development of new technologies and the resulting demand for new processes and products; Asian Acquisitions in North America helped sustain financial inflow. He cited one Mckinsey report which indicates that the job creations and GDP growth will be driven by five catalysts including energy, trade, technology, infrastructure and talent development.
- ❖ **Europe:** Inflows declined by 20% as compared to the previous year in the first half of the 2013; UK continued to remained an attractive FDI destination as it retained its first ranking in the global rankings for FDI; cross-border M&As remained the source of FDI rather than investments in new productive assets through Greenfield investment projects.
- ❖ **Asia Pacific:** Southeast Asia is speeding at 5.5% which is expected to double in 13 years; regional co-operations like ASEAN etc. may sustain this growth.
- ❖ **Middle East and Africa:** 70% FDI in 2012 came from emerging markets; Intra-African FDI growing at 32.5% compound since 2007; African consumers are fuelling the demand; biggest telecom acquisitions came from India amounting to \$ 10.7 Billion.
- ❖ **Latin America:** Brazil remained second only to China in the number of transactions valued at more than \$1 Billion in the past five years; Brazilian corporations are making their presence felt in cross- border transactions.

Investment Risks in the Developed Markets

- ❖ **USA:** Fiscal cliff, Investment in Infrastructure remains depressed; Weak infra-investment make supply chains vulnerable/businesses reluctant to invest; High corporate taxation to continue due to fiscal imbalances

Risk Perception for Emerging markets especially India: fiercer competition; Competition for assets pricing may be expensive; political stability; economic volatility compliances regulatory uncertainty; fluctuating deregulation on FDI, investment landscape etc.; nationalism, may be an aversion to certain countries.

Navigating Risks

The risk mitigation Strategies include: assess compliance risks; keep track of regulatory developments; get companies to comply by global standards; M&A as an option; human capital needs need to be healthy and skilled.

The Challenges of Investing in India



Mr. Ramesh Vaidyanathan, Partner, Advaya Legal, Mumbai

Mr. Ramesh Vaidyanathan, Partner, Advaya Legal, Mumbai spoke about the challenges relating to investments in India and viewed legal regime as the biggest challenge with various facets thereof coming into play like:

- ❖ **Difficulties in enforcing contracts:** Arbitration has not been as successful, the continued court intervention with arbitration awards; damages as a rule and specific performance as an exception;
- ❖ **Dealing with inconsistency of the investment regime:** advance ruling mechanism for proposed investment transactions; Time bound disposal of applications and other grievances: Concept of deemed approval needs to be built in to ; Effective single window

clearance mechanism; Getting a vine from the states: taking the states on board in the overall investment scenario;

- ❖ **Challenges at the level of Regulatory Authorities:** Multitude of regulatory authorities: manning them; fence sitting not getting categorical responses from ; sequential querying challenge;

The Dovetailing of National Development Plans and Investment Strategies



Mr. Dushyant Thakor, General Manager, Invest India

Mr. Dushyant Thakor, General Manager, Invest India, a not for profit Joint Venture Company between Department of Industrial Policy & Promotion , Ministry of Commerce and Industry , Government of India and Federation of Indian Chambers of Commerce and Industry (FICCI) and Various State Governments to act as first point of contact for investment related activities.

- ❖ **Key Lessons from 4 countries in investment promotion:** In his presentation he gave a comparative overview of the methodologies/strategies adopted by Malaysia, Indonesia, Kenya and UAE to promote investments in their jurisdictions and the lessons which may be learnt by India to achieve its investment goals. The key learning from all that he believed was the easing taxation regime, setting up investment facilitation mechanisms/agencies, review of economic policies, skill development plans, setting of up centres of excellence, use of ICT and e-governance, promotion of e-biz, promotion of investment zones, incubation support



for startups, provision of requisite infrastructure support. Many countries have set up their targets and are very seriously pursuing those targets.

- ❖ **Indian Investment Experience and promotion of Industrial Corridors:** India is coming up with four Industrial Corridors with development of Delhi-Mumbai Industrial Corridor as one of the important projects the project would lead to the creation of at least 24 new cities in the corridor. The concept of Industrial Corridors aims at high-speed transportation and industrial corridor between various important Indian Cities with Delhi-Mumbai Industrial Corridor being one such corridor between Delhi and Mumbai. It is essentially a PPP between the Indian Government, the Japanese Government, Six Indian State Governments and a number of public financial institutions. And it is being developed as a Model Industrial Corridor to showcase international standards facilitating expansion of the manufacturing & services base & transforming the DMIC region as the global Manufacturing & Trading Hub.

Question and Answer

- ❖ **What is preventing us in learning from others despite being one of the brainiest countries?**

Asked Mr. S. Ramaswamy, VP and General Counsel, Escorts from Mr. Thakore (Supra). To that he responded that the economic environment in last couple of years has become gloomy yet in the medium term it will definitely improve as there are certain fundamentals which remain despite world bank's doing business report ranking us abysmally low like that we have a huge middle class which nobody can ignore and despite all odds companies who come and invest here make profits as well. And having said that the challenges just do not go away yet they give you a perspective on issues. He viewed that things will improve if the manufacturing goes up a little bit.

- ❖ **What are three other Industrial Corridors?**

Asked Mr. Ashok Lalwani (Supra), Chennai-Bengaluru Industrial Corridor; Mumbai-Bengaluru Economic Corridor;

- ❖ **What are the suggestions on improving contracts enforcement?**

Asked Ajay Yadav, Consulting Editor, Lex Witness from Mr. Vaidyanathan (supra) in the context of his observation that 'damages as a rule and specific performance as an exception', to that he responded that the answer lies in making it very expensive to breach a contract;

setting up separate commercial courts and awarding actual legal costs and not nominal ones in his views were the suggestions that could improve contracts enforcement.

Technical Session IV:

Challenges in Doing Business Globally



An Illustration to Capture the Issues Involved in Trans-Border (in-bound or out-bound) investments



Axel Heck, Esq., Attorney & Counselor--at—Law, Germany

Session Chair Mr. Axel Heck, Esq., Attorney & Counselor--at--Law, Germany shared few ponderables in such transactions and requested all the panelists to try and address them in respect of their jurisdictions in their presentation. And they include issues relating to:

- ❖ **Nature of the investments:** direct, seeking a say in the running of the business; or portfolio, or seeking return on the investment only
- ❖ **Structure of the direct investment :** taking a share in widgeco or creating a new company that the parties jointly own and control directly or indirectly; through another company (Newco); or, creating the proposed venture by the contract only
- ❖ **Where NewCo should be corporate?**
- ❖ **SHAs and pre-emptive rights:** put and call options should they be there; what about a reverse call option; does the governing law need to be defined and what are the practical alternatives; should there be a dispute resolution mechanism (to arbitrate or not).
- ❖ **Operational Considerations:** How would the newco or widgeco would do business in foreign markets; directly or indirectly; through a local subsidiary; using local subsidiary (exclusive vs. not exclusive); or using sales representatives; what law should govern those contracts and what about a dispute resolution clause.
- ❖ **What about the cost of labour in terms of wages social contributions and taxes?**

Key considerations in M & A transactions in Sri Lanka



Ms. Shehara Varia, Attorney--at--Law, Sri Lanka

Seeking to dispel some misconceptions about legal regime in Sri Lanka, Ms. Shehara Varia, Attorney-at-Law, Sri Lanka, and addressing the issues raised by the Session Chair, provided a bird's eye view of the key considerations in M & A transaction in Sri Lanka including issues concerning company law, contract, Intellectual property, put and call options.

- ❖ **Exchange Control Regulations:** The Exchange Control Act provides that no person (legal or natural) resident outside Sri Lanka, within the meaning of the relevant law, may validly acquire any shares in a Company incorporated in Sri Lanka without the prior general or special approval of the Central Bank.
- ❖ **FDI permitted:** 100% foreign shareholding is permitted in many areas of investment provided that the investor complies with certain conditions. However, there are areas such as mining, coastal fishing, pawn broking etc., in which foreign investment is prohibited and there are also areas in which investment is permitted up to a certain percentage such as education, freight forwarding, shipping etc.
- ❖ **Method for routing investments:** As per her, the only condition which needed to be satisfied was that the investments must be routed through Securities Investment Account condition under which a non- resident is able to invest in shares of a company carrying on a business which is not excluded or restricted from investment under a Govt. Gazette issued in terms of the Exchange Control Act, is that the payment for shares in any issue or transaction is made out of or in to a Securities Investment Account (“SIA”) formally termed a Share Investment External Rupee Account (“SIERA”) , opened in a commercial bank in Sri Lanka in accordance with the directions given by the Controller of Exchange in relation thereto to commercial banks.

❖ **Legal Regime:**

- Put and call options are permitted in Shareholder Agreements;
- Arbitration: Parties can choose their governing law and dispute resolution mechanism ;Parties can exclude jurisdiction of courts; courts can set aside award on very limited grounds;
- Modern Intellectual Property law;
- Company Law: Much simpler Australia and New Zealand inspired Company Law permitting Single shareholder and single director concepts.
- Contract law of British Origin

**How to resolve disputes and deadlocks in 50/50 joint venture companies—
Practical Scandinavian Experiences**



Carl Gustaf De Geer, Attorney-at-Law, Sweden

Carl Gustaf De Geer, Attorney-at-Law, Sweden after speaking briefly about the lightness of investment regime in entire Scandinavia sought to share his views on disputes and deadlocks in 50/50 joint venture companies. As per him howsoever dazzling the ideas and brilliant the outlooks the soon-to-be JV partners may have on their cooperation, often end up drafting and entering into their joint venture agreement without contemplating dissidence. Potential deadlock is, however, an

intrinsic feature of most joint ventures and in practice, we have seen many joint ventures facing disagreement on key issues, said Mr. Geer. There are basically two schools of thought as regards how to handle disputes and deadlocks in joint venture companies: (i) in advance in the joint venture agreement through (a) governance rules to prevent disputes and deadlock situations and/or (b) mechanisms to resolve them if and when they would still occur or (ii) while keeping the joint venture agreement silent, by way of negotiating appropriate solutions at the time of occurrence of a deadlock situation.

All in all he was of the view that although a clear mechanism in the agreement for resolving conflicts may streamline the deadlock process and avoid confusion and uncertainty, getting into too complex mechanisms could become more costly and time-consuming

Than rewarding.

Joint Ventures in Switzerland



Dr. Edgar Philippin, Attorney--at--Law, Professor Lausanne University School of Law, Switzerland

On Swiss Corporation Law Dr. Edgar Philippin, Attorney--at--Law, Professor Lausanne University School of Law, Switzerland. As per him generally there are two main forms of joint venture (JV) which are contractual joint venture and corporate joint venture. Then he added the comparative advantages of pursuing the same.



❖ **Formation:**

- **Contractual joint venture:** Although the partners typically enter into a cooperation agreement, no specific formalities are required when setting up a contractual JV and no equity has to be contributed by the partners.
- **Corporate joint ventures:** Formation has to follow statutory provisions (incl. equity requirements) and involves a variety of corporate documents.

❖ **Funding Contributions/ Financing:**

- **Contractual joint venture:** Unless otherwise agreed, each of the partners must make a contribution to the JV either in cash, assets or by providing personal services. This being said, unless otherwise stipulated in the cooperation agreement, the partners have no right to compensation for services (work) provided in favour of the JV. Likewise, assets transferred to the business will be jointly owned by all partners, but other forms of ownership can be contractually stipulated.
- **Corporate joint ventures:** If the operations of the JV require financing in addition to the initial share capital, the shareholders' agreement should provide rules with regard to the provision of such financing and the conditions under which it will be contributed.

❖ **Representation:**

- **Contractual joint venture:** Unless otherwise agreed, each partner may act on behalf of the business, i.e. create obligations for which all partners will be jointly and severally liable.
- **Corporate joint ventures:**

❖ **Decision-Making:**

- **Contractual joint venture:** Decisions, unless otherwise agreed, must generally be taken unanimously. In order to facilitate the management and operation of the business, the partners may agree on the possibility of a majority vote for all or selected matters.

❖ **Profit and loss allocation:**

- **Contractual joint venture:** Unless otherwise agreed, the partners will equally share profits and losses without regard to their respective contributions. In addition,



agreements on the allocation of profits, unless otherwise agreed, will automatically apply to the allocation of losses.

❖ **Transfer of interest/ Shares:**

- **Contractual joint venture:** Swiss law does not provide for the transfer of a stake in a contractual JV from one party to another. Hence, unless otherwise agreed, a transfer will require the liquidation of the existing JV, followed by the setting up of a new JV with different partners.
- **Corporate joint ventures:** To the extent permitted, the partners may seek to implement certain limitations on the transferability of shares (such as pre-emptive rights as well as purchase, tag-along or drag-along options) which otherwise are freely transferable according to Swiss law.

❖ **Duration:**

- **Contractual joint venture:** According to Swiss law, unless otherwise agreed, a cooperation agreement with unlimited duration may be terminated by any party upon 6 months' prior notice

❖ **Dissolution/ Termination:**

- **Contractual joint venture:** If the JV is dissolved, partners are not entitled to demand the return of the assets originally contributed by them.
- **Corporate joint ventures:** Often, a shareholders' agreement entitles the partners to terminate the agreement under certain circumstances (such as in the event of a change of control with respect to a partner)

❖ **Additional Features relevant for Corporate joint ventures**

- **Operations:** The shareholders' agreement should establish the rights and obligations of the partners with respect to the JV's operations (such as the provision of staff, know-how, assets, etc.).
- **Decision-making:** In order to protect their respective interests, the partners may provide for specific requirements regarding attendance and quorum for certain decisions taken by the shareholders' meeting which represents the supreme body of the JV Company.

- **Board members:** In the event that the partners' respective shareholdings are not equal, minority partners may be granted the right to nominate a member of the Board.
- **Management:** Apart from appointing the initial members of the operative management, the partners may set out rules regarding the appointment or dismissal of key executives.

Further, since Indian law students were part of the audience he extended an invitation to them to come over to Switzerland to pursue academic courses there by stating the competitive advantage the students may have in pursuing their advanced degrees from countries like Switzerland.

Corporate Contribution to Swiss Social Security System



**Dr. Bettina Kahil, Prof. & Dean Lausanne University School of Law,
Switzerland**

Dr. Bettina Kahil, Prof. & Dean Lausanne University School of Law, Switzerland sought to address the concerns related to the last part of Mr. Heck's matrix. She was of the view that though not very exciting yet precise knowledge of law is of great importance as companies are the biggest contributors to the social security system in Switzerland. The system includes pension provision in case of old age, disability and death.

Some Regulatory Issues in the Indian Aviation Sector



Capt. Kapil Chaudhary , Director (Legal), AERA

- ❖ **Presentation on Airports Economic Regulatory Authority:** The evolution of the Authority along with powers thereof, its relation with the central govt. and its powers concerning issues like Punishment for non compliance of orders and directions; offence by Companies and Govt. Departments, AERA's role in determination of the fees and tariffs have been the subject matter of the presentation made by Mr. Pranav Mehra, Managing Editor, Conspicuous Competition.
- ❖ **AERA's Jurisdiction and the challenges faced by the Authority:** Captain Kapil Chaudhary, Director Legal Airports Economic Regulatory Authority (AERA), while sharing her views on the AERA and its challenges stated that their first challenge was the creation of a transparent and rational system and creation of guidelines for all the 16 Airports in the country after extensive stakeholder consultation. Another challenge was the determination of Tariffs for all these major airports and aeronautical services. For that the officials at the authority undertook extensive studies and after considerable homework the guidelines were finalized. So much so that AERA's work has received appreciation from the World Bank, stated Captain Chaudhary.

Question and Answer

❖ **What are the restrictive Labour Issues in European Union?**



Ms. Shahana Basu Kanodia, Chief legal Officer, Apolo Tyres

- ❖ Asked by Ms. Shahana Basu Kanodia, International Corporate lawyer and responded to by Ms. Cahill (supra) that indeed the restrictions are there in the sense that there is a collective termination of joint agreement. So once you acquire a company you cannot fire labour if you do so then the acquisition will also have to go. Besides there are anti-discrimination legislations are also there in the EU be they foreigners or apart from other categories discrimination. And Mr. Heck in terms of such EU directives becoming automatically applicable if they are not brought into by a particular EU member and Mr. Geer added to the answer by Ms. Kahil.

Technical Session V:



Legal Challenges for the Rapid Economic Growth

James P. Duffy III., Esq., New York and Session Chair while reflecting in a lighter vein on the title of the Session was of the view that it was akin to “what is wrong with the world and how do we fix it?” which was quite a tall order. However on a serious note he was of the view that there are certainly a number of issues relating to the ‘Legal Challenges for the Rapid Economic Growth’ and sought to focus on Rule of Law Issues in Commercial Matters.

Rule of Law Issues in Commercial Matters

❖ What:

- A good contract law, in view of Mr. Duffy, was one of the important Rules of law considerations. He viewed that effective economy depends upon economic relationships entered into by way of contracts by parties. So ensuring compliance thereof and if not then providing for suitable remedies are the rule of law concerns. In his view often ‘despite best intentions of the people contracts always do not work out’. The solutions as per him he always try to achieve are through encouraging his clients to find their own solutions as better than a judge. The contract law should require performance of contracts in good faith and not all legal systems do that.
- Timely and cost effective legal system: It is very important to have well informed honest judges reaching judgments within reasonable time and costing lesser in monetary terms especially for MSMEs.
- Due process Procedures may be built in your legal system to deal with them.
- Effectiveness of remedy is also very important from that perspective.
- Good bankruptcy law is equally important.

❖ Why important?

- Corruption has very corrosive effect on the economy. People will pay too much for inferior quality of products.

Legal Challenges for the Rapid Economic Growth in India



**Mr. Arun Chawla, Asst. Secretary General,
FICCI**

Mr. Arun Chawla, Asst. Secretary General, FICCI chose to speak on the legal challenges faced by the Indian Economy. Corruption and policy paralysis apart- there is an empirical relationship between Efficient Legal framework and the quality of economic growth. He was of the view that there are certain legal issues which really need to be looked into like:

- ❖ **Doing away with Uncertainty**-Due to policy level ad-hocism and poor implementation of the rules, Retrospective tax law amendment and Coal blocks allotment. Fluid legal framework leads to too much discretion which is- simplified procedures- coupled with quick processing of applications is a good thing. It can be dealt with by providing for clear procedures providing for timely
- ❖ **Making it Easy to do business:** In terms of World Bank's Index on ease of doing business, he was of the view that complying with 12 procedures and requirement of at least 27 permissions just to incorporate a business is certainly not an encouraging sign for the rapid economic growth. Access to finance is even more difficult with requirements of collateral and necessitates tedious documentation; Labor regulations are restrictive; judicial overreach coupled with inefficiencies in judicial structure. The need is to have legal and judicial reforms to unleash entrepreneurial energies.

Paramourcy of Legal Reforms: Hardships Galore!

Reflecting on the 'India's growth Story' its success and now the heartburn at the recent slump therein, Mr. D.Baliga, VP-Legal, Coca-Cola India, sought to equate the situation with that of a very obese person going on a diet who initially makes loses weight but later on fails to sustain the momentum. Similarly, that is what happened to India's growth story, he said. As in the absence of systemic and structural reforms the long suppressed enterprise had to bring in quick results but with

the systems and attitudes largely remaining the same the growth had to stagnate and then come down. So in his views following if not undertaken in the right earnest then we are for time times.

- ❖ **Do away with outdated laws-** Mr. Baliga was of the view that many laws sit on the statute book which are not just anachronistic but also cause unnecessary harassment. And a business enterprise has no solace when confronted by unhelpful enforcement officials. To that he narrated an incident that under factory regulations spittoons were required to be put but since Coca Cola's plant was state of the art so spitting and smoking were simply not allowed. But still the officials dug their heels and wanted spittoons to be put there because it was required by the law!
- ❖ **Harmonise laws:** Another difficulty he believed arises from the fact that there are multiple laws to govern the same things and which only help in creating a legal maze.
- ❖ **Prior consultation before amending policies much desired:** In his view the amendment of notifications/circulars etc. without warning causes a lot of hardship and must not be done. And it would be advisable to have prior notice or intimation.
- ❖ **Regulators need to be more proactive:** Since a regulation is open to multiple interpretations so any business entity desirous of taking any initiative with regard to that regulation but is not sure about its correct interpretation then there must at least be some system like that of advance rulings to deal with the confusions in the regulatory framework. So in order to make compliances easier regulators must provide clarifications and for everything it is now wise to ;
- ❖ **Ensure consistency in judicial pronouncements:** Another difficulty is that on same legal proposition whether tax or otherwise there may be multiple rulings from various high courts and that is hugely problematic.
- ❖ **Strengthen law enforcements at the state level:** Patchy enforcement and compliance scenario, in states, must also go if India is looking at robust growth rates.

Response of Law to Economic Growth

Ms. Akila Agarwal, Partner, Amarchand & Mangaldas & Suresh A Shroff & Co. (M&A) sought to give an overview of India's regulatory developments in response to the economic growth. To the pessimists she had a simple message that despite slow down we are still a rapidly growing economy and not necessarily lose heart. But felt that given the kind of growth that we experienced the response of the regulators and legislatures could at times be terms knee jerk reaction and which is not in the best interest of the businesses and adds to the mystery of doing business in India. As per her following have been key changes:

- ❖ **New Companies Act:** partly notified, is an example of knee jerk reaction to the huge corporate fraud which took place almost 5 years ago. And is also described as Satyam Act as the intent of Act seems to find out fraudulent intent rather than easing doing business.
- ❖ **FDI Policies:** Since 1991 there has been increasing liberalization in the FDI regime. liberalized in many areas but remains oscillating for pharma; retail also make investors wary
- ❖ **Changes in Securities Laws-**Be it whole new regulations relating to takeovers, delisting, more transparency and liquidity in the system. Minimum public shareholding regulations, not taken seriously in the beginning but the crackdown and otherwise also there has been a great change. In fact as per her 2013 has seen a lot of changes in overall Securities Laws
- ❖ **Competition law:** The competition law regime has really gone from strength from strength and corporate must watch their competition behavior to not incur the wrath of the regulator. The new changes relate to merger control regime and also legitimate functions of trade associations have also been recognized. There are issues relating to the competition law like wide definition of control; large fines; low evidentiary standard to establish a 'contract'; focus on oligopolistic industries and public procurement which need attention.

Have Positive Laws

Mr. Rajeev Mishra, CEO, Lok Sabha TV, while responding to the question inherent in the title of the Session was of the view that undoubtedly we must criticize legislators and policymakers. But we also must appreciate the perspective of regulators and the difficulties faced by them as well.

As per him lot of companies make lots of profits but when it comes giving it back to the society or in other words fulfilling their corporate social responsibility (CSR) many turn reluctant. And that is why, he believed, CSR has been made compulsory under new company law. But having said that he was also of the view that but it does not mean that lawmakers can neglect their responsibility and one of their important responsibility to make Laws which are positive and not restrictive. And he quoted response of lordSwaraj Paul to a question of doing social work in India lots of formalities related to doing so puts him off said Mr. Paul.

The Risks and the Inspiration for Legally Challenged Indian Economy

Starting off by quoting as to what Indira Nooyi happened to describe India as a business destination- *“India has become from must invest to must deal jurisdiction”*- owing to its various issues including Infrastructure and taxation, **Mr. S. Ramaswamy, VP, Group General Counsel, Escorts Ltd.** tried to paint a picture of the state that the Indian Economy is to propose his formulation. Another illustration of the situation which he sought to advance was the one painted by A Planning Commission group led by Arun Maira where it had portrayed three 'flotilla' scenarios for Indian economy which was described by them as : Muddling Along (Insufficient Action), Falling Apart (Policy Logjam) and The Flotilla Advances (Strong, Inclusive Growth). In each scenario a large collection of ships tries to move ahead purposefully, led by a 'commodore', the elected prime minister. We seem to squarely fit the Policy Logjam scenario, where the document says: "A flotilla of ships is trying to sail together, but ships keep colliding with each other. The ships do not communicate enough. Consequently, ships often sail off in different directions. The flagship is spending too much time just getting the flotilla back together, leaving little time to coordinate future directions."

- ❖ **What to watch out against, Eight Risk areas:** As per **Mr. Ramaswamy** there are eight risk areas that nation faces today and he sought to gave answers for each one of that. The



- ❖ first risk that he felt was the leadership crisis which could be addressed through change of guard; the second risk areas was high fiscal deficit which could be dealt with by speeding up aadhar pilots to transfer subsidies; High CAD is the third area which could be managed through a number of policy measures; Inflation another risk areas could be tackled by opening the economy for retail and other economic measures; Rupee depreciation he said was another risk area; Stall reforms which could be dealt with by quick bold reforms was another risk area; Drop in investment was another risk area which could also be managed through a slew of policy measures.

- ❖ **The Six Growth Fundamentals of Indian Economy:** Mr. Ramaswamy sought to highlight six points from Union Finance Minister's Speech delivered at Carnegie Endowment for International Peace delivered on 11.10.2013 which will write India's success story, including:
 - **Young Demographics with better skills**
 - **International economic integration-** because on the current account and on the financial account, India is now engaging with the world on an unprecedented scale. Gross flows on the current account are now 63.3 per cent of GDP and gross flows on the financial account are now 55.3 per cent of GDP. These add up to gross flows across the border of 118.6 per cent of GDP.
 - **Increasingly “capable” financial system-** because every year, our financial system is getting better and stronger and, through this, we expect to translate our good investment to GDP ratio into a higher GDP growth rate. And it is being so on the basis of new Indian Financial Code already stands drafted to replace 50 existing laws governing finance with a single, integrated, coherent, modern financial law; enactment of a brand new Companies Act to replace a law that was 57 years old; the subject of commodity futures has been shifted to the Ministry of Finance, something which has not been possible in the US even after the 2008 crisis. India has enacted a law establishing the Defined Contribution Pension system under a statutory regulator.



- **Sophisticated firms-** because today we have a clutch of firms in steel, oil and gas, mining, power, information technology, and hospitality that have become multinationals and are buying out companies in the advanced economies.
 - **Sophistication of the workforce-** because with the liberalization of the Indian Economy in 1991, Indian workforce now has 21 years of experience in a competitive and globalised market economy. As it has by now dealt with modern technology, foreign companies, and a truly competitive domestic environment.
 - **Democracy-** because Liberal democracy is the ultimate foundation of rule of law and legal certainty, without which nobody can trust a country or invest in it.
- ❖ **Five Pillars of Development:** In addition to that **Mr. Ramaswamy** sought to highlight new RBI Governor's Five Pillars of Developmental Measures to deal with the gloomy economic situation
- Clarifying and strengthening the monetary policy framework.
 - Strengthening banking structure through new entry, branch expansion, encouraging new varieties of banks, and moving foreign banks into better regulated organizational forms.
 - Broadening and deepening financial markets and increasing their liquidity and resilience so that they can help allocate and absorb the risks entailed in financing India's growth.
 - Expanding access to finance to small and medium enterprises, the unorganized sector, the poor, and remote and underserved areas of the country through technology, new business practices, and new organizational structures; that is, we need financial inclusion.
 - Improving the system's ability to deal with corporate distress and financial institution distress by strengthening real and financial restructuring as well as debt recovery.

Question and Answer

❖ **What young people can do towards redemption of the situation by rule of law?**



- ❖ Asked by **Lukman**, a **JamiaMiliaIslamia** Student and refined by Mr. Heck (Supra). Mr. Ramaswamy (supra) urged all the youngsters to first go and vote, then start getting into professionally responsible groove. **Ms. Akila** (supra) added to that by saying that it was the power of the youth that in post 'Nirbhaya' scenario Indian Criminal Law was changed overnight with greater deterrent protection for women. Mr. Duffy (supra) exhorted the youngsters to take a leaf out of the ideas of Thomas Jefferson.
- ❖ **Clarity and predictability in law anArea of Concern-** A comment made by Ms Shahana Basu Kanodia (supra) that what India must refrain from is retrospective amendments to laws especially like tax as it did in the wake of Vodafone Judgment. Because clarity and predictability of the law and policy are very critical for investors to be reality encouraged in investing in any economy.
- ❖ **Why there is a difference between multinationals and domestic companies regarding compliance ethics?** Asked by **Mr. Vaidyanathan** (supra), **Mr. Baliga** (supra) responded saying that it happens when there is zero tolerance, it is like a train, he said, which leaves on time so one is either there or will miss it. And that is how such compliance to law may be achieved.

DAY II

Technical Session VI:

Young Lawyers Section



An INBA initiative to create a Young Lawyers' Section within the framework of the conference and otherwise as well to act as a guiding and inspirational force for other fellow young lawyers, Young Lawyers Section was kept as a separate technical Session for the purpose.

Three young legal Turks from the legal fraternity came forward to discuss their challenges in charting their respective professional course. The panelists included Mr. Tejas Karia, Partner, Amarchand Mangal Das and Session Chair; Yash Mishra, Founder Partner, Alliance Law Group and Mr. Bindu Pandey, Law Quest, Litigation Partner. The focus of discussion remained around as to the Current trends in the profession and the legal arena and how young lawyers may take their practices forward. The discussion revolved around below mentioned themes and panelists expressed their views as mentioned there under, as follows:

On Opportunities for young lawyers

Mooted by Tejas and agreed to by all others was that young lawyers face a lot of in terms of getting placement in the legal fraternity because the gestation period is 5-10 years. And all three believed that there are avenues available which may be terms of joining as arguing counsel, or joining a law firms or one may also go for judicial positions.

On Attitude and Work Ethic

- ❖ **Yash Mishra:** Keep trying, was his response. As he related a personal experience as to how in March 2012 with no godfather in profession he realized that he was on his own. And Believed that with a bit of grey hair, sense of being available and dependable for the client, patience and learning to enjoy were the key to success besides hardwork. Role towards clients- he believed that give honest opinion to your client and present a fair picture of the likely outcome to them and it will help. And he quoted from Mr. FaliNariman's book "Before Memory Fades" a few tips for young lawyers: "let your opinion be honest and responsible; the essence of good lawyering is acquiring oneself with the relevant law including case law on the subject at hand; when you argue a case in the court be clear and precise and not confused; keep yourself informed and up-to-date with all the reported judgment...".
- ❖ **Bindu Pandey:** He believed that it was important to know one's passion and choose one's practice area according as law is very vast so specialization adds a great value to your success in your career. Secondly he highlighted the Importance of struggle and urged all young lawyers to gain experience by trying and handling the matters the briefs given by seniors. Thirdly he said in law it is 70% common sense and 30% legal knowledge that comes into play.
- ❖ **Tejas Karia:** As per him client's trust is paramount and that can be earned only if you have cutting edge knowledge. Besides learning to enjoy your work and using emotional intelligence with clients are very important skills.

On upgrading skill set

- ❖ **Bindu Pandey:** Regular updation is important, said he, on various judicial pronouncements, policy developments and also changes in overall business environment.
- ❖ **Tejas Karia:** he believed that Specialization is also very important. And higher studies in your chosen field may bring you dividends. Besides keep yourself up-to-date. Another thing was that the practice followed in Firm for mentoring etc. he believed was very important in terms of drafting, briefing seniors, arguing matters and also in ethics.



On Money

- ❖ Money follows excellence all three concurred.

Future Initiatives

- ❖ The Chair sought to promote a Young lawyers' News letter.

Question and Answer

- ❖ **Mr. Duffy's (supra) Comment:** was of the view that for specialization, one must join a specialized bar association. And when informed that there are no such bars in India, then he said in such a case International Bar Associations may be joined by young lawyers.
- ❖ **A student's question:** Courts are dirty perception, for female lawyers, a widespread perception was shared by the women lawyers. To that the panelists and audience were of the views that as mindsets are changing so your gender would not work to your disadvantage.
- ❖ **Why big law firms hire largely from National Law Schools:** Asked by a student and responded to by Tejas that it is because of the perception that they are better educated but things are improving, he added.

Conclusion

While concluding the session, the Chair invited the young lawyers to join the executive committee of INBA's young lawyers section so that they all also turn into a force to reckon with. And he believed that great future lay in front of every young lawyer as there is a huge gap between young and the seniors.

DAY II

Technical Session VII:

Legal Education Section



Swiss Welcome to the Students of Law

Dr. Bettina Kahil, Prof. & Dean, European Social Law Lausanne University School of Law, Switzerland, after thanking INBA for inviting her to participate in the Conference. With a view to provide a perspective to the students desirous of going abroad, especially Europe for higher education, spoke about the structure of Education of in Europe and also the challenges faced by the students in Switzerland.

- ❖ **Structure of Education in Europe:** Really pleased with the fact that Indians, especially at the conference are so proficient with English language that despite her being foreign and not knowing any of the Indian languages still she could communicate and understand everything so very well that in her view was a very praiseworthy thing. In her view like India Constitutional Law, administrative Law, along with human rights law is equally important. Other areas of law which she believed are important are data protection law and privacy law. So in her view anybody whosoever comes to study in Europe will need to learn one of the

national languages be it German, French, Italian, Portuguese and English, which Indians already are good at.

- ❖ **Challenges faced by international students in Switzerland:** The challenges may be in terms of learning at least one foreign language and there may be issues which may be resolved locally.

Fearless questioning is the greatest key to learning

Taking a cue from Prof. Kahil, regarding learning foreign languages, Mr. Naveen Chopra, Director, N & N Chopras Consultants Pvt. Ltd. dwelled on the Sheer Inclusiveness of Indian Civilization. So much so that let alone modern times whatever significant ever born anywhere was absorbed by Indians like a sponge be it Christianity, Islam or any other cultural influence. We are the only civilization in the world that never stepped out of its natural boundaries to conquer others. What else could be a better evidence of the fact that he an Indian born and brought up here is communicating in English with relish and flair. So the need and necessity of learning new things comes to Indians very naturally, that is in our DNA. And since the world has turned into a global village so it is the push for excellence, a continuous learning curve is the new reality and once you do that then everything else follows. So in the wake of such a reality he was of the view that the openness of minds is a key component for growth for success.

He urged all the students present at the conference, to shed any shyness whatsoever, to ask their questions fearlessly, without bothering about the merits of the question. As he believed that ‘stupid question’ is the problem of the perceiver and not necessarily of the one who has asked it.

Big Room for Qualitative Change in the Sphere of Legal Education

With 950 plus law colleges in the country there is still a much greater scope for qualitative change in the sphere of legal education viewed Maj. Gen. Nilendra Kumar, Director, Dean & Faculty of Law, Amity Law School and Former Judge Advocate Judge with Indian Army. With 1500 students, 50 faculty members, law courses with the duration ranging from 5 years and 3 years degree courses and of late one year LL.M programme, the school has successfully experimented with the idea of qualitative change in the Sphere of Legal Education. The methods, in his view, that he has adopted in bringing that qualitative change are as follows:



- ❖ **Need for a practically trained Faculty:** He was of the view that if there is a faculty teaching Criminal Procedure Code Faculty and who has never seen a police station and the various processes thereat then he/she will only give booking knowledge to the students without much real substance. So development of faculty in a sustainable manner to build in the elements of practical experience in the expertise of faculty with their faculty development programme is one of the thrust areas.
- ❖ **Greater reliance on Clinical legal Education:** In Mr. Kumar's views client interviewing, legal aid clinic, moots, legal writing and such other practical tools are very critical for the students to get a first hand exposure to all the skills that will come into play once he/she joins the profession. And that is where, he stated, Amity was doing much to build that skill set. And in that regard he related to one legal aid camp organised at the college and attended by one Supreme Court judge, Judges from the UP and Delhi High Courts attended it which gave a flair to the students in such an exercise.
- ❖ **Amity Competition in Law Reforms:** viewing the role of a lawyer in Courts is either to gain advantage for one's client or keeping him away from the disadvantage, Mr. Kumar was of the opinion that interpretation of the statutes is the very important legal skill in such a scenario. And in order to train the students in the art of interpretation of the statutes they went in for Amity Competition in Law Reforms programme as part of clinical legal education only. In that all the facets of law making were experimented by the law students with the final outcome come being that the students come up with a model law on the subject so that they could identify deficiencies and gaps in laws come up with suggestions for the improvement thereof.
- ❖ **Community lawyering:** Another initiative part of clinical legal education was the idea of exposing students to the concept of Community lawyering in association with local Residents Welfare Associations by sending students' missions to the areas and listen to their difficulties with different facets of the law and making students come up with practical suggestions in that regard.
- ❖ **Legal entrepreneurship:** Continuing with the idea of qualitatively improving the education scenario another experiment that Amity did was to promote its students to really think on the aspects of setting up their own law offices and fathoming as to what all challenges they may have to face in such a scenario.



Question and Answer

- ❖ **How a young lawyer can get the same relief as a Senior Lawyer does, on the same line of Argument, where senior succeeds and young does not?** Asked by a young lawyer to Mr. Chopra (supra) who viewed the scenario in terms of more practice that is needed of young lawyer to come to the level of senior. And for that one needs to dive deeper into the ocean of law, further brush up concepts, strengthen arguments and then seek favorable orders and one will definitely succeed. The answer from Mr. Chopra was further commented upon by the Professor of Law from Switzerland and he added that apart from not being afraid from asking questions one must also not be afraid from answering a question and responding to that and then specialization will happen in time and with time.
- ❖ **Is there an online course on clinical legal education?** Asked by a student and responded to by Mr. Kumar (Supra), he was of the view that though there is nothing online on the subject but Amity may take some part thereof for online consumption.
- ❖ **What are the course contents of clinical legal education?** Asked by a lawyer and responded to by Mr. Kumar (Supra), internship (includes attend court, maintain court diary) and legal ethic (
- ❖ **In the context of mushrooming of Law colleges, Is there a real demand or it is just an attempt to tap the aspiring middle class?** Asked by Ajay Yadav, Consulting Editor, Lex Witness and responded to first by Mr. Kumar (Supra) that though cannot say for sure but there are 10 applicants for each seat that Amity law University and such other law colleges which have made a name for themselves. Yet he agreed that, yes there is a proliferation of the law colleges. Later on Mr. Chopra (supra) referred to the rough estimate that there are just 950 law colleges for a population for a population of a 1.2 billion so by that measure we are woefully short in numbers so that is justified. Because as you may see, he said our legal system is choked with huge pendency of cases, the institutions of judicial redressal of grievances are located and concentrated at the level of districts or metros. So in such a scenario how do you propose to address the need to access justice by a poor and marginalized farmed in a remote village.
- ❖ **Scenario for Job Opportunities etc. for the young law graduates:** asked by a student and a law practitioner and responded to by Mr. Kumar that there are tremendous opportunities

which are there with corporate as in-house counsel, with Firms, in Judiciary, in media houses and law publications also.

DAY II

Technical Session VIII:

Women Empowerment in India



Aao Zid kare inki Jadein Hil Jayein (Let's insist and persist stubbornly so much so that the very system is shaken)

By way of a short poem Ms. Chitra Desai, senior lawyer and visiting faculty at Mumbai's SNDT college, penned in the state of angst at in the wake of 'Nirbhaya' case (Delhi Gangrape case). She called upon the women in India to be so much stubborn that the system is forced to change which despite of 45 enactments on the point of women empowerment have simply failed to achieve the intended objective.

Changing mindsets for true empowerment

Smt. Nirmala Samant Prabhavalkar, Member, National Commission for Women, also a lawyer herself, expressed her gratitude to INBA for inviting her to such an important Conference. Amongst various things following important things she spoke about on the state of justice system in the country and the need and necessity of empowering women:



- ❖ **Access to Justice and need for accuracy Law:** agreeing with the position taken by the Mr. Kumar (Director, Amity Law College) there is a far greater scope for accuracy in legal provisions so that the looseness in law goes away and the possibility of multiple interpretations goes away.
- ❖ **Doing away with 'absence of women in Decision Making':** starting off from the point of usage of terminology like 'empowerment'/'awakening' in the context of women Ms. Prabhavalkar was of the view that it is contradictory to employ such terms as if women are still sleeping and need to be awakened. In her view the true empowerment will occur only when she is brought in the process of decision making be it making her an MLA or MP or any other position irrespective of whether she is able to deliver or not as once brought into the process the delivery will also happen.
- ❖ **Reality is different from what is mentioned in the Statute books, need attitudinal changes:**She spoke about the evolution of law with regard to the empowerment of women right from the provisions in the Constitution to dowry prohibition laws to right to the right to inheritance in coparcenary property to Vishaka guidelines to amendments to criminal law in the wake of Nirbhaya case and then now law on protecting and giving justice to the victims of acid attacks. She believed that there is a steady improvement in women empowerment.
- ❖ **Rooting out Sexual Harassment at work place:**She urged Supreme Court to first put its own house in order on the issue of having sexual harassment committees being constituted at the Court. She believed that though the Court was directing the rest of the country to do so but not doing so in its own backyard was not a good thing. She further added that even in the corporate world sexual harassment committees were largely non existent and also felt that though such committees have been constituted at the Govt. level yet they are there only in name and do not really perform any significant function in truly empowering women against such harassment.
- ❖ **Changing mindsets for true empowerment:**Legislating new laws, amending old ones is just first step in the direction of empowerment but the real change would be when mindsets change, that they are admitted, accepted with full dignity in the system then only there will be true empowerment.

Empowerment is taking back what is yours and has always been your

The Session was chaired by Ms. Lata Krishnamurti, Lawyer and Partner The Ram Jethmalani Law Chamber spoke extensively with passion on what is empowerment and the important constituents thereof that is equality and dignity. She also spoke at length about the progression of law to restore the rights and dignity of the women. She found the use of the term ‘empowerment’ as grossly unfair because to Struggle to get something which is yours in the first place was absurd. It’s for you to take it so talking about getting what is already yours is absurd. Quoting an American personality she urged the women to take it as nobody gives you power but it is for you to take it.

- ❖ **Assure/ Accord Equality:** Be it equal pay for equal work or equality in representative bodies like Panchayats, Municipalities etc. and in all other walks of life like educational institutions etc. Ms. Krishnamurti was of the view that it is very crucial constitutional guarantee of equality be assured and accorded to women.
- ❖ **Restoring Dignity:** Another significant point that Ms. Krishnamurti made was that there was the most urgent need to restore dignity to women be it in terms of property rights, which though has been done only in 2005 that too grudgingly, apart from that the practice of dowry does a lot of disservice to women’s dignity. Another act of indignity was in the form of Infanticide and Foeticide being practiced by the educated and the uneducated equally that also needs to go away and law must act very firmly against such criminal conduct.

Women Empowerment in Healthcare in Germany

Ms. Susanne Kumpfert, Managing Director, Pinkerton Healthcare Consulting, Germany in a very elaborate and lucid presentation gave an overview of the health care industry in Germany. The Germans are ‘An ageing society’ said she and therefore the healthcare industry in Germany has tremendous scope and women have tremendous growth prospect therefor. In her view Healthcare is a constantly prospering market and therefore has tremendous scope for women empowerment. Innovation in the health care industry is - consumer oriented innovation; innovation technologies and

Law empowered us in Europe

While talking on the issue of empowerment especially in Europe Dr. Bettina Kahil, Prof. & Dean, Lausanne University School of Law, Switzerland, said that it is through law that equality has been accorded to the women folk. As an example she stated that women were enfranchised only in 1976 so the situation as far as equality of women in their various areas has not been much different. Other area where women were denied were equality in work opportunities for instance when women were

not allowed to be lawyers in Germany. Apart from that despite laws and everything still there are incidents where women are denied equal pay for equal work.

The Problem is in our mindsets: The fact of seeing men in the audience in a session on women empowerment really delighted Ms. Arundhati Seigell, Head Corporate Communications, Escorts Ltd. sharing her views on the subject. She viewed it as a long drawn fight because it is ultimately our mindsets with heavy gender bias against women which are responsible for the denial of equality and dignity to the women. She believed that despite having views like as to 'Why do we have to fight, it is our right we are supposed to be equal' the stranglehold of patriarchy was too strong especially in rural India with illiteracy, maternal mortality, early marriage of the girl child, infanticide, foeticide, superstition ruling the roost. She viewed that the Progress is still limited to privileged few, reality is still very grim and as a society we are full of contradictions. We have the support of the law and institutions but the fight is to be fought at the level of the family at homes.

Question and Answer

- ❖ **The condition of women in all personal laws is deplorable so would the implementation of Uniform civil code as under article 44 of the Constitution help women empowerment?** Asked by a girl student and responded to by Ms. Krishnamurti (supra). She said that this is a tricky issue as the moment you talk about it, it touches a raw nerve in the minority community. So in a multi-religious society like ours it is difficult to do. She referred to the ShahBano Case, where mere award of maintenance to a divorced Muslim woman by Supreme Court, was opposed by the minority community leadership and the Govt. of the day did away with the ratio of that judgment to please the community. So it is the lack of political will which is responsible for the continuing denial of right of equality to women.
- ❖ **Why have we not been a women respecting civilization despite many scriptural platitudes on the point?** Asked by a boy law student and responded to by Ms. Krishnamurti (supra), she was of the view that women do not ask for deification rather they just want their dignity, equality and freedom to be restored to them. Because idealization of women, as this 'Devi' or that 'goddess' is beset with problems and we, women just want to be as imperfect as any other normal man is because what we ask for is normal, ordinary treatment and not some hallowed status which may be busted later on. Mythology and scriptures are there but we need

DAY II

Technical Session IX:

IP Eco System & Media & Entertainment Law



Concept, Aspects and Issues in IP Eco-System

Mr. Zameer Nathani, Head Legal, Balaji Telefilms Limited and Balaji Motion Pictures Limited made a presentation covering following IP issues in the entertainment business:

- ❖ **Concept of IP Eco-System:** It includes entire range of intangible assets of an enterprise including trademarks, copyrights, patents, trade secrets, industrial designs and interaction within internal and external business environment and finally combining people, processes, legal solutions that enable an organization to manage IP assets more effectively and with efficiency.
- ❖ **Aspects of an IP Eco-System-** creation, protection, commercialization/monetization, creating awareness about new rights or new developments in the field and finally the enforcement of IP rights in the event of enforcement thereof are the different aspects of an IP Eco-System.
- ❖ **Issues Faced:** content is the king and copyright is the principal weapon against infringers. After creating content e.g. script post writing requires protection, so writing script is registered not just with Copyright Office and then registering it with the cine artists association. Later on proper documentation about all the commercial aspects like satellite

rights, IP assignment rights is also done so that least amount of issues arise commercialization. Then commercialization aspects is the most aspect of it which include a whole range of rights which may relate to theatre rights, or creation of a CD of the programme etc. and it has its own issues.

- ❖ **‘Dirty Picture’ Case study on Enforcement of IP rights:** Being a common name ‘Dirty Picture’ per se could not be trademarked, so claiming it as a brand name but there was a lot of movies like ‘Don’ done by different artists. So when one Kannada producer wanted to make a movie by the same name, Balaji Films went to the court. And Bombay HC recognized ‘Dirty Picture’ as brand name belonging to Balaji Films.

Recent Issues, Interpretation by the Courts and Disagreement therewith



Dr. Alka Chawla, Associate Professor, Faculty of Law, University of Delhi in a very erudite address to the audience highlighted the fact of there been copyright violations alleged against producer of recent movies like Guzaarish that it was a copy of GoonjUthiShehnai or that Atithi Tum Kab aaoge was also a copy. Talking about related issues to copyright infringement she expressed her disagreement with the recent interpretation of copyright law on the principles of Novelty rather than originality by the Delhi High Court. She was of the firm opinion that copyright concerns more about originality because novelty is more about patent law.

And then there was a freewheeling discussion on the various facets of copyright law wherein Mr. Hitesh S. Barot, Senior IP Counsel & Vice President, Technology Policy, General Electric, Mr. Dinesh Mittal, Group General Counsel & Company Secretary, Hindustan Times Media Limited and the Audience wherein a lot of issues were discussed threadbare for the benefit of all.

DAY II

Technical Session X:

Government Procurement Policy



The procurement of goods and services is critical to the economy as about 35% of the GDP goes into procurement, said Mr. Ashok Sharma, Founder President, Indian Corporate Counsel Association & Arbitrator, Former General Counsel MMTCL Ltd and Session Chair. As per him the DNA of the procurement policy was in the philosophy that when right goods and services in the right quantum at right time for right prices is done then that is called procurement. With these words he started the session and invited Mr. O.P Khorwal to share his views on the theme.

A thoughtful analysis of the Public Procurement Bill 2012

A seasoned public sector official, Mr. O.P Khorwal, Additional General Manager, NTPC Foundation, first sought to apprise the audience that the Bill which is pending in the Parliament seeks to regulate and ensure transparency, accountability in procurement by the central government and its entities. It exempts procurements for disaster management, for security or strategic purposes, and those below Rs. 50 lakh. The government can also exempt, in public interest, any procurements or procuring entities from any of the provisions of the Bill. Mr. Khorwal was of the view that though well intended and barring a few exceptions there is nothing new about in the Bill as reasonable systems are already in place regarding checks and balances which take care of transparency and accountability. As he further elaborated the issues with the Bill he was of the opinion that the issue regarding approval by the competent authority as it does not as to who will be

the competent authority above 1 crore and 2000 crore. In his view the Bill restricts the scope for negotiations which may or may not be the appropriate method to resolve the issues which it precisely seeks to address. While talking about the transparency mechanism in the Bill he was of the view that it does not address it creates more confusion as it seeks to compulsorily putting all the bidding details (successful as well as unsuccessful) on the web portal connected therewith. Mr. Khorwal was of the view that such a provision will firstly be in conflict with RTI Act as even the commercial secrets are exempted under that Act. Besides portal will also be under tremendous pressure of such heavy files containing the bidding documents and it also trip. In his presentation he went to speak about other important Bills which needs clear delineation and appropriate treatment before the Bill becomes a Law.

Further Analysis of the Bill

Mr. M.M. Sharma, Director (Personal), State Trading Corporation, while agreeing with the position taken by Mr. Khorwal further analyzed and highlighted the issues with the Bill which he believed if addressed then we may have a great Public Procurement Law. In his view the Bill also enables the foreign companies to participate in the procurements which has long been the demand of many European and US companies. In his view the important aspect of the Bill that needs a relook is that the appointment of a retired high court judge to head grievance redressal committee needs to be further bolstered by bringing in other people having direct experience in the particular line of business otherwise in the event of too many complaints the system may simply choke and which may not be a desirable outcome. Secondly in his view section 23 of the Bill does not allow for price negotiation and such a thing may not be in sync with the guiding philosophy of the Bill. Another related aspect in his view is that in the event of cartelization by suppliers there may again be trouble which needs to be taken care of. Thirdly he viewed that the provisions as they stand today may not be in the best interest of procurement systems as there are certain lines of trade where quick decision making is very critical and Bill its cumbersome process may deny such strategic quickness to the whole process. So all in all he believed that it is a fine piece of legislation provided appropriate exceptions are carved out then we may have a great Public Procurement Law.

Question and Answer

- ❖ **Is there a localization clause i.e. compulsory procurement of 30% from local supplier?** Asked by a Student and responded to by Mr. M.M Sharma that there is no such clause albeit there is a set off clause for a certain sectors like defence etc.
- ❖ **Are there sufficient provisions in the Bill to deter corrupt practices?** Asked by a Lawyer and responded to by Mr. M.M Sharma again that since there is a provision of deterrent punishments so it may be an effective remedy provided there are appropriate rules enabling the concerned officials are put in place.
- ❖ **Can Govt.scrap the entire tender process?** Asked by Mr. Duffy and responded to collectively by Mr. M.M Sharma and Mr. Khorwal that yes, the govt. can do so but it will have to give reasons for it.

Closing Ceremony/Valedictory Session



- ❖ Sr. Advocate Shri Ram Jethmalani, Member of Parliament (RajyaSabha).
- ❖ Mr. BejonMisra, Founder at Partnership for Safe Medicine (PSM) India, International Consumer Policy Expert.
- ❖ Ms. Meenakshi Lekhi, National Spokesperson, Bhartiya Janta Party.

Such intellectually rich and stimulating exchange of ideas, on the pressing concerns of national and international importance, had to have an equally befitting valedictory session or closure ceremony. The stalwarts who presided over the session and graced the occasion, all accomplished people in their own right, are mentioned along with the highlights of their speeches in the order they cast their spell on the audience.

Mr. Bejon Mishra, Founder of PSM (Partnership for Safe Medicine) India and also International Consumer Policy Expert

Referring to the deplorable situation of the availability of the goods and services in the country owing to the license permit Raj, Mr. Mishra, narrated as to how the consumer movement gathered momentum to bring about the Consumer Protection Act, 1986.

Emphasising the importance of legal and policy framework in the life of even a common man he viewed that a policy should always be framed keeping its impact on the most marginalized man in mind. And he said that not only it should be framed keeping the greater common good in mind but also that it should be properly and widely disseminated in the relevant vernacular so that the last man gets to know a policy.

Ms. Meenakshi Lekhi,

Who graced the closing ceremony in her incisive speech, highlighted the importance of the need for respecting privacy law and not only respecting women but also recognizing the immeasurable contribution which they make towards society. Relating to a recent incident she sought to inform the audience as to how the media with its own agenda turn a mole into a mountain by turning a purely surveillance situation into a stalking and a full fledged snoopgate and as a result need for respecting privacy of the individual.

She was of the view that if we need to do away with all forms of social discrimination against women we need to built in parity in all our systems. Secondly she was also of the view that the menace of sexual harassment at workplace will be tackled if Vishaka Guidelines are implemented in letter and spirit. But she was equally of the view that in the spirit of fighting against the menace chances of false allegations thereof must also be taken into account and careful treading must be done to do so.

She highlighted and quoted wise, courageous and respectable women, especially from ancient India, who carried their womanhood with aplomb and how it not at all mattered in their becoming accomplished and respected individuals in their own right. And she urged all to take inspiration from all those leading lights to be achievers in life. And in her view if there ever was any difference between men and women, it was just in the way they happen to dress differently and that is what she finds between herself and others.

Ram Jethmalani: Youthful charm and Sage like wisdom

Mr. Ram Jethmalani, a living legend in every sense of the term, like a true master with youthful charm and sage like wisdom gave multiple lessons in wit, in fortitude, in remaining inspired and following one's heart and also not to get emotional about a situation rather remembering one's purpose and pursuing it with courage and ingenuity, to every person sitting in that hall.

Mr. Jethmalani who simultaneously wears multiple hats including that of a visiting law faculty, one of the longest (73 years to be precise) lasting, to many national and international legal educational institutions; a frank and forthright Politician; a Newspaper editor, INBA's Chief Patron and above all a lawyer par excellence.

In an address which lasted for about 45 minutes, Mr. Jethmalani demonstrated the importance of courage of conviction in achieving what one aspires to accomplish that can easily translate into everlasting youthful charm and professional success. Following are the highlights of his address:

- ❖ **Humour is the soul of life:** The laughter induced by the opening lines "*charming ladies and slightly less charming gentlemen*" converted the entirely tired audience into an attentive and all ears audience for himself.
- ❖ **Why youth is the most inspiring attribute of a human life:** After establishing that witty connect with the audience, Mr. Jethmalani described his situation as of somebody who is "*sitting in the departure lounge of an airport with his flight being delayed*", and shared with the audience his conviction that "*the older you get the younger should be your company*" meaning thereby that the youth with its innocence and energy is capable of accomplishing almost anything which people of any other age would find it difficult to do. As aging tends to make your body weak and mind doubtful.

- ❖ **It was Women who created civilisation:** In a witty take, to highlight the important role played by women in the evolution of human civilization, Mr. Jethmalani stated that it was a woman who built the first cottage, as man was busy in hunting for food, it was she who tilled the first field, domesticated animals and man was the last animal domesticated by her. That is how the civilization has come into being so we not only respect women but also treat them with respect and gratitude for the contributions they have made and continue to make for all of us.
- ❖ **Never to bow down before tyranny, keep ingenuity handy:** Next Mr. Jethmalani urged everybody to value the availability of freedom and narrated a situation when Govt. of the day, in the days of Emergency, wished to see him behind bars and how he chose not to get bogged down in the face of adversity and instead of meekly surrendering before the tyrant chose to fight it out and highlight the ugly face of the Emergency to the entire world by simply keeping his ingenuity and courage of conviction handy.

It will be a fitting tribute to the living legend to sum up the highlights of his speech by reproducing the urdu couplet, which he recited to drive home the point that you never know who will turn out to be courageous in the face of adversity, as it was the spirited and not the learned who proved to be of any help: ***“Sitam ke Daur mein woh ahal-e-dil hi kaam aaye, Zubaan pe Naaz tha jinko woh bezubaan nikle!”***



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