

INDIAN NATIONAL BAR ASSOCIATION

A VOICE OF INDIAN LEGAL FRATERNITY

Annual Report of
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National Law Day –
International
Conference on Law

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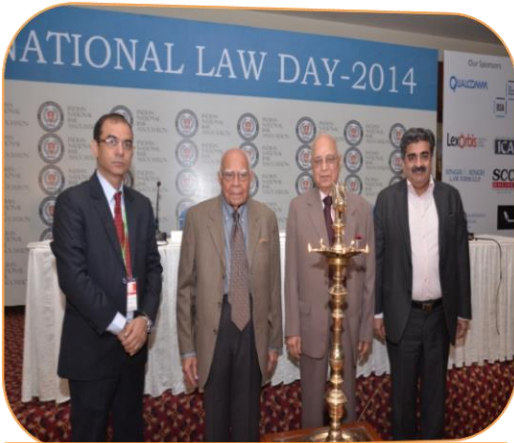


Contents

S.no.	Particulars	Page no.
❖	Executive Summary	
❖	Inaugural Session	
❖	Digitalization of judiciary to expedite the judicial process.	
❖	Public Policy Law	
❖	Taxation	
❖	Policy issues underlining the interface between IPRs and Competition Laws: Standards Essential Patents”	
❖	Alternative Dispute Resolution India as Center For International Arbitration	
❖	Trade Secret Law	
❖	India And The World Law & Investment Forum	
❖	Competition Law	
❖	Banking law in general, enforceability, SARFAESI, important RBI guidelines, management of NPAs and changing scenario of banking	
❖	Role of education participative democracy in India	
❖	Role of GC in today’s legal environment	
❖	Evolution of Indian legal industry & role of young lawyers	
❖	Good Governance in Legal System	
❖	Closing Ceremony/Valedictory Session	



DIGNITARIES GRACES THE OCCASION



Shri Ram Jethmalani, Sr. Advocate, Dr. Subhash C Kashyap, President INBA, Shri Pankaj Mohindroo, National President, India Cellular Association and Mr. Kaviraj Singh, Secretary General, INBA



Shri Ram Jethmalani Presented mementoes to Shri Pankaj Mohindroo



Ms. Meenakshi Lekhi, Mr. Mark Snyder, Ms. Lata Krishnamurti, Dr. Alka Chawla, Associate Professor, Mr. Kaviraj Singh



Mr. Kaviraj Singh with Shri Tushar Mehta, Additional Solicitor General, Supreme Court of India



Mr. Mark Snyder, Vice President & Patent Counsel, Qualcomm Incorporated



Mr. Sanjay Chaubey, Attorney-at-Law, New York felicitating Mr. Benjamin Grossman, Chairman Israel Bar Association



ESTEEMED SPEAKERS & GUESTS

Name	Designation
Mr. Ram Jethmalani	Sr. Advocate
Ms. Meenakshi Lekhi	Member of parliament
Mr. Tushar Mehta	Advocate Solicitier General, Supreme Court of india
Hon'ble Mr. P.K. Malhotra	Secretary for Legal Affairs, India
Dr. Subhash Chand Kashyap	Former Secretary General, Lok Sabha
Mr. Pankaj Mahindroo	President, Indian Cellular Association
Mr. Yash Mishra	Managing Partner, Alliance Law Group
Mr. Tabrez Ahmad	Secretary General Organization Of Pharmaceutical Producers Of India
Mr. Subrata Dutta	Indian Network Coordinator Food Fortifiaction Intiative
Ms. Yolynd Lobo	Director(India), BSA/The Software Alliance
Mr. Arvind Singhatiya	Vice President- Corporate Affairs, ANI Technologies Pvt Ltd
Ms. Krishna Sarma	Managing Partner, Corporate Law Group
Dr. Gaurav Arya	Associate Director, Public Health and Policy Eli Lilly and Company (India)
Smt. Aruna Sundararajan	Administrator (USOF) Universal Service Obligation Fund
Adv. Prashant Mali	Cyber Law & Cyber Security Expert.
Mr. Benjamin Grossman	Chairman Israel Bar Association
Mr. Sujit Ghosh	Partner & National Head Tax Litigation & Controversies (IDT) ADVAITA LEGAL
Mr. Krishan Malhotra	Head Taxation, Amarchand & Mangaldas & Suresh a.Shroff & Co.
Mr. Ashok Kumar	Barrister-at-Law, Chalfont Chambers, Sydney
Mr. V. Lakshmi Kumaran	Managing Partner, Lakshmikumaran & Sridharan
Ms. Pratibha Singh	Senior Advocate, Supreme Court of India
Mr. Rajagopal Saikrishna	Managing Partner, Sai Krishna & Associates
Dr. Kirti Gupta	Director, Economic Strategy, Qualcomm Inc
Mr. John Matheson	Director, Legal Policy, Intel
Mr. Akiyoshi Imaura	Director IPR, JETRO
Axel Heck	Attorney-at-Law & INBA Int'l Sec. Co-Chair, Germany
Lata Krishnamurti	Attorney-at-Law & Law Professor, Switzerland
Caroline Bechtel	German Institution Of Arbitration (DIS)
Shehara Varia	Sri Lanka Arbitration Centre (ICLP)
Scheherazada Dubash	Deputy Head (South Asia), Singapore International Arbitration Centre (SIAC)
Many more.....	

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& Former Secretary General, Lok Sabha., **“Key Note Address”** Shri Ram Jethmalani, Sr. Advocate & Member of Parliament (Rajya Sabha) and **“Vote of Thanks”** by Shri Pankaj Mohindroo, National President, India Cellular Association “The National Law Day, which is like our humble tribute to the founding fathers of the constitution, prompt us to reflect upon and renew our pledge to protect, preserve and enhance the values enshrined in our constitution.”

The conference was also blessed by other legal luminaries and fraternities and dignitaries like, Ms. Meenakshi Lekhi, MP & National Spokesperson, BJP, Smt. Aruna Sundararajan, Administrator (USOF) Universal Service Obligation Fund, Shri Tabrez Ahmad, Secretary General, OPPI, Shri Tushar Mehta, Additional Solicitor General, Supreme Court of India, Mr. Badrinath Durvasula Vice President & Head Legal - Larsen & Toubro Limited, Mr. S. Ramaswamy, Group General Counsel, Escorts Ltd, Ms. Lata Krishnamurti, Partner, The Ram Jethmalani Law Chamber, Ms. Pratibha Singh, Senior Advocate, Supreme Court of India, Adv. D.Bharath Kumar, General Secretary, Rashtriya Adhivakta Parishad.

Numerous legal luminaries across the world marked their presence. Those are: Mr. Benjamin Grossman, Chairman Israel Bar Association, Mr. John Matheson, Director, Legal Policy, Intel, Mr. Akiyoshi Imaura, Director IPR, JETRO, Mr. Ashok Kumar, Barrister-at-Law, Chalfont Chambers, Sydney, Axel Heck, Attorney-at-Law & INBA Int’l Sec. Co-Chair, Germany, Edgar Phillipin, Attorney-at-Law & Law Professor, Switzerland, Caroline Bechtel, German Institution Of Arbitration (DIS), Shehara Varia, Sri Lanka Arbitration Centre (ICLP), Ms. Scheherazada Dubash, Deputy Head (South Asia), Singapore International Arbitration Centre (SIAC), Mr. Aditya Kurian, Hong Kong Int’l Arbitration Center (HKIAC), Mr. Oliver Alexander, Attorney-at-Law, Germany & Qatar, Mr. Carl de Geer, Attorney-at-Law, Sweden, Ms. Srita Heide, Indo European Business Advisor, Germany & India, Mr. Mark Snyder, Vice President & Patent Counsel, Qualcomm Incorporated

Participants from reputed organizations like: Pharmaceutical Producers of India (OPPI), Business Software Alliance, ANI Technologies Pvt Ltd, Corporate Law Group, Eli Lilly and Company (India), Dell Inc, Hindustan Unilever Limited, ADVAITA LEGAL, KPMG, Qualcomm Inc, Intel, JETRO, Reliance Industries, Asset Reconstruction Company India Ltd, Exim Bank, Escorts Ltd, Godrej Industries Ltd, Hindustan Coca-Cola, Larsen & Toubro Limited, Raymond Limited, HCL Technologies

Participants from top Law Firms like; Corporate Law Group (CLG), ADVAITA LEGAL, Amarchand & mangaldas & suresh a. shroff & co., Chalfont Chambers,



Sydney, Sai Krishna & Associates, Singh & Singh LLP, Anand & Anand, Lexorbis IP Practice, J. Sagar Associates, Khaitan and Company, APJ-SLG Law offices, The Ram Jethmalani Law Chamber, Parekh & Co, Alliance Law Group, United Chamber of Lawyers (UCOL), Meera Bhatia & Co, Shroff & Company, Mukherjee & Mukherjee Associates, Alexander & Partner, Germany and **Universities and colleges** who participated as a partner and participants: Mountbatten Institute-Asia Pacific Office, Raffels University, Rajasthan, Lloyd Law College, Noida, Amity University, Faculty of Law, Jamia Millia Islamia, Faculty of Law, University of Delhi, South Asian University, National Law University (NLU), Delhi, Symbiosis Law College, Noida, University Five Year Law College, University Of Rajasthan, Jaipur, Lausanne University School of Law, Switzerland, University of petroleum & Energy Studies, Birmingham City University.

Senior Members from different -2 bar Associations: New York Bar Association, American Bar Association, Indian Cellular Bar Association, Israel Bar Association, The London Court Of International Arbitration (India), Singapore International Arbitration Centre, Hong Kong International Arbitration Centre, Chalfont Chambers, Sydney Bar Association, Supreme court of India, Andhra Pradesh Bar Association, Hyderabad Bar Association.

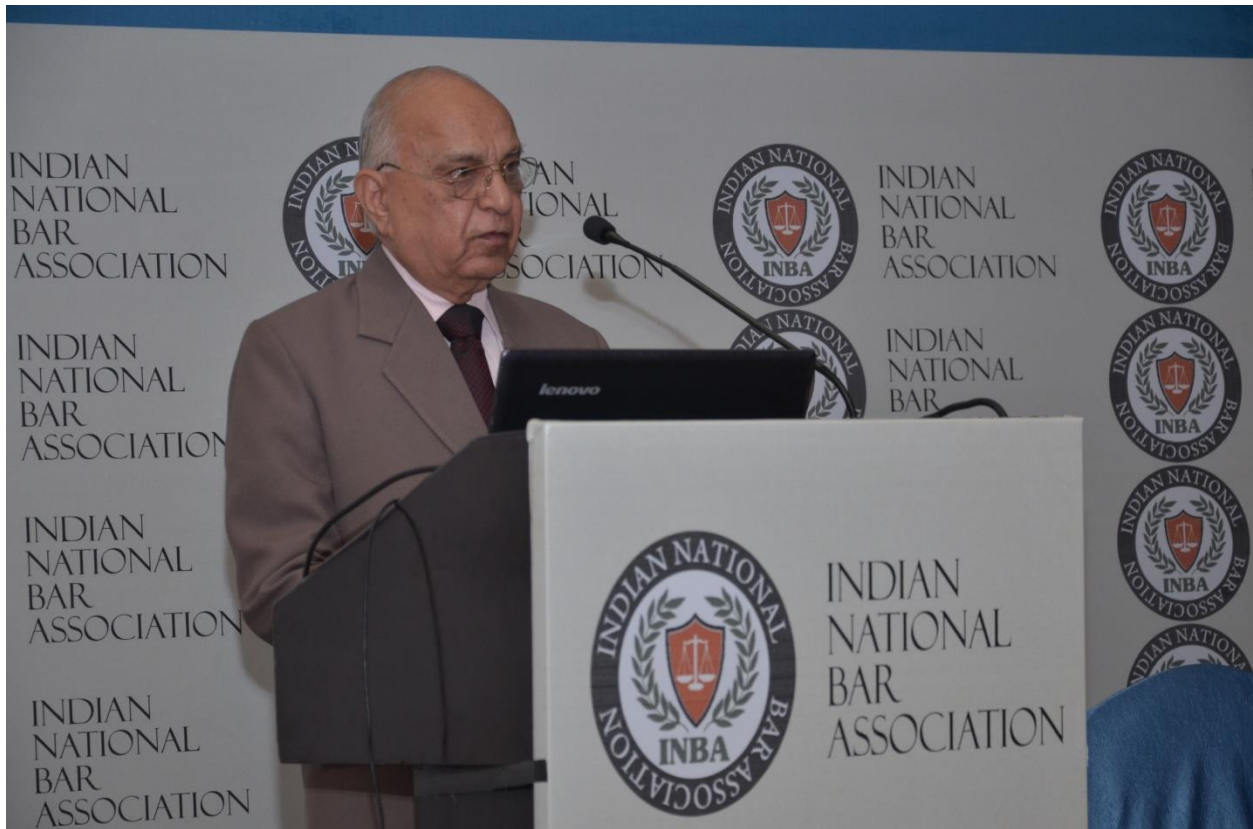
Topics covered by speakers and dignitaries like; Digitalization of judiciary to expedite the judicial process, Public Policy Law, Taxation, Policy issues underlining the interface between IPRs and Competition Laws: Standards Essential Patents”, Alternative Dispute Resolution India as Center For International Arbitration, Trade Secret Law, India And The WorldLaw & Investment Forum, Competition Law, Banking law in general, enforceability, SARFAESI, important RBI guidelines, management of NPAs and changing scenario of banking, Role of education participative democracy in India, Role of GC in today’s legal environment, Evolution of Indian legal industry & role of young lawyers, Good Governance in Legal System

The Law Day conference was jointly sponsored by Qualcomm Inc, Lex Orbis, Trustman Legal Services Pvt. Ltd. Business Software Alliance (BSA), Alliance Law Group, Singh & Singh Law Firm LLP, Indian Cellular Association, Mountbatten Institute, SSC Online.

Inaugural Session



Welcome Address



Dr. Subhash C Kashyap, President INBA & Former Secretary General, Lok Sabha

Commencing his speech with the welcome address, Dr. Kashyap introduced Mr. Ram Jethmalani as a **Chief Patron**, the senior most of the seniors of the Supreme Court, former Union Law Minister, an eminent jurist and a relentless fighter for the rule of law. He said that today was a special day in India's history as 65 years ago that the Constitution of India was adopted, enacted and given to ourselves by we the people of India in our Constituent Assembly. Since the Constitution is the basic law of the land which is administered by all courts in India this day is considered as the National Law Day. We at I.N.B.A also pay our homage to the rule of law and traditions of constitutionalism by organizing meaningful events on this day each year. Acc to him the last 65 years have been very eventful, changes have taken place at hurricane speed. Centuries have been compressed into years. There have been many significant achievements and also as many dismal failures in India. There is much to complain and lament about in India and there also are many reasons to be proud too. We are the largest democracy in the world. All the problems and crisis we faced have always been resolved within the framework of law. It has been largely accepted that there have been free and fair elections, and most importantly we should see is that after every election the transfer of power has been entirely peaceful, which speaks volumes for the maturity of democracy in this country, particularly when we compare it with several neighboring countries. Throughout these 65 years have



seen that the unity and integrity of our nation have survived, the press has remained free and the judiciary independent. Constitutionalism and the rule of law have reigned supreme, despite some temporary aborations.

While talking about the Indian National Bar Association Dr. Kashyap said that INBA was among the country's largest bar associations. He also said that it was unique and also had a distinct identity of its own. INBA is incorporated as a non-profit, non-political and non-governmental association whose objectives include representing the interests and social responsibilities of the legal community, striving to reform the legal system and justice delivery to reduce delays and costs. INBA also identifies obsolete and unfair statutes, rules, regulations and bureaucratic practices coming in the way of national growth and development.

The spirit and vital energy behind INBA is it's highly committed and dedicated secretary general Mr. Kaviraj Singh. Within a short period INBA has already achieved a membership of 6500, which include leading advocates, eminent judges, multinational organizations, NGOs, law firms, senior law professors, government officers, jurists, law publishers, in-house councils and other stake holders including law students. INBA has its very active presence in various parts of India through its regional branches in different states. INBA also has its chapters in Washington DC, New York, Madrid, Milano, Germany, Australia, UAE, Kenya etc. The various activities of INBA include exchanging views in legal matters through online forums and partnerships around the globe, organizing and supporting seminars, debates competitions, and conferences and participating in important events in India and abroad, conducting researches and providing legal aid to the needy and counseling in ADR, PIL etc. INBA also helps upcoming law students and lawyers in various ways and hosts delegations and dignitaries from abroad. One of the latest and somewhat courageous research projects being undertaken by INBA with the help of law students is that of analyzing the performance of individual judges of various high courts in India. Tentative results in respect of one high court reveal that the average number of judgments delivered by a judge varied between 3 and 52 per month. The study may have a considerable impact potential in context of the 3 million cases which are still pending in high courts, over 33,000 cases are pending in the Supreme Court and some 25 million in subordinate courts. Unless some systemic reforms in juris management are brought about urgently it is estimated that it might take 350 years to clear the backlog even if no new cases are filed.

Key Note Address



Sr. Advocate Shri Ram Jethmalani, Chief Patron, INBA & Member of Parliament (Rajya Sabha)

Starting with a delightful address Mr. Ram Jethmalani commenced his speech by talking about the enormous unpayable arrears in the disposal of cases. He said that the solution was simple, more than one law commission has reported that India needs five times the number of courts that exist today. Till date prompt administration of justice has been missing from the agenda of the governments that have come into power from time to time, he hopes that the pressure of the bar and the pressure of the litigants moves the new government which has come to power now. As a supporter of the new regime Mr. Jethmalani says that he will become a great opponent if the regime does nothing to improve the existing condition.

Mr. Jethmalani, talked about 26th November 1949 being a great day in the history of India as she became a sovereign republic. He also said that the Constitution of India was framed under strange circumstances and it was not a happy event as the country was divided into India and Pakistan and the worst feature of this partition was that the division took place because of religion. He also said that at that time the lawmakers were also under pressure to make India a kind of Hindu Republic just as the other side of the new border had pronounced itself to be the Islamist Republic of Pakistan. The temptation to do this was avoided and in spite of some provocation India was made a sovereign democratic republic and made it a wholly secular regime. Mr. Jethmalani suggested that all the secular democracies of the world should come together and pool their resources economic,



military, intellectual and ensure that secular democracy extends its sway to the whole world, as rest of the world according to him is an uncivilized world. He hopes that the bar would make the dream of many thinkers come true.

Mr. Ram Jethmalani talked about the time when the constituent assembly drafted the constitution giving every citizen the right to profess and practice their religion. He said that it was very strange that the minority members of the constituent assembly i.e. the Muslims and the Christians insisted that a third right be added to the two prior ones, as they were not satisfied with just the right to profess and practice their religions but they highlighted the need to propagate their religion and demanded that it be considered as a right. Mr. Jethmalani further told everyone that many sincere and well meaning members of the constituent assembly including the greatest architecture of our constitution and Pandit Nehru advised them that they were asking for a very dangerous right and urged them to reconsider it. Ultimately there was an amendment in Article 25 and the third right of propagation of religion was added. Nobody realized the implications of the great amendment at that time. Mr. Jethmalani explained that if you have the right to propagate your religion it means that all religious belief and all religious doctrine and rituals would compete for supremacy and acceptance in the free market of ideas. There would be no law of blasphemy; there will be no limit on criticizing religious leaders. There will be no limit even in using extremely strong language about some beliefs and practices which have been inherited by certain religions for the last 2000 years. Mr. Jethmalani said that everyone accepted these three rights without the knowledge that the framers of the Constitution had made them subject to three paramount interests of the Republic of India i.e. subject to public order, subject to public health and subject to public morality. He further talked about competing religions and said that if religion is attacked in some parts it can be attacked on grounds of repugnancy towards public health, order and morality. His main question was that who and what will decide the contest when some paramount belief of some scripture is challenged publically by anyone. He said that people cannot just defend their cases by saying that it is quoted in the scripture and should use his mind instead. He said the Constitution of India dictates and mandates a life that is guided by reason and logic. He also said that if people are freely discussing religion then they have already developed that kind of character, and a sense of mutual love and affection that they will not burst into violence or terrorism. It requires a high degree of compassion, charity and understanding to be built up before one can seriously go out and propagate it in the market.

Speaking for himself, Mr. Jethmalani said that although he is not a great one for religion he does believe that religion has without doubt has brought comfort to some people by bringing to them a ray of hope of a better afterlife. He talked about an accurate analysis by secular philosophers about the role of religion in history. He did this by reciting a quote, "All the ships of all the navies of the world can swim comfortably in the ocean of innocent blood which has been shed in the name of religion through the history of mankind."

Further on he stressed that the need for a secular state was tremendous education which would free the intellect and the mind from the thrall of the so called religious practices and religious beliefs



which by no means were pronounced by God. He said that since the time the universe has been in existence God has never spoken to man. He wishes that one day God himself would appear and instruct us all about the right path. Invariably what God wants from us is taught to us by self appointed teachers and agents of God over whom we do not have control. Mr. Jethmalani talked about history and said that because of the coming of monotheistic religions the democracies of the pagan societies of Greece and Rome came to an end. Democracy died with the birth of monotheistic religions and remained dead and remained non existant for nearly 15-16 centuries to only be revived when man got the moral courage to challenge the authority of the pope. He also said that he is very happy that education is a very important requirement of democracy. The people should be very highly educated and democracy without education is hypocrisy without limitation.

Mr. Ram Jethmalani, further talked about the main problem with the Indian and other democracies is that they suffer with the paucity of education of the electorate. The ruler has no particular interest in educating the ruled because if the electorate becomes highly educated and intelligent they are bound to ask very difficult questions to their rulers and hold them accountable for the same. He said that it is a great tragedy in the education system of our country that the education being impacted by it produces some kind of knowledge but no wisdom, it produces a thirst for power but no sense of social responsibility and lastly it produces cleverness but no conscience.

Mr. Jethmalani further told the crowd about what legal education should be doing. According to him legal education is not only supposed to be producing lawyers, we must ensure that our legal education now starts producing great citizens who understand the veracity and the excellence of very important constitutional principles and they produce not merely practicing lawyers but they produce statesmen who are going to rule the country and perhaps rule our legislatures. The legal education system must produce the greatest kind of teachers that the country can afford and the kind of education that must be given is not merely to train people for going into practice and starting a livelihood.

While talking about the profession of law Mr. Jethmalani, expressed his views that the nature of the profession has changed and is now being treated as a business for the sole purpose of money making, and what is now legitimate in the conduct of a flourishing business has now become a part of professional life. Mr. Jethmalani asked the audience about the state of justice in the country and other countries, and whether the common poor man who is a victim of injustice stand up and fight against a corporation which has a war chest of money and great political pull and power and his answer was no. he also said that although large law firms take up pro bono work, most of the lawyers practicing today are there solely to make money. He said that we have departed from the role of the spiritual ancestor of the bar. Mr. Jethmalani recognized the spiritual ancestor of the bar as a young man called David who existed in biblical times and whose tale Mr. Jethmalani recited with great passion. His focus was on the courage of David in voicing a different opinion in honor of justice. Mr. Jethmalani once again said that courage is the most important attribute to a member of the bar. As a lawyer one must have the courage to fight against the establishment of the day because it is the establishment which turns out to be corrupt. Democracy is like a swimming pool which



needs a periodic change of water or else it will turn into a cesspool. India's democracy had turned into a cesspool from 2004 till 2014 and now there has been a change and there is hope that the water will remain clean for sometime at least. Other lessons to learn from the story of David as pointed out by Mr. Jethmalani is that he fought the woman's case for free and thirdly he ultimately fought to establish the innocence of the woman who was about to be killed.

Finally Mr. Jethmalani concluded by talking about the moral compass which guides lawyers, he gave the example of Gautam Buddha who through love and care brought back to health an injured bird, He said lawyers must think of the society and work on healing victims of injustice. He hopes the Bar would work on the meaningful teachings of Buddha.

Vote of thanks



Shri Pankaj Mohindroo, National President, India Cellular Association

After thanking Mr. Jethmalani, Mr. Pankaj Mahindroo, talked about the vision of the judicial system which is a part of the digital India Vision of the Prime Minister which means that the law has to catch up through the digital process and come up to speed and should also be ahead of the process and the perpetrators of crime etc. He also said that the program was very dense and thanked INBA for its effort, and requested everyone to take note of the words of wisdom.



Digitalization of judiciary to expedite the judicial process

- ✚ **Session Moderator** : Shri Pankaj Mohindroo, National President, India Cellular Association
- ✚ **Adv Benjamin Grossman**- Chairman of the India Israel Committee of IBA
- ✚ **Mr. Snajay Chaubey**, Attorney-at-Law, New York



Chaired by Shri Pankaj Mohindroo, National President, India Cellular Association commenced his speech by talking about the Prime Ministers program of a Digital India, and how they were involved in it. He pointed out some of the initiatives like, zero net import of electronic systems and design products ranging from mobile phones to computers to all sorts of digital equipments, Initiatives in e governance such as UID program etc.

He laid the focus on the digitalization of the judiciary which would deliver the most powerful impact on the life of Indian citizens. The fact that it would take almost 350 years to clear all arrears in courts is unacceptable and we cannot continue with that. Mr. Mahindroo informed everyone that the Delhi high court pioneered in digitalization of courts in India. This was started in company arbitration and the tax benches. The company court is probably the only paperless court, starting from filing to arguments which are done by the help of laptops and tablets and



now internal noting and signing of orders is done by digital signatures. Mr. P. Mahindroo feels that this modal should be replicated across the country.

Further on Mr. P. Mahindroo talked about the stakeholders in the ecosystem of digital courts which are the government, public, court staff, lawyers, litigants and judges. He said that the judiciary should adopt practices of the central government such as installing biometric scanners so as to improve the discipline of the court staff. It is seen that there has been a drastic increase of discipline of central government employees due to digitalization, and the same must be applied by the courts to improve discipline of their employees.

Mr. Pankaj Mahindroo talks about the problems in the Indian judicial system. He said that people tend to give false identification when they are arrested, in courts there are some “stark” witnesses who are well known are produced multiple times in courts. People who stand as sureties for the accused also keep changing their identities. He says that sometimes the wrong person is released deliberately from jails (case of Sher Singh Rana). He says that biometric identification which is a part of digitalization of judiciary we will be able to avoid all these incidents. This in turn would have a huge impact to transparency and proper administration of the criminal judicial system.

He gave a set of draft recommendations for the government and including all sister and cousin associations etc. He said that this recommendation should come out from the entire digital economy. He said that most of the justice system is in the district courts which have poor technology, are rigid, not so smart and this has to be changed. He said that all courts have to be WIFI enabled. Work is being done on the national optical fiber network and the knowledge network which is GB capacity to 15000 colleges and universities. There has to be setup an E-highway between the courts so that they have a WIFI enabled capacity. He talked about the need to have a secure e-mail communication system with a digital signature. So as to curb abuse of the system by counterfeit signatures of magistrates and fraud cases which happen very frequently. The layers of security in a secure email communication system will prevent such incidents. He said that the first layer of security is the UID and the second layer is the iris recognition technologies which are more secure than the UID system. While talking about the age old system of dictation in courts he said that the speed of thinking is far more than any short hand can accomplish. Although this relic of the past has been in existence it has to be replaced with a technology that eliminates errors and manual typing in capturing dictations. There is a need for touch screen Kiosks at the courts and strategic places so that litigants have easy access to information. As we are responsible to the litigants we need to ensure user friendly and weather proof touch screens where data can be accessed without any premium. He talked about the importance of e-filing. Mr. Mahindroo talks about the large number of lawyers who do not have access to technology and the statistics are very shocking. He said that in the Mufussil towns more than 70% of the lawyers are not equipped computers, tablets or smart phones, and this has



to change as it is highly important for lawyers to be e-enabled and hence there has to be a request of a financial package so that every lawyers gets a laptop or a tablet to be able to do his work.

He said that video conferencing is highly important especially in child sexual offences etc where it is very traumatic for the victim to come to the stand. Video conferencing will ensure that the child is masked from the alleged perpetrator of the crime. Witness evidence can be done by way of video conferencing, stamp crimes and multiple state crimes may also be done easily by this method and India can learn many things from USA and Israel.



Adv Benjamin Grossman- Chairman of the India Israel Committee of IBA

Mr. Grossman commenced his speech by describing the digital legal system in Israel, with the help of a short technical presentation. He said that in Israel the coming of digital courts was part of a larger phenomenon in which all the government services were digitalized. The digitalization of the legal system was the most recent. From 2003 till 2009 only 60% of courts were digitalized. Today all the courts are digital, except the Supreme Court and the Municipal courts which are still not in the system. This is so because of difference in procedure and no pressure as procedures are not that long. He also said that the program was not very successful in its first two years as there was some hacking into the system and this brought down confidence in the system. But in the last two to three years it has become very successful.

There have been learning curbs and certain security issues have also been well addressed after attempts to corrupt the system. The system according to him is very efficient as the goal was to cut the timing between the filing and the decision, and this was successful. He further explained how the system works, after registration one gets a smartcard which has a digital signature by which one can view all filings and requests and so on. The stakeholders of the systems are the public who can view all the decisions and all the requests of the state, with exceptions for the sake of national security.



The public can see everything such as PILs. The Lawyers are the main users of the system as they can get all their decisions on the same day on their laptops and mobiles. The judges can get the information 24/7. Mr. Grossman talks about an incident where a lawyer filed a document at 11:59 on the day of deadline due to which there had to be a limitation on the timings of e-courts. A high court chief limited the time from 8am to 5pm because the officers cannot be expected to work the whole day and they too need private time at home which was also protested by some lawyers. The secretariats of courts do all the procedures, legal work, publish decisions and send them to the lawyers.

Mr. Grossman talks about technical advantages, such as searching for all the decisions, requests, filings, injunctions etc can be done online. If a few lawyers want to look at the same file then they can, but in case of paper files only one can view it at a time. Online payments all the dispositions are cut. Time is saved as no agent has to be sent all the way to the courts and is highly relevant in the cities affected by traffic jams. It saves a lot of money of clients by eliminating the nuisance of delivery. Most importantly it creates transparency as all citizens can look at the decisions of courts and see how the government is fulfilling it. The only source of constraints is that some of the management of courts does not want to be under observation every hour of the day but once this is overcome the system works very well.

Public Policy Law

- ✚ Session Moderator : Shri Tabrez Ahmad, Secretary General, OPPI
- ✚ Ms. Yolynd Lobo, Director(India), BSA/The Software Alliance
- ✚ Mr. Arvind Singhatiya, Vice President- Corporate Affairs, ANI Technologies Pvt. Ltd
- ✚ Ms. Krishna Sarma Managing Partner, Corporate Law Group
- ✚ Dr. Gaurav Arya, Associate Director, Public Health and Policy Eli Lilly and Company (India)
- ✚ Mr. Rajeev Batra, Group Head - Corporate Affairs of Hindustan Unilever Limited



Public policy-new policy practice in India

Chaired by Mr. Tabrez Ahmed, Secretary General, Organization of Pharmaceutical Producers of India (OPPI), the first technical session titled “Public Policy Law” new policy practice in India. Mr. Tabrez has introduced to panelists of his section and making sought to explore and analyses 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 features and effectiveness.



Shri Tabrez Ahmad, Secretary General, OPPI

Question raised by Mr. Tabrez Ahmad

Q- What are the measures to empower every stake holder in country to have right consultation and transparency? Policy making that is efficient and appropriate.



Dr. Gaurav Arya, Associate Director, Public Health and Policy Eli Lilly and Company (India),

Dr. Gaurav Arya, Interface between law and policy is very close, which is often discounted by most of the people who are in the policy making process. Many a times as a policy is drafted by a particular body and is sent through various channels to the legal department for their approval and the legal department is completely blindfolded about the origin of the policy. The disconnect between policy makers and legal experts comes into light when it is implemented. Policy by definition is a statement of intent and is not a law or a rule but is itself implemented by a set of rules. This is where the understanding of the legal process and the constitution overall compels us to do. Thus there needs to be a holistic balance between both the departments and the consent of the legal department needs to be taken into consideration, to reduce the disconnect between both. Thus we can emphasize the condition of those who are affected by it. As Shri Ram Jethmalani said, its needs to have a reason and logic behind its implementation.

He said that it was very commendable to start a policy and law group. It would address the gap and help in bridging the same. Sometimes we overstep what is Constitutional, for example: Some of the guidelines of the policy makers says that you need to submit a particular data and its non submission shall be viewed seriously. The said data has to be submitted within seven days, failing which appropriate action will be taken under the provisions of the concerned Acts for non compliance. This letter apparently is not served to the respondent, it doesn't say what is appropriate action and legal experts would understand that such a letter would not stand the test of law and would not be appropriate in judiciary. These are the things that are trying to be addressed through this interface. Improving the Understanding of policy makers regarding the constitution and judicial process itself needs to be, that is where these gaps could be address.



Ms. Krishna Sarma, Managing Partner, Corporate Law Group

Ms. Krishna Sarma, Managing Partner, Corporate Law Group, started a discourse about his observation that there has been a change in governments consultation process since 1998, from negligible to none to now having a process where stakeholders comments are invited and it is understood that where government policy, regulations or law is being made, they are competing interests group, which ensures the presence of transparency which is very commendable. The coming of the RTI regime there is far more information available to the public, to know about the internal workings of the government. She said that in a lot of cases and fundamental decisions the stakeholders and NGO communities are not taken into account at all. For ex: While being involved in a case related Arunachal Pradesh and Assam border, about all hydroelectric projects were given with huge environmental impact. There was no process of consultation at all as a result today power projects never came through, causing huge public protest which is still is ongoing in the contemporary era. If the process of consultation was done prior to such huge projects, the outcome would have been fairly different.



Mr. Rajeev Batra, Group Head - Corporate Affairs of Hindustan Unilever Limited

Mr. Rajeev Batra, spoke about the process of public advocacy and how it has changed for making public policy in country but advocacy professionals lack the skills for this task. There are new demands being created and people are recommending, how public policy is to be created. This led to



the formation of an informal group called “public affairs forum” which promotes ethical advocacy on public policy. After 5 yrs or so the corporation group grew to some 110 members from top leading companies. Today it is formalized forum (PAFI).

While talking about the processes of macro public policy formation, he said the main concerns were about:

- What should be the process that the country follows in laying down these policies?
- Who should be a stake holder invited for discussion?
- Whose view point must be heard?
- Whose viewpoints should be quered upon?

When it comes to decide whether a regulation or a law needs to be set up, the procedure to do so should undergo a four stage process:

- **Awareness:**

This stage is used to determine whether if there is a need to create something like this.

- **Public Debate:**

Even though it may tend to be a heated debate it has to be an informed and sensible one.

- **Draft or recommended policy:**

This is where the policy is available in public domain so that experts can give their inputs including the people who feel that they have been ignored and are not a part of it.

- **Policy Formation:**

This is the stage where the law or policy is laid out. It has to be ensured that the advisor is a trusted person.



Ms. Yolynd Lobo, Director (India), BSA/The Software Alliance

Ms. Yolynd Lobo said that at the start of public policy has always been to control an industry rather than allow it to grow and flourish. We need to look at public policy with an advantage India



perspective, and the need is to look at long term gains and not for a short term. Stakeholder roles need to be decided. Ex: cloud computing space, there is great fear, and the need of government to control that sphere, by forming policies. Critical players in this space which are the companies that are creating this technology are often left out with the dialogue. As most of these companies are MNC's and security is a major concern. How to create an honest and trust worthy, open and frank dialogue as today technology determines how policies will be framed. How to deal with the economies of the future? This must be focused upon.



Mr. Arvind Singhatiya, Vice President- Corporate Affairs, ANI Technologies Pvt. Ltd

Mr. Arvind Singhatiya said that their four year old venture has brought a lot of change in the country. He said that their interface is the policy executioners who are civil servants and government officials who are the forefront. As a journalist he said that government servants who are executing the policies have nothing to say regarding the policies they implement. He gave an Ex- The Karnataka radio taxi scheme which was drafted in 1998, saw a loss of customers as they moved to the services provided by the cabs using ANI technologies as the charges were almost 50% lower than the prevailing taxi services plying in Karnataka. The government officials were clueless about the issue raised. They were in a dilemma as they could not penalize the company for charging less. He also said that nobody had ever thought that channelizing these resources could solve everyone's issues and that it could be a replacement for personal car too. Now scenario has changed a lot policy makers are struggling through new concepts to control the low fare service providers, earlier they used to control the high charging service providers. He said that this can be viewed as a challenge to the establishment.

Shri Tabrez Ahmad, Secretary General, OPPI, **Q-** Could you enlighten us about the solution to cover the disputes btw government and stakeholders or company?

Mr. Rajeev Batra, Group Head - Corporate Affairs of Hindustan Unilever Limited, He said that policy making in India has historically been based on the premise that industrialists are cheats and that the government is the controller. The NGO's always thought that businessmen are cheats. The businesses always thought that the NGO's always had an ulterior motive to make money and are responsible in delaying projects. There was a mutual distrust all around. There was no possibility of a sensible discourse or a clean open dialogue among the stake holders. He said that in his carrier he



has noticed a change or a shift as today large corporations and large international NGO's are able to sit together at a table and reach a common ground on certain inconvenient issues. Regulators today are different from the government and have an understanding of the environment in which a business flourishes. The CCI for example in certain cases has been very hard on businesses but in other cases they have passed amazingly business friendly decisions. There is a change in mind of the Central Government but State governments have not change their old mind sets and perceive businesses as cheats. Smaller NGOs which have political people backing them are still problem creators as they do not understand or appreciate the business issues as their thinking is not tuned to it. On the other hand international or large NGOs understand that business needs to be done and there is a responsible way for doing the same.

Shri Tabrez Ahmad, Secretary General, OPPI,

Q-Origin of company, many times there is deep distrust btw MNC, though they are registered as per Indian law they serve Indian costumer

Dr. Gaurav Arya, Associate Director, Public Health and Policy Eli Lilly and Company (India), said that there is a very thin line between profit and profiteering and that is where ears and eyes of regulators and government agencies get alert. The good aspect about Indian system is that a free judiciary provides that opportunity to dispute, contest and stand for the right thing. We need to evolve. He said that even today a lot of cases laws related to profit and profiteering quoted by the government and the regulators are from the 1970's and 1980's. We are not adapting ourselves in the reformed system. We need to used new cases laws and contest the things which we feel are not right.

Ms. Krishna Sarma, Managing Partner, Corporate Law Group, said that in certain areas of public policy there is a lot more emotive build up and it is often seen that it is not necessary that arguments put forward by various interest group are logical. There should be a space for that while making public policies. Government departments tend to welcome the kind of agenda that is created by NGOs to further public policy goals that the government wants to follow. Government ultimately represents the consumer and there has to be a balance and it should be based on facts, on law and international commitments.

Mr. Arvind Singhatiya, Vice President- Corporate Affairs, ANI Technologies Pvt. Ltd. thinks that whenever they discuss with the government at various forums, the biggest challenges with these forums are that we are not doing backward integration of the problem, and do not go into the heart and soul of the problem. He gave an example of a last mile connectivity issue, that after deboarding the metro one has to look for other modes of transport like autos and cabs to reach a desired location. He connected this problem with Mr. Modi's ambitious project of "Jan Dhan Pariyojna" where every citizen would be allotted a bank account. He agreed that these two subjects were absolutely different. He shared a new perspective which could be a possibility. Government is currently motivating people to open a bank account and get the benefit of insurance. He doubts if this initiative will work as a person from a lower strata is least interested in opening a bank account and depositing money in bank. They would rather prefer cash in hand, so that they could utilize it when required. He said that we all use a metro card while commuting via metro. He said that if we



had some financial instrument like a magnetic debit card which could be used seamlessly across various transportation services, it would solve a lot of problems for everybody. This would allow people using such an instrument to be able to swipe it for payment purposes. Once the public understand the value of such a debit card then they will not hesitate to keep their money in a bank account. He said that if the “Jan Dhan Yojna” is somehow connected with some innovative solution like a card with a touch and go cashless technology it will motivate a lot of people as they will be able to draw value from that card. The only thing needed to ensure the coming of this system is better policy support.

Dr. Gaurav Arya, Associate Director, Public Health and Policy Eli Lilly and Company (India), said that health is a state subject and all decisions in its regard are taken by the state governments. Since health is more of a philanthropy or donor based action, the funds have to come from the centre or if the state is revenue surplus then they can come from the centre. The state would formulate the policy depending on the needs of the state. Mostly the state depends on the center for its funds as it does not have the required funds. Due to this it makes it dependant on the centers own priority and very often health is not a priority. Till date the overall expenditure of the government is 1.2% which is miniscule when it is compared to other countries like Sri Lanka, Bangladesh, we see that they spend a higher proportion of GDP on health. With this disconnect, states with surplus revenues and can invest into health have better health indicators and those states which are poor have poor health indicators. This is a vicious cycle which is difficult to break. The National Rural Health Mission was formed to address these issues, and to give states with poorer health indicators financial inputs. The disconnect has its play in between and the allocation at the state level is spent ineffectively.

Ms. Krishna Sarma, Managing Partner, Corporate Law Group, said that

It is not necessary that the richest states in India have the best health outcomes. She said that governance is the key differentiator. For Ex: Kerala does not have the highest GDP but all indicators of HDI are higher than that of Maharashtra and Gujarat. She said that looking at the regulations in the FDA, we see that the regulators have actually been strengthened in the last decade or so in states such as Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh, Gujarat and Rajasthan. This same vibrancy is missing in the northern and eastern states. She said that in the public policy space there is need for skill sets.

Ms. Yolynd Lobo, Director (India), BSA/The Software Alliance, said that we see many states competing with each other for FDI, what we forget to see is the creditability of country at large and that is where the central government is the custodian of that creditability. She said that many companies will go and invest and states bring new investments and forget about managing the old ones and hence things go bad. When you look at the world bank or ADB bank enter the market and provide funding, they completely control how and where their money is invested. That perspective should be held by central government. They are responsible for developing the branding policy of India.



Mr. Arvind Singhatiya, Vice President- Corporate Affairs, ANI Technologies Pvt. Ltd. talked about simplifying the procedures. Government has issued a negative list. It helps a lot as anything which is a service will be taxed. The new government is a very entrepreneurial in nature as they are looking forward to investments from international players. The biggest stumbling block for international players to come in India is the prevalence of red-tapism. He feels that the government should simplify the procedures and make as many negative lists as possible.

Policy issues underlining the interface between IPRs and Competition Laws: Standards Essential Patents”

- ✚ Session Moderator: **Mr. V. Lakshmi Kumaran**, Managing Partner, Lakshmikumaran & Sridharan
- ✚ **Ms. Pratibha Singh**, Senior Advocate, Supreme Court of India
- ✚ **Mr. Rajagopal Saikrishna**, Managing Partner, Sai Krishna & Associates
- ✚ **Dr. Kirti Gupta**, Director, Economic Strategy, Qualcomm Inc.
- ✚ **Mr. John Matheson**, Director, Legal Policy, Intel
- ✚ **Mr. Akiyoshi Imaura**, Director IPR, JETRO



Session Moderated by **Mr. V. Lakshmi Kumaran**, Managing Partner, Lakshmikumaran & Sridharan



Mr. V. Lakshmi Kumaran, Managing Partner, Lakshmikumaran & Sridharan

Mr. V. Lakshmi Kumaran asked the audience about the discussion about standard essential patents, and FRAND. Highlighting the differences in infringement cases between normal patent holders and standard essential patent holders, he said that when technologies, trade and the industry agree that certain standards will be followed by everybody for the sake of uniformity. These were basically agreed to for interoperability. Therefore these standards are important and everybody has to comply by them for the common good. He further said that if inventors come with inventions and these inventions lay in the standards and since everybody is compelled to follow these standards then they will necessarily be infringing the patents. What will happen is that all the standard essential patent holders would be enriching themselves with the royalties because there is no choice as all have to follow the set standards. Therefore the standard essential patent holders are obliged to give the licenses on a FRAND (fair, reasonable and non-discriminatory) bases. Talking about FRAND he asked as to who will determine whether any particular license term which has been given to the various users are FRAND compatible or not. He asked John the same. He said that courts determine what is reasonable, but can there be an alternative and can a user go to the Competition commission and say that the royalty rates are too high instead of going to the court. Would the competition commission have the jurisdiction to decide the reasonableness or not?

Another question by him was about non-discriminatory issue. He asked that if FRAND license is signed by NSCP holder in a particular country like Korea, will the same license agreement would be given in India, China, Thailand and Nigeria. Will that same license conditions should be given only then will it be called non-discriminatory or it could vary from country to country depending upon the economic situation there. If the license rates in US and Europe is higher than in India and Nigeria would that be discriminatory or not.

Another question to **Ms Pratibha** was related to fair reasonable and non-discriminatory clauses. He asked whether a standard essential patent holder wants to bundle the essential patents and other patents together in a license agreement and ask for money, would that be fair or unfair.



Ms. Pratibha Singh, Senior Advocate, Supreme Court of India

While discussing the interface between IPRs and competition law in the area of standard essential patents Pratibha Singh told the audience that it was one of the hottest topics the country was debating today in courts, in policy, in the government, in the corridors of regulators and in the industry. She discussed the common purpose in IP and competition law as to build a competitive environment and to build innovation. The basic concept of IP could be an antithesis for competition. IP as a policy in India and the world is here to stay. Change in policy should first assess the market conditions and see if there is the need to change IP law or competition law to bring about a balance. While looking at the status of the smart phone industry in India, she pointed out that India has more than 60 mobile phone vendors in which not a single one manufactures in India. Not a single Indian Vendor owns any patents. Most smart phones are only imported and sold as we only market phones. The only employment we create is for marketing and advertising personal.

She asks many relevant questions:

- Where are the thousands of electronics and telecommunication engineers being employed by the Indian vendors?
- Where is the research and development?
- Where is the innovation?
- Do we not have the capability or capital?
- What is the contribution of Indian vendors to the Indian innovation ecosystem?
- What is India's contribution to standards?
- Do we take part in discussions related to standards?

Further she said that Indian bodies that are now being created for creation of standards are being driven by the innovators. All innovators who own technology have made huge investments in India. They have generated employment in India, and set up research and development centers in India. Instead of collaborating and adopting best practices in India, we have hung the words competition and investigations on them. Pratibha Singh further said that analysis shows that before the US and EU started investigations against companies they built the IP ecosystem and set the standards that are followed by us. Looking at the overall market share in India, we see that it is glaringly different



from the entire world. In India Samsung is the highest at 17%, Micromax at 14 %, Nokia at 10%, Karbonn at 9%, Lava 8% and 42% others. Out of the top 68% there are 4 Indian players selling in India. Similarly the world market shows that Samsung has 31%, Apple has 15% showing a huge gap of almost a double figure. This data shows us that there is competition in India. There are a lot of players in India and the prices are the lowest in the world in India. She said that there enough competition in India since the prices are the lowest over here. The roadmap for India in her view is that there has to be collaboration with technology owners, setting up of manufacturing bases in India, adopt the best practices in manufacturing qualitative products, making use of the incentive provided by the government and creating employment. India should not be a consumer and importer of smart phones but a net exporter of them. Out of seven billion smart phone users in the world three million smart phone users are in India and in China. She advises not to treat technology owners as foes but as friends. Invest, time, money and effort in positive cooperation instead of negative publicity.

While talking about innovators Pratibha said that litigation would reduce the incentive of innovators to participate in India's growth. In 5 to 10 years we can be the manufacturing hub of smart phones by assimilation of technology, by technology transfers and collaboration with technology holders. For programs such as Make in India and Digital India to succeed technology assimilation is the key and therefore collaboration is the way forward as innovators are key partners. In her view the debate on competition begins at the finish line of innovation. India has to mature and create innovation before we talk of IP and competition.

Answering the question of Mr. Laxmi Kumaran she said that in her view standard essential patents have to be treated separately from non standard essential patents. She also commented on the issue if the rates could be vary in different territories. She said that the rates broadly ought to be the same because today in the global world where phones are being sold across jurisdictions an Indian company who may get a lower rate may compete with the Samsung in Europe and Apple in US. Why should the rate be different just because the company originated in India. The Rate should be decided on the bases of the technology used and on the bases of the global market, broadly speaking the rates should be the same.



Mr. Rajagopal Saikrishna, Managing Partner, Sai Krishna & Associates



While commencing his speech Mr. Saikrishna informed the audience that he would talk on two broad points which were:

- Standard essential patents
- The perceived jurisdictional conflicts between the Controller of Patents, the Competition Commission of India and a civil court that would hear a suit for patent infringement.

He asked whether patent proceedings involving standard essential patents need to be treated differently than any other standard suit or proceeding for patent infringement considering that our patents act and any patent legislation around the world make no special mention of standards and essential patents being treated in a special manner. Talking about the rules which operate in the context of patent litigation, he said that ideally there are no ad interim or ex parte injunctions granted in patent proceedings or that is a rule that ought to be followed. He said that a patent which is young and untested in the normal course an interim injunction ought not to be granted. In the context of standards and essential practice, where the suit itself is one of a money decree, where the patentee says that anyone willing to pay a license fee determined by him would be granted a license wouldn't Sec 41 of the Specific Relief Act, act as a bar to the grant of an injunction? In context of an SCP there is an argument is often placed in court, that if the validity of the patent is challenged then the defendant who challenges the validity of the patent is considered an unwilling licensee. He also said that if there were the standard rules that would operate in context of a traditional and conventional patent claim then why is it that in a pending trial a defendant is asked to deposit in court large sums of money and security in IP proceedings that could cripple a company as a result.

While talking about the second part of his speech Mr. Saikrishna talked about the perceived conflict of jurisdiction between the Controller of Patents, the Competition Commission and a court that hears a suit for alleged infringement of a patent. He said a civil court that is seized of a suit for patent infringement essentially decides questions of validity of the patent, whether the technology in question is essential, and consequently if there is infringement. If the validity and infringement are established what the monetary consequences should visit the defendant. In contrast the scope and enquiry of the competition commission is vastly different because the competition commission is not concerned with the validity or the issue of infringement. The competition commission is only concerned with the issue of abuse of market dominance resulting in competition being hijacked. Hence there could be a situation where in a patent infringement proceeding the patent is held to be valid, the technology is considered to be essential and infringement has been established and yet the competition commission may still come to a finding of abuse of dominance. He concluded his speech by saying that proceedings involving standards and essential patents are just like any other subject matter and should not be given the special status that they have been given till now.

Answering Mr. Lakshmi Kumaran, Mr Saikrishna said that without any doubt there can be an obvious difference in royalties rates and structures between different territories that would not per say amount to discriminatory treatment and as a logical corollary of that it is important to keep in mind the socio-economic realities of a particular region or territory while determining what the royalty rate



applicable to that territory should be. He also submitted that within that territory similarly placed entities should be treated equally.



Dr. Kirti Gupta, Director, Economic Strategy, Qualcomm Inc

Dr. Kirti Gupta commenced her speech by talking about concepts such as standard settings, what are the innovators doing and why it is highly essential for the health of the industry and for its growth and evolution in India. Her focus was primarily on the mobile industry as all debates are centered around smart phones and tablets and that it was an essential part of our economy. While talking about standards Dr. Gupta said, that in the ICT industry the technology develops in multiple phases, and this is very important to remember because without investment in innovation and downstream technology standards there wouldn't be a vibrant industry to begin with. All the technology we use today is possible due to the fact that firms came together in this self organized industry and invested in standards, solved really complex problems by anticipating many years in advance about what the market demand for a particular technology and put billions of dollars as investment on the table.

According to her the three stages are:

- Firstly, many years in advance the industry needs to develop technology standards and invest in R&D.
- Secondly, the development of standards compliant products start such as smart phones and tablets as without standards and core technology solutions there wouldn't be these products that implement these core technology solutions.
- Finally, the network operators and service providers deploy these networks.

She also said that investing in standards brings about multiple types of risks such as inter-standard competition, as firms which invest do not know whether they would survive against their competitors they also do not know if their technology would be adopted by the markets. She said that at the second stage the inter-standard risks are mitigated when people start developing products. At stage three there is a greater sense of what the market adoption is going to be like when operators start deploying these networks. She said that in order to incentivize innovators to contribute key technologies into these standards and seed the industry we must think of incentivizing risky R&D by reverting those kinds of investments. She also shared a sense of the function of standards bodies by talking about the scale of these types of investments. While sharing some data from 3g and 4g



wireless standards body she said that, there are hundreds of firms from multiple countries that come together in these global standards and solve these complex technical problems, millions on man-hours have been spent over the last decade or so for 3g and 4g standards solely in meeting time which according to her is just the tip of the iceberg as most of the R&D is done outside these meetings where these technologies are developed and these meetings are solely to discuss and choose the technologies based on technical merit. Hundreds of technical specifications each one is a very thick engineering document representing what these standards are. She said that we all have seen the mobile industry evolve in front of our eyes. She concluded by saying that we live in such an era that it is hard to find an industry which is more competitive, dynamic and successful than the mobile wireless industry, and it all has been made possible because of investments in standards and incentivizing innovators and their investment in R&D.

Answer the query raised by Mr. Lakshmi Kumaran, Dr. Kirti Gupta said that in context of reasonableness and where that should be determined in the court or the competition commission. Letting the markets decide means that we let the firms decide based on bilateral negotiations and if these negotiations fail then the licensor has the power to take that matter to court. It is really difficult to understand the matter of holdup because as FRAND commitment is made by the patent holder this idea of a unilateral power over price which is idea that relates to market dominance is entirely negated. If a licensee does not agree with the price the licensor is putting on the table the licensee would take the licensor to court, hence the market decides and in the case of market failure the court decides. If the matter is to be taken to the CCI it needs to be shown that there is a potential abuse of dominance, but if there is a FRAND commitment and there is an access to justice through courts there is not a market dominance issue at all.

While talking about whether the royalty bases should be the chip or the device price, she said that there are multiple considerations to take into account. In the industry there is a reason why the net selling price of the device is usually used as the royalty base. She that the technology used is not limited to the devices, but also extend to the infrastructure and the base stations etc. The royalty bases according to her could be the entire revenue chain. The industry has converged to use the royalty base as a device for a variety of reasons. On the issue of royalty stacking she said that it may cost a ton of money to create something and the creation of that something is the cost of multiple tangible and intangible inputs. We all know that the cost of creating something lies much more in the ideas, than in the materials to create it. When we do not think of capping the other tangible inputs like the material that goes into creating something, why is this notion of capping the value of ideas entertained.



Mr. John Matheson, Director, Legal Policy, Intel

Mr. John Matheson said that Intel is a holder of many standard essential patents and also is a licensee of standard essential practices and that the system works perfectly where ever they operate in the world. He said that a standards body's efforts to establish a standard was a very complex process as you've got companies bringing their technology to the standards body and presenting it as the best solution and try to get their patents into the standard which is followed by a lot of R&D and money. He said that at the end of the day after all the competition, arguments and spending of money you end up with one standard and the competitors who try to bring in other technologies or other solutions fall away, tending to leave one group of winners and then the rest. The industry has to coalesce around that standard because we cannot have 15 or 20 different ports behind your computer and you want to have one USB port which speaks to all your devices. People want every technology to be used to be as simple as possible. The standards system is very effective in delivering that outcome. He said that competition has changed substantially and everyone in the industry is banking a particular standard the fortunate players who happen to own those standard essential patents are in a delicate position as they need to recoup their investments in IP, R&D etc. They also have to recognize and be respectful of the fact that they have been ordained that special position by the standards organization. The principle tool by which this discipline is imposed is by a mechanism based on fair reasonable and non-discriminatory grounds, which is the trade off. Mr. Matheson also said that it is the potential abuse of this trade off where all the issues arise. In the world today there is a sea of litigation when standard essential patent owners are trying to recoup their R&D by charging as high a royalty as they can and the licensees are arguing for the low a royalty as they can, which is a natural tension that happens in our system. The courts have caught on with the types of abuses in the systems and the EU is now leading the way with a number of leading cases and have summarized very well the types of abuses that happen in standard essential patents, He further quoted from the EU's policy paper "The issue is that you have been defacto locked in once the standards have been set, and this gives companies the potential to behave in a anti competitive way. For ex- by holding up users after the adoption of the standard, by excluding competitors from the market, by extracting excessive royalties and by setting cross license terms which the licensee would not otherwise agree too had they not been in a position of having no bargaining power."



Looking at the landmark cases it can be seen that they have been litigated by very big names. He talked about the EU decision in Motorola Vs. Apple where a German Court injected Apple in relation to one Standard Essential Patent and basically shut down their business of I-Pads and I-Phones until Apple signed up to a license. This license included terms that precluded them from challenging the validity of the patents they had been licensed. EU said that is anti-competitive and it is also anti-competitive for a Standard Essential Patent Holder to seek an injunction against a willing licensee. Mr. Matheson said that the interesting thing about these cases is that if you are a really big company with a big pocket and a massive litigation budget at the end of the day you can resolve these issues, but what about the smaller companies which don't have that budget and that just started up. Those companies that are supporting Make In India, who want to be innovators, and leaders of the markets, they need access to the same kind of justice that the large companies get. He thinks that the challenge here for India is to learn from international experience to look at the bad points and to try and establish a solution where we can avoid small companies being saddled with outrageous royalties.

In the context of royalties, he gave an example of a US case of Microsoft and Motorola when there was an argument about royalties on Microsoft's X-BOX the usual debate about what the royalty level. Motorola Mobility was seeking \$3 and \$4.50 per X-BOX. Their case was litigated and millions of dollars later Microsoft succeeded and the judgment said that the proper royalty rate was 3.5 cents per X-BOX, showing that big companies can defend themselves and out challenge their competitors. He concluded his speech by addressing the panel about the issue, and the need for a solution that enables everyone in India a share in these opportunities without the outrageous litigation costs.

Answering Mr. V. Lakshmi Kumaran, he said On FRAND what reasonable means is intrinsically very complicated. The courts are the best say what is reasonable since they have been dealing with damages forever and have been dealing with licensing issues forever. So the courts have the expertise, so when they determine what is reasonable they look at a whole host of different things. They will look at licenses companies have for the same technology, but they have to be careful as a FRAND encumbered patent is different from an everyday garden variety patent. Once there is a FRAND commitment the reasonable and non-discriminatory element tests are very important. According to him the courts are best to check these tests and abuses are dealt by the competition authorities. Secondly if the royalties based on the device or the component is a very interesting question. They were strongly of the view that the licenses should be sought by the component manufacturer. Since Licenses at the finished machine stage would mean a percentage over things they had no contribution to, and it would be a fairer solution if licenses were sought at the component level. Talking about the royalty stack argument simply means that the judge must take into account the total number of standard essential patents in the mix when they figure out what the royalty rate should be.



Mr. Akiyoshi Imaura, Director IPR, JETRO

Mr. Akiyoshi Imaura commenced his speech by addressing the status of Japan with regard to **Standards and patents**. He shared a case law from the IP High Court Japan. The case was decided on May 16th and was between Samsung and Apple in regard to standard essential patents. He said that in the cases Samsung is a right holder. The IP High Court invited public opinion on how to handle or determine and interpret this issue. Many comments came in from the industry using which the IP High Court came to a decision on the issue. He said that there are several issues in these types of matters but he wanted to focus on three main ones. There is a dispute on whether in these kind of case Samsung can claim the damages and whether it should be less than or equal to the value of license fee which should have been given by the contractor if it is signed. The correct answer to this is a “yes” and Samsung can claim damages as long as it is equivalent or less than the value of a license fee. The other thing which **Mr. Akiyoshi Imaura** said was that if Samsung does not declare this fund, there is a possibility of claiming damages higher than the value of license fee based on the FRAND contract. In this cases the IP High Court delivered a negative decision that apple cannot claim damages which is higher than the value of a license fee. There was an exception that is the defendant does not accept or wish to be licensed based on the FRAND conditions, there is a possibility that the right holder can claim damages which is higher than the value of license fee. In the context of claiming injunctions, **Mr. Akiyoshi Imaura** talked about a case from the Japanese IP High Court where it said that in these situations if Samsung made a FRAND declaration then the injunction cannot be granted. There are some conditions that the defendants need to prove such as that right holder makes the FRAND declaration, the defendant wishes to be licensed based on FRAND conditions, such as making some negotiations with the right holder and propose some conditions or otherwise in Section 100 of the patent law the patent holder can claim the injunction. The reason the injunction was not granted in the above mentioned case is that there were many debates on whether competition law was applicable. The IP High Court said that the patent act which is a civil code and section 1 sub section 3 talks about abuse of rights. Based on this the claiming of an injunction is the abuse of rights and could not be granted.

The Japan Patent Office has undertaken many efforts for better examination with regard to standard essential patent such as they have signed several international authorities of standard. The database is kept safe in JPO networks so as to prevent any third party from stealing cutting edge technology. He talked about doing research studies related to clarify is a standard document is open to the public or not. He concluded by saying that Japan was discussing all these matters and would like to develop these issues by cooperating with India.



Taxation

- ✚ Session Moderator: Mr. Sujit Ghosh, Partner & National Head Tax Litigation & Controversies (IDT)ADVAITA LEGAL
- ✚ Mr. Krishan Malhotra, Head Taxation, Amarchand & mangaldas & suresh a. shroff & co.
- ✚ Mr. Ashok Kumar, Barrister-at-Law, Chalfont Chambers, Sydney



Chaired by Mr. Sujit Ghosh, Partner & National Head Tax Litigation & Controversies (IDT)ADVAITA LEGAL



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

Mr. Malhotra started his discussion on **overview of key international developments and highlighted the Base Erosion and Profit Sharing (BEPS)** on which G-20 has been working with Organization of Economic Corporation and Development (OECD) in order to curb



multi-national tax avoidance and offshore tax evasion in developing countries. He discussed, at length, the concern to digital economy, make dispute resolution more effective, preventing artificial avoidance of PE status and assurance that transfer pricing outcomes are in line with value creation/capital/intangibles. It was also shared how other countries like China, Australia, New Zealand, Argentina, Canada and United States have been amending their laws in order to curb tax avoidance and off-shore tax evasion.

It was also discussed that how the Mauritius route from income tax perspective has been reevaluated and new amendments brought in into the Indian legislation by the Government for evaluating the Mauritius route. Transfer pricing developments were discussed by sharing Shell and Vodafone judgments pronounced by Indian Courts. The Transfer pricing adjustment in relation to marketing of intangibles was also discussed and famous LG Electronics India's judgement was discussed. Advance Pricing Agreement and Safe Harbour Rules were also discussed. It was also informed that Transfer pricing regulations have been expanded to domestic transactions. The General Anti Avoidance Rules (GAAR) was also discussed in detail and its implications were highlighted.



Mr. Ashok Kumar, Barrister-at-Law, Chalfont Chambers, Sydney

“Goods and Services Tax (GST) – Some and traps and pitfalls for practitioners – An Australian perspective

Ashok Kumar, Barrister, said that Goods and Services Tax (GST) is consumption based tax fixing rates on supply of all goods and services unless exceptions apply under the law. As the new tax was introduced many other changes in relation to the tax laws occurred. Australia introduced very comprehensive tax reforms. Similarly, India had to repeal many different types of taxes.

He talked about the Australian experience, the pitfalls and traps experienced in that jurisdiction. Australia has tackled these issues through a lot of GST Rulings. Over the years and since 2000 when the Australian GST tax kicked in, the core areas where the tax is likely to have impact has been subject to considerable GST public rulings and other interpretive decisions issued by the Tax Commissioner. He said that the Australian government whilst introducing a very broad-based tax had the policy of excluding certain items from GST. The government tried to minimize any inflation created by GST on the housing, food (“fresh fruits and vegetables” as further detailed below).



Export items are also subject to special rules. The whole idea of this tax has been to make the Australian exports cheaper. Although there are exemptions on food the ordinary consumer probably pays larger proportion of GST.

He further discussed the Australian GST model and said

4 The following supplies are GST-free in Australia:

- exports
- residential rent;
- international air and sea travel;
- domestic air travel if purchased overseas by non-residents;
- most health, education and child care services;
- basic food for human consumption (not take-away etc);
- charitable activities;
- religious services;
- local government rates;
- water and sewerage.

5. The other GST-free supplies include:

- the sale of an existing business (“the supply of a going concern”);
- the first supply of precious metals;
- supplies through inwards duty-free shops;
- grants of freehold and similar interests;
- cars for use by disabled people.

6. A supply only becomes a taxable supply if:

- it is made for consideration;
- it occurs in the course of carrying on an enterprise or a business;
- supply is connected with Australia; and
- The entity is registered (unless the supply is GST free or input taxed).

He said that only a registered enterprise is entitled to charge GST. It is mandatory for most business turning over \$75,000.00 in Australia to register for GST. The seller of goods and services are required by law to charge GST tax (Output tax) on the invoices. The purchaser who has paid GST (Input tax) can claim the GST paid on the purchases when the purchasing business completes its tax return. In contrast in pre-GST era, the sales tax were levied and paid when the goods were sold but there was no credit.

He said that in a Joint venture agreements there may complications as to who is registered for GST. The registration is key to claim input tax credits and issuing of Tax invoices. The Australian Business has a Number (ABN) to be shown to charge GST.



He said that certain activities are not subject to GST (input taxed) such as financial and insurance companies. Australian GST law is generally flexible as to the structure of the enterprise including branches may register for purposes of GST.

He said that the common features of both Australian and Indian GST systems are that there are at least attempts to unify one level of tax – the State & Federal Government displacing one or more other taxes such as Sales tax, stamp duties and so forth. NSW retains its stamp duties revenue raising power. There has already attempt at consumption based tax (such as CENVAT) and attempting to make the tax efficient in India. The key differential feature is that in Australia is that only the Federal Government has the power to levy GST. The tax pool is then shared in accordance with agreed formulas with the States. In the Indian system States also levy their own taxes and thus different to the Australian system.

Some areas impacting claims and charging of GST

Registration

The suppliers charging tax must be registered for GST. Problems have arisen in business sale where a purchaser has paid vendor of business in two scenarios:

- (i) Where the unregistered business charges GST (the business purchaser is not able to claim the input tax credit –thereby loses the benefit of the tax credit);
- (ii) Going concerns – when the Commissioner has not accepted that the business being sold is a going concern; eg Newman v C of IR (1995) 17 NZTC 12,097,(transactions “repeated over time”). That means that the business purchaser has to pay GST and may have cash flow implications (if the business seller is GST registered and usually would be to charge GST then can claim input tax credits).

The business sale and purchase agreement often provide that the purchaser indemnify to pay for GST shortfall even where the seller is later found not be entitled to zero ratings..

Housing

He said that complications often arise regarding what types of transactions are exempt from GST. Commercial leases are subject to GST output tax but the residential leases are not. There have often been disputes with the Commissioner where leases which were claimed as residential lease in the circumstances where the Tax Commissioner maintained it to be commercial lease and imposed tax on commercial lease. The intended use of the lessee is key factor. The use of property for more than one purpose could create problems for the business. In terms of newly constructed properties, there have been formulas to minimize the payment of GST where property is sold as residential property and subject to margin scheme so that minimum tax is payable whereas on commercial property full GST would apply. When the tax kicked in determining the cost or purchase price created some complexities. Whilst most leases would straight forward residential or commercial leases, there are considerable problems in cases of overlapping usage.



Damages / court settlement

The role of lawyers is to appropriately structure the settlement agreements for disputes in any Court. The payment of damages may generally be exempt from payment of GST. He said that the problematic area is that litigation may have impact on GST. He asked whether the payer claims any input tax credit by way of damages and whether the recipient of damages pay GST on said damages.

Off-shore supplies / property

In relation to properties, he said that the seat of the property has always the basis of taxation. Off-shore supplies in connection to the properties have created problems in the past. There was a case of Fijian company engaging the services of New Zealand marketing company promoting the services – the occupancy / services in Fiji. The company from New Zealand was taxed for services performed in New Zealand in relation to property in Fiji:

Citing the cases of *Malolailai Interval Investment NZ Ltd v CIR (1997) NZTC 13,137*. He said that Australia has adopted this interpretation. As the holiday marketing activities “time share” for Fijian company was not connected to overseas supplies.

These are sorts of traps that India is more advanced as a beneficiary of off-shoring of services from many countries around the world. This is an area that may come before Indian courts as to whether it is tax exempt activity or subject to tax. The overseas client would not have the benefit of input tax credit and thus there would be costs disadvantage to the parties in such a regime. Similarly an Indian architect draws up plans and but the work is actually carried on out of India. The issues which may arise are whether the client ought to be taxed. In cases of non-residents of India who are not present in India but done in connection with work done in India. The property is being used for residential or commercial purpose itself would have tax implications and where residential accommodations are exempt, they would not be a subject for GST.

GST on Imports

He said that the GST is assessed is paid when the goods are imported. There may be small players / cottage industries / home-based industries not registered for GST and thus would have to pass the GST component (“creditable acquisition”) paid to the Customs as costs to the consumers and businesses. Business purchasing products from such players would not have the benefit of the credit from customs GST paid at the time of the arrival of the goods. This is registration issue that may be overcome by using the registered player to import the goods if the purchase is for a specific customer (and price disclosure is not an issue).

There may even be goods imported purely for exports and the exempt status may not put the exporting purchaser in the most advantageous position.

Transitional issues

There was a transitional period in which stock on sales tax was paid – there was duplication of tax past the transitional dates as GST (output tax) was chargeable. The inventories held prior to tax



commencement dates (no input tax existed) were creating and sometimes the application of transitional rules were not clear. He asked whether such issues arise in India.

Other issues

He said that taxation of intellectual property was a grey area. The payment of monies in respect of intellectual property would generally be subject to GST unless amounts are insignificant. He also said that there are huge compliance costs as businesses become the tax administrators for the government and smaller business may be disproportionately affected. In India small business are engines of the economy.

Tax / GST Ruling system

He said that there also were public GST rulings issued by the Commissioner. The taxpayer's advisers use this for the client's affairs. Taxpayers can obtain advance tax rulings from the Commissioner which could be used to minimize or avoid penalties were the position adopted to claim not to be correct provided the Ruling is based on the truthful facts.

Impact on systems

There are many challenges ahead for businesses. The impact of the introduction of GST on the enterprises in India would require businesses to address some of the following:

- (a) The impact of the abolition and introduction of the new tax on the sale price and any impact the tax would have on the industry and the market share.
- (b) Process modification and improvements;
- (c) Systems and accounting modifications to accommodate the new tax;
- (d) The risk management such as the transactions are properly captured and properly accounted for.

Tax advisers

He said that to be compliant with the challenges imposed by this new tax, there would be many opportunities for lawyers and tax advisers before the interpretative rulings set in settle the law. No doubt the businesses would for certain have to engage lawyers to tackle the challenges this tax would present. At the end of the day any tax is cost to the business. There would be a role in seeking private rulings from the Commissioner affecting any proposed transactions as well advising the clients on the state of the law.

While concluding he said that New Zealand's GST tax model (introduced in 1987) is the most successful model because of the less exemptions and more uniform operations. There are many challenges ahead for businesses in India. Unlike Australia, India is somewhat late in introducing this tax. However it already has a form of consumption tax. It may be that the businesses are unlikely to be as challenged when the Indian GST law comes into operation next year compared to the Australian counterparts when this tax was introduced in 2000.

Alternative Dispute Resolution India as Center for International Arbitration

🚩 **Session Moderator :Axel Heck, Attorney-at-Law & INBA Int'l Sec. Co-Chair, Germany**



- ✚ Lata Krishnamurti, Attorney-at-Law, India
- ✚ Edgar Phillipin, Attorney-at-Law & Law Professor, Switzerland
- ✚ Caroline Bechtel, German Institution Of Arbitration (DIS)
- ✚ Shehara Varia, Sri Lanka Arbitration Centre (ICLP)
- ✚ Scheherazada Dubash, Deputy Head (South Asia), Singapore International Arbitration Centre (SIAC)
- ✚ Aditya Kurian, Hong Kong Int'l Arbitration Center (HKIAC)
- ✚ Oliver Alexander, Attorney-at-Law, Germany & Qatar



Moderated by Axel Heck, Attorney-at-Law & INBA Int'l Sec. Co-Chair, Germany

Reflections by an International Arbitrator on the Conduct of International Arbitration Proceedings

Axel Heck said that according to conventional wisdom, resolution of disputes, in the end, is all about facts. You want your arbitrator to be competent not only as a professional, but also as a human being. He must be passionate about resolving the dispute before him fairly and as speedily and cost efficiently as possible. You want a solid jurist, not a mechanical lawyer; someone who, in an international arbitration, is sensitive to the different cultures and knowledgeable about the different legal systems involved.

Here are some situations the arbitrator needs to be able to cope with:



In my view, it is the function of an arbitral tribunal to ascertain and decide facts in dispute between the parties who employ them. (I use the term “employ” advisedly: Arbitrators, in my view, are agents of the joint will and purpose of those who appoint them.) Those facts, I argue, include the fact of the law that applies to the merits and its effects upon the disputed issues. Arbitrators have powers only insofar, and for as long, as these are necessary to make the decisions they need to reach.

He talked about certain situations which an arbitrator may face, these were;

- At the timetable conference, the lawyers inform the arbitrator that they have agreed on a timetable already. The arbitrator, however, sees the proposed timing as being way too long. ----- What are his options?

- One of the arbitrators feels that his colleague(s) on the tribunal is / are likely going to favor one of the parties. ----- What are his options?

- At the hearing, one of the parties asks the arbitrator to make a proposal for how the case might be settled; the other party concurs / objects. ----- What are his options?

- In the course of the proceedings, the arbitrator arrives at the conclusion that one or more of the parties committed a criminal offence (e.g., money laundering; corruption). ----- What are his options?

- Neither of the parties invoked the antitrust / competition laws in their pleadings. Yet, the arbitrator has concluded that the underlying agreement violates section 1 of the (U.S.) Sherman Act / article 81 of the (EU) Treaty of Rome. ----- What are his options?

- There are three agreements that are relevant to the outcome of the arbitration. One drafted in the English language and governed by English law; another in the Russian language and governed by Russian law; the third in the French language and governed by Swiss law. ----- Would it be useful if the arbitrator were to ask the parties to grant him the powers of an amiable compositeur or to decide the case ex aequo et bono?

- In the course of the proceedings, one party has a “truck load” of documents (allegedly relevant to the case) delivered to the other party and to the arbitral tribunal. – What are the other party’s / the tribunal’s options?

- Prior to the constitution of the arbitral tribunal, the complaint and the answer having been exchanged between the parties, the defendant files a court action for declaratory judgment that the matter is not



for arbitration and so advises the arbitration institution, requesting that it stay the proceedings; specifically, not constitute the arbitral tribunal. – What are the parties' / the arbitral institution's options?

- The “place of arbitration” is so remote from where everybody in the proceedings resides that nobody wants to go there. – What are the options; and, why does the choice of the “place of arbitration” matter?
- Confidentiality of the arbitration process!? ... What about it?

He said that corruption clearly is a major obstacle to the establishment of the rule of law. A true system under the rule of law can exist only in a democracy in which international human rights standards are respected. Which requires an earnest effort to root out corruption, this despicable phenomenon that affects everyone in a society; in particular, the poor.

International arbitration to be introduced in India



Lata Krishnamurti, Attorney-at-Law, India

She said that as we know arbitration act still has loopholes. The Law Commission of India has come up with proposals to improve it.

- 1) Contain the delay– Arbitration proceedings now go on like court proceedings forever and ever. There is prescribed time limit under the proposed amendments. For instance–interim order obtain under sec 9 is for 60 days, so you can't take interim order and continue delay.
- 2) Repeated adjournments- When unreasonable adjournments are requested then one has to pay the cost of proceedings.
- 3) Another provision going to be introduced under 6A is that a person who loses the litigation will be asked to pay for all the unnecessary delays and counter claims he had made.



She further said that the existing Act has a neutral approach towards institutional arbitration. Whether there is contact or not has to be decided and the arbitral tribunal should not waste time in court. Under sec 11 power is given to Supreme Court and High Court to refer matters to institutions. Electronic writing can be introduced.



Edgar Phillipin, Attorney-at-Law & Law Professor, Switzerland.

He said that Switzerland has been a place for institutional arbitration. Adherence to timing is the most important of all aspects. A case should be decided within six months in Switzerland. Things might get tricky in arbitration and you might need the assistance of the court, which will assist you with enforcement but will refrain from any real intervention. In international arbitration it is possible to rule out any appeal about the arbitral award. He said that Switzerland has a procedure of emergency relief which can lead to quick decision. Switzerland is neutral country, its arbitrators are impartial. It is considered as a rule which can be checked and challenged. On the question of whether cases of fraud can be arbitrated or not he said that they have a very liberal perspective about it. Where cases of fraud are involved, it does not prevent the involvement of the arbitral tribunal designated by the party.



Oliver Alexander, Attorney-at-Law, Germany & Qatar.

He said that different countries have set up their own arbitration centers and rules. They also have financial centers and they also have their own arbitration rules. There are international arbitration authorities like ICCE, London court of arbitration. The main contractor subcontracts hundreds of contractors all over the world and they engage in arbitration. It is not only important to know the procedural rules, the arbitrator should also be well aware of all the facts. The beauty of arbitration is that the arbitrator and the parties design the rules, terms and references and work together.



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

He said that in ad-hoc arbitration we see, that where no institution is used but an arbitrator is selected, the parties can decide how they want the procedure.



Caroline Bechtel, German Institution of Arbitration (DIS)

She said that international and domestic arbitration in Germany is growing at a fast pace and is handling 30% of international disputes at the moment. German institution of arbitration is fully independent of any other chamber or state entity. It sets its own policy which gives it a high credibility and flexibility to quickly respond to all the market needs. Germany revised its arbitration law in 1998 there by implementing the provisions of the worldwide recognized constitutional model law on international commercial arbitration. The balance between judicial intervention and judicial support and judicial control is essential for development of arbitration. The power of state court to intervene is regulated very specifically. Section 1026 of the German Code of Civil Procedure, regulates the extent of the courts intervention and provides following in sec 1025 to 1061 which is the arbitration law. It says that no court shall intervene except so provided in the book. Courts cannot supervise the proceedings. Courts are not entitled to supervise the arbitration proceedings

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

While talking about modern arbitration he said that in 1995 Sri Lanka adopted a new arbitration law, however broad concepts of party autonomy and minimal judicial intervention were little difficult to digest in adversarial environments in the law commission reports from procedural point of view the per sitting fees for arbitrators, retired judges controlling the proceeding and duplicating court procedure. In Sri Lanka the most successful arbitrations are in the construction industry, lead by engineers and consultancies rather than lawyers and delays in the conclusion of proceedings and thereafter in enforcement and of course the difficulty in obtaining interim relief because of sec 5 which is common in India too. Amendments in laws will bring the required clarity. There is a need for training in arbitration, including lawyers, judges and other parties. She said that ten years ago their institute which is a non-profit organization set up by businesses and the commercial community, commenced a diploma in arbitration, they have several training programs with assistance from Sweden. She feels that these training have in some way impacted the modern arbitration practice. Courts have begin to realize that they should play a supportive role and are



recognizing arbitration agreement in a recent judgments by a Supreme Court where the parties had a poorly drafted arbitration clause but because the party agreed to arbitrate the judgment was that they should arbitrate in terms of the Arbitration Act because the intention of party was very clear. She believed that regional training was more effective than to do it on their own. She said that everyone should learn from other countries regional groups



Scheherazada Dubash, Deputy Head (South Asia), Singapore International Arbitration Centre (SIAC) –

She said that last year they decided to open up representatives offices in India at Bombay. The purpose of the office is to spread awareness of operations under SIAC rules. She said that they reach out to companies and law firms and provide ideas and knowledge of how arbitration works. They also promote the court of institutional arbitration in India. She said that they are proud of themselves as they were able to complete the arbitration between 9 to 12 months and if its overly convoluted then may take 18 months, have a special procedure that guaranties arbitration conducted within 6 months time frame till the time arbitral tribunal has been appointed. She said that certain criteria need to be satisfied in order to apply for expedited procedure, president of SIAC accepts the application and it needs to be of certain value of Singapore dollar 5 million. 140 applications have applied till date and 100 are accepted. 42 applications have come for emergency arbitration and all have been accepted. They have panels for arbitrators from various jurisdictions across the world. They are available publically and parties are free to appoint arbitrators from their panel.



Aditya Kurian, Hong Kong Int'l Arbitration Center (HKIAC)

He said that behind the success of Hong Kong International Arbitration Center there are many reasons. Firstly the government has played a very pro active role in promoting ad hoc and institutional arbitration. If one party fails to appoint an arbitrator the HKAC will appoint an arbitrator. Secondly Hong Kong courts have been extremely supportive towards arbitration. They follow a pro-arbitration system based under the New York Convention which makes it very difficult for parties to set aside awards in Hong Kong. The Hong Kong Supreme Court provides that if party is unsuccessful in setting aside an award it is going to be added to the indemnity cost of the winning party and that is very fair and that leads to less applications to set aside awards. He said that India can do the same to prevent the challenges brought by setting aside of awards. The arbitration community in India needs to take a more pro-active role in training and setting up an arbitration bar. All other countries such as London, Hong Kong, Singapore have been very successful because they have very strong arbitration community and bar. There are no very large arbitrators in India most of them tend to be Judges of High Courts and the Supreme Court. Some of them are good but most of them are not the very best option. If you look at the best arbitrators in International arbitrators you have to find experts and trained ones. So this culture needs to be developed in India.

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

He said that it is a good idea to appoint a higher Judge to be arbitrator. The problem in India is that they have enormous backlog of cases, so how does one deal with it through arbitration for e.g. labor, In many countries labor is not arbitral, in United States it is and its very successful and so how can India through arbitration reduce the case logs.

Lata Krishnamurti, Attorney-at-Law, India

She said that if we send more and more cases to arbitration then it will definitely reduce the burden on the courts. It is the ideal way of dealing with the enormous backlog of cases. The problem is that arbitral proceedings so far take just as long as court proceedings which are now deal with by saying that Arbitral Tribunals have the same powers as Civil Court in dealing with interim reliefs. The questions is on how the arbitration clause to be drafted? In India there exist certain provisions for



instance Arbitral Tribunal can take the assistance of the court for recording evidence. They say when parties do not mention in their arbitral agreement in a foreign arbitration clause, even domestic laws such as sec 9, 27 and 37 would all be applicable, so you have to be careful and mention if you specifically want to exclude the jurisdiction of Courts in India. It has to be expressly said that you do not want the application of these sections. In India we unfortunately do not have very qualitative or knowledgeable arbitrators in institutions so people opt for ad-hoc arbitration. She said that we have to appoint and work on improving the quality of people who are enrolled in arbitration.

Audience- as we have inefficient arbitrators then why don't we consider a centralized globally body like as in London so that such chartered appoint the arbitrators?

Oliver- I don't support central global body cause you need to find your specific arbitrator with expert in the field of arbitration you have and in centralized body it is very remote.

Scheherazada Dubash, Deputy Head (South Asia), Singapore International Arbitration Centre (SIAC)

She said that in order to have better arbitration there is a need to have specific criteria for appointing them. They should have the required experience and should know how arbitration is conducted. They should be experts in arbitration.

Audience Questions-

- Can we introduce arbitration in a tax practices? If no then why?
- In institutional arbitration what are the possibility of mediation and consolidation, have we explored that in the context of settlement of disputes in India keeping in view the explosion in litigation that we have?

Lata Krishnamurti, Attorney-at-Law, India

As routine practices in family matters, property matters and commercial matters within the family, most of these go to mediation first, and there is a provision in the same Act. The 4th part of the act deals with that. The Delhi High Court has been successful in most part and many of civil suits which go on for 20 years to get resolved are referred to mediation.

Edgar Phillipin, Attorney-at-Law & Law Professor, Switzerland

He said that it is difficult to introduce arbitration in tax matters because after all the tax authority has a deciding power and very often they do not see the point in resolving the disputes other than the Supreme Court of Switzerland. However to prevent it you can have a corporate deal as e.g. then you can get an approval of the authority prior to implement the deal.

Trade Secret Law

🚩 **Session Moderator: Dr. Pinaki Ghosh, AVP & Head IP, Reliance Industries**



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ASSOCIATION

- ✚ Ms. Tusha Malhotra, Partner, Anand & Anand Law Services
- ✚ Mr. Subramanya Sirish Tamvada, Partner, Trustman Legal Services Pvt. Ltd & Assistant Professor at Jindal Global Law School
- ✚ Ms. Pooja Dutta, Managing Partner, Astute Law
- ✚ Mr. Vidya Bhushan Mehrish, Partner at LEXORBIS



Moderated by Dr. Pinaki Ghosh, AVP & Head IP, Reliance Industries. He has introduced to all panelists of his panel.



Dr. Pinaki Ghosh, AVP & Head IP, Reliance Industries

Dr. Pinaki Ghosh defining a “trade secret” any kind which is technical, commercial, financial, strategic, logistical, scientific, human resource etc everything can talk about trade secrets. Trade



secret has features such as it should not be known to others, not generally known to the relevant business circles or to the public, it should have economic value and it should maintain secrecy. The presence of these three things can be called as a trade secret. Confidential information is generally limited to a single or preliminary event in the conduct of the business whereas the trade secret is a process or a device for continuous use in the operation of a business.

The factors used by the courts to determine whether the information is a trade secret or not is to see:

- The extent to which the information is known to people within or outside the owners business.
- The extent to which the employees and officers in the business know it.
- The extent of measure taken by the corporation to guard the secrecy of the information.
- The value of the information to the owner and the competitors.
- The ease or difficulty by which the information may be legally acquired by others.
- The amount of time skill, effort, capital etc that has been invested to develop that information.

Types of trade secrets:

- Financial information
- Scientific and technical information
- Negative information
- Commercial information
- Test data of drugs
- Computer software and hardware
- Invention disclosed in pending unpublished patent applications
- Business plans and strategies
- New product names
- Customer names
- Sales data
- Financial projections

He further talked about studies done by him about how Intellectual property laws are being introduced into existing statutes in India. He stressed on the importance of a trade secret law so that India could develop its overall IP system. Trade secret violations in corporations are mainly concerned with explicit knowledge, the trade secret that is taken away from the companies.



Ms. Tusha Malhotra, Partner, Anand & Anand Law Services

Ms. Tusha commenced her speech by talking about the practical side of trade secrets. She talked about the concern of clients at the contractual level. According to her, the trend of trade secret jurisprudence in India is based on employer-employee violations, breach of confidence and breach of confidentiality obligations. Talking about contracts, she said that when certain employees work at highly relevant positions where they would know the know-how of the company, and how would an employer protect himself against this employee. There is no certain answer to that as contracts vary from company to company and there is no guide book. It all depends on the nature of the business conducted by the company and that helps in identifying those key positions in a company where the know-how is divulged to employees.

Other concerns that clients have is regarding how they are going to protect their trade secrets in the courts as there is an open court system in India where people can just walk in, files are not kept confidentially in sealed boxes or secure rooms. The courts have recognized the essential requirement of protecting a trade secret as a trade secret even when it is under litigation. There are procedures devised for this purpose. The courts created a confidentiality club where the concerned people from the parties in consultation with their lawyers amongst themselves with consent identified people who are going to be privy to the confidential information. These people would then sign an undertaking which would hold them liable in cases of breach of any confidentiality. Hearings would take place in closed chambers. The courts would make such arrangements for special matters where there are boxes being created to keep the files. During inspection of files the presence of the opposite council is mandatory. These are some ways by which the trade secrets are kept intact.



Mr. Subramanya Sirish Tamvada, Partner, Trustman Legal Services Pvt. Ltd & Assistant Professor at Jindal Global Law School

Mr. Subramanya said that from the perspective of the industry the leakage of trade secrets and information could be very damaging. It could damage the business of an entire company. He also said that despite tons of legislations India does not have any particular legislation for trade secrets. However other acts do contain clauses which help in governing trade secrets such as the Indian Contract Act which does provide a lot of protection to companies from employees through various confidentiality agreements. There also are specific laws with respect to patent rights, trademarks, copyrights etc. He said that the main question is on how we can protect trade secrets and how can we enforce them. How will disputes on trade secrets be resolved?

He said that the situation in the pharmaceutical industry is very complicated as leakage of information and protections for it would definitely take the prices up because of the various costs involved, and the general consumer would not be able to afford these medicines.

He also said that enacting a new law is more about social policy and the social perspectives have to be taken into consideration to keep a check on the impact the law is going to have. Talking about financial, commercial, technical and negative information he said that negative information should not be protected because it may affect the end consumer as they would not know what exactly the company is doing and not give a scope to judge what they are getting into.

Competition Law

- ✚ **Session Moderator: Mr Amitabh Kumar, Member, Governing Council CIRC & Partner, J. Sagar Associates**
- ✚ **Mr Manas Chaudhuri, Partner, Competition Law Practice, Khaitan and Company**
- ✚ **Ms Surbhi Mehta, Head-Competition Law, APJ-SLG Law offices**



Session Moderated by Mr Amitabh Kumar, Member, Governing Council CIRC & Partner, J. Sagar Associates



Mr Amitabh Kumar, Member, Governing Council CIRC & Partner, J. Sagar Associates

Mr. Amitabh commenced his speech by saying that the procedures before the CCI the appellate tribunal and the Supreme Court in connection with cartel investigation is the same procedure applied when it comes to abuse of dominance. To explain the meaning of abuse of dominance he shared a landmark case from 1976 which was decided in the European Court of Justice. Also known as the banana case, the facts were as follows. A dealer of one of the very large banana plantations and sellers had complained that his dealership had been canceled because the owner of Chiquita



brand of banana was the dominant player and therefore was abusing his dominance in trying to cancel the dealership. When the matter reached the court the defense was that banana was a fruit which competes with other fruits and therefore bananas form a very small part of the large fruit market therefore there cannot be a question of dominance. The European Court of Justice came up with a very unique finding which has been loved and criticized equally since 1976. It said that banana is a very unique fruit as it is seedless and it is the only fruit which is in demand by the toothless, i.e. the very young and the very old. Hence it does not have a competitor and banana is a market by itself. Being a market by itself then the person who has a very high market share in selling bananas is naturally a dominant player and once it is dominant then its conduct on the market can be treated as an abusive conduct. He further said that all these elements have come into our competition law as well and the takeaway is to first define a market. Once this is done one has to see whether the player who is under investigation is dominant in that market. The proof of dominance under the modern law is based on many factors. The starting point is the market share. A high market share usually points to dominance. The law has taken cue from the European Union. It has also taken cue from the jurisprudence which has evolved in the US which itself came from the German Act which is considered to be the mother of all competition acts in the world. Indian Law has taken some jurisprudence from Canada and Australia. Mr. Amitabh Kumar said that we have about six factors which are mentioned in the law which the CCI must consider to define the product market. There are other eight factors which are supposed to be taken into account to define the geographic market as a lot of times the markets are confined to a small geographical area and dominance cannot be on a pan India level and is limited to that geography. There are another fourteen factors given to determine the dominance in the defined market. He said that the other important issue to remember is that following the European jurisprudence the Indian interpretation of the law by the appellate tribunal has been that a dominant player has an extra or additional social responsibility. Once anyone is a dominant player a conduct which would otherwise be possible would not be tolerated anymore. Hence once anyone crosses a threshold of 30-40 % market share it is always good to have a look on at your conduct on the market and see whether one can fall foul of the cases. Import cases laws which grabbed the headlines are the DLF case where it was fined Rs. 640 Crs. for abusing its dominance which was related to high end luxury apartments costing Rs. 1.5 Cr. and above limited to the geography of Gurgaon. Other cases on abuse of dominance done by the CCI like the shot glass were overturned by the appellate tribunal because it did not agree with the finding of the market or the finding that both the players were on the same market, also found that the conduct was not abusive as it had been found to be. He concluded by saying that jurisprudence needs to evolve and maybe the CCI will come out with guidelines on all elements of competition law including the abuse of dominance.



Mr Manas Chaudhuri, Partner, Competition Law Practice, Khaitan and Company

Mr. Manas Chaudhuri commenced his speech by thanking INBA for the opportunity to share their experience in competition law and the competition regime in India for the last 12 years. The law came into statutes in 2002 December. Due to structural problems of the Competition Act it got stuck in the Supreme Court. The issues were about what should be the structure of the commission, whether or not it should follow the MRTPC with a judge heading the commission or whether it should be an expert. He said that a writ was filed on 30th October 2003 and got disposed off on 20th January 2005, with an observation that the government may like to consider making certain observations to the law so that the challenge of the petitioner could be met. He said that the government ultimately decided to go ahead with the amendment and it was accomplished on 20th September 2007 and after the commencement of the act the commission came into being in May 2009. The basic structure of the amendment was to create an appellate tribunal in between the CCI and the Supreme Court and the tribunal shall be headed by a judge of a Supreme Court or a Chief Justice of any High Court of India and the other members could be experts. Although there was no bar on other members being from the judicial back ground because the law is very open. Members in the CCI also can be of a judicial background. He said that it is time for the commission to kick start and implement this law in letter and spirit.

Mr. Manas Chaudhuri said that one of the most pernicious anti-trust issues which is the agreement between companies who are in the same level of business. In competition law they are known as relationships in horizontal business. It is generally believed to be entered into in secrecy. As a person who is into a cartel would always try to make things as secretive as possible so that they can reap the best benefits like the price, market and the consumers. He said that some fundamental issues in this regard are that whether or not our law i.e. cartel, bid rigging etc are per se legal. Many jurisdictions the law is for horizontal restraint is per se illegal. In our law it is not like that. There is a strong presumption that if a person, an enterprise or companies are having some kind of agreement which breaches the four fundamental principals laid down in the law i.e. directly or indirectly fixing prices, limiting or restricting production, controlling the market in such a manner that they are able to



allocate the market between and amongst themselves or participating in bid rigging. These four issues were considered to be very serious offences in business. According to our laws if any of these four points are triggered within the confines of an agreement between parties who are in the same level of business then the presumption is in the law that the parties have caused appreciable adverse effect in the market in India. Talking about appreciable adverse effect Mr. Manas Chaudhuri said that the statute has provided six factors and these are more or less economic factors. If the parties are able to revert those presumptions which are against them then perhaps the CCI may have to close the matter as it is not proved. In case of failure then the penalties are huge and substantial. Even though it is a civil law, the penalties can make a lot of difference to the balance sheets. Looking at the vertical agreements in a business chain the law says that appreciable adverse effect is likely to be caused which means the rule of reason. He said that Section 33, which talks about horizontal agreements, i.e. cartels and bid rigging agreements which follow the rule of reason, because sec 36 of the Competition Act mandates the CCI to function within the confines of the principles of natural justice and they can have their own regulations and it would not only be the CPC, hence they will cut short the procedural delays which generally happen in the civil court. This is to make it business friendly and in competition law the industry would like to have their decisions as quickly as possible. The principle of natural justice is the cardinal principle within the confines of which the CCI is mandated to work. According to the principle of natural justice even in revertible presumptions in case of cartel bid rigging we have to give an opportunity to the other party as to whether or not they have got any justification to fix prices, limit production and allocate markets. If the defense is satisfactory to the CCI then perhaps even a prima facie allegation of cartel may fall flat in the ultimate analysis. Hence the rule of reason is the cardinal principle.

On how to measure the appreciable adverse effect factor Mr. Manas Chaudhuri said that there are six factors and the three most pernicious and anti-competitive ones are:

- Enterprises are trying to create artificial entry barriers for the new entrants.
- They are trying to drive out the existing competitors from the market.
- They are making business situations in such a manner that for others the businesses are coming to a foreclosure.

On the contrary the next three factors are pro-competitive:

- Generating consumer welfare
- Enhancing economic efficiencies
- scientific or technical advancement

Mr. Chaudhuri talked about the lifecycle of a case after it is filed before the CCI. He said that the law says that one has to file information not identical to a complaint. He thinks that it is a complaint even though it is termed as information; because parties allege anti-competitive conduct before the CCI by paying a filing fee that the opposite parties are breaching their right to do business or are



actually distorting the market by its own way of doing business. Hence the informant is challenging the business modal of the opposite party.

Explaining the life cycle of the case he said that once filing is done with the filing fee and the secretariat of the CCI finds that the application is in order, it would then send it to the commission for considering if there is a prima facie case of the informant against the alleged opposition parties. Once that information is being considered at the prima facie level the CCI can do to things, firstly it may agree with the allegations of the informant or it may completely disagree. The moment it agrees the mandate of the law is that the matter shall have to be investigated by the Director General of the Competition Commission. The DG is an independent organization in terms with the intent of the law. Section 16 says that the office of the DG will be appointed by the Union of India which means that the officers of the DG are protected under the constitutional guarantee of Article 309.

This means that the DG has to be independent of the CCI and vice versa. He said that it take approximately six months to form a prima facie view. Then about a year for the DG to conclude the report because the DG is also a civil court in terms of one of the provisions of the competition act, which gives opportunity to the parties to come before it for oral deposition on oath like a typical civil court. Then the DG concludes its report on the basis of evidence as well as oral and submits its report to the CCI. The DG may/may not/partially agree with the prima facie view of the CCI. The CCI may or may not agree with the DG. If it agrees with the DG then it may give an opportunity to all parties of the parties to come before the CCI to submit their respective cases and at the end of all these oral and written submissions, arguments etc. the CCI finally disposes of the matter either substantiating the findings of the DG or disagreeing with the DG at the final order. In his view the whole cycle takes about two years from which the information has been filed and validated. In case the CCI rejects the prima facie view which happens maybe in about six months the parties will have a right to appeal before the appellate tribunal. If the party has been successful in convincing the CCI of a prima facie view then the opposite party does not have the right to go and appeal as to why an investigation has been started against them. The SAIL Vs. CCI judgment of the Supreme Court confirmed that fact that the intent of the law is not to have an appeal at the prima facie stage. The term agreement is very broadly defined in the Competition Act so as to capture secrecy, agreement entered into by competitors in a secret manner. The CCI relies on international jurisprudence very often because Indian law stands very much on the premise of the European commission. There exist challenges of transparency and due process for ex. CCI regulation talks about even opportunity of cross examination. He also talked about two direct evidence possibilities under the law all over the world i.e. leniency and dawn raids, In the former one of the cartel or bid rigging members decides to disclose everything to the CCI in lieu he may get up to 100% exoneration if the member is able to get a marker one position. There are three markers first, second and third get 100, 50 and 30% respectively. The idea is to get direct evidence against a cartel. On the other hand in case of a dawn raid it is the commission who actually goes into the premises of a company and makes a surprise raid so that people are unaware and are caught. Laptops, mobile phones hard disks etc are confiscated and all this is possible and is part of the law. In the EC these direct evidence has given a success rate of 70% in cases of cartel and bid rigging. These processes have now started in India



which is very commendable because many jurisdictions which have grown along with India have still not been able to settle these issues.



Ms Surbhi Mehta, Head-Competition Law, APJ-SLG Law offices

Ms. Surbhi had discussed on a distinct portion of competition laws known as combinations and she also talked about how the CCI regulates the aspect of combinations or merger control. She said that combination under the Competition Act means any acquisition of an enterprise by a person or merger or amalgamation of an enterprise which satisfies the necessary threshold criteria. This consists of three major aspects such as mergers and amalgamation, acquisition which can be by means of shares, voting rights or assets and finally acquisition of control by any enterprise. While talking about acquisition she said that section 2A of the Competition Act says that any direct or indirect acquisition or agreeing to acquire either the shares, voting rights or assets of any enterprise or any control over management or assets of an enterprise. While defining control she said that explanation A as inclusive of controlling the affairs or management of an enterprise by one or more enterprises over one or more enterprises, one or more group over another group, which simply means that any act by which one entity is controlling the affairs or management of another entity. She said that the threshold criteria in the act is divided into either entities which are having assets in India or entities which have assets in India or abroad. The threshold criteria in India is triggered if one has assets worth Rs. 1500 Cr as an individual or a turnover of Rs. 4500 Cr as a group. She said that the turnover is determined by the value of sales of goods or services minus the indirect taxes. The value of assets is determined by taking the book value of assets which is shown in the audited book of accounts in the last preceding financial year it also includes the value of intellectual property, brand value, goodwill and if the audited book does not have that it has to be included in it to cover the exact value of assets. The thresholds given are revised by the central government every two years the last revision was made in 2011 and also depends on the wholesale price index and the fluctuations in the exchange rate. She said that the regulation of combinations under the act means any combination which is causing or is likely to cause an appreciable adverse effect on competition within relevant market in India is not permitted and is considered void in nature. Section 19 of the



Competition Act give certain criteria which helps us in analyzing how the product and the geographical market can be ascertained in relation to a combination. Section 20 of the Act involves anything and everything on how the market will react once the combination takes place and how the market was before the combination took place. So an ascertainment and balancing of the two to determine whether the market will get affected by the market or whether I will create a scenario where a single super party is coming into being which can exploit the market in its favor.

Further talking about the procedure related to combinations Ms. Surbhi Mehta said, that a combination is a mandatory pre-notification regime which one has to give within 30 days of a binding agreement for getting into place for acquisition matters and 30 days of approval of proposals related to mergers and acquisitions by the board of directors of the enterprise. The filing of the combination is generally form-1 by which one files certain information to the commission by which they regulate the combination. Form-2 is that detailed form of form-1 which gives much more additional criteria to be given to the commission. Form-2 filing is optional it is not mandatory to file form-2 as there is a difference in the fee structure. However the regulations specify that there are certain scenarios where it is preferred that form-2 filing is done as a further assessment of competition has to be ascertained by the commission. These scenarios are the ones where the parties are engaged in similar or identical or substitutable goods or services and their combined market share is more than 15% of the relevant market. The second criteria is where the parties are engaged in different stages of production and their individual or combined market share is more than 20% of the relevant market. There have been certain scenarios where the commission has directed certain parties to filing in form-2. She also said that an enquiry into a combination can be done by the commission can be done by the commission on its own knowledge sou motu or when a party files an information or a notice of combination before the commission. For a Sou motu enquiry there is a limitation of 1 year and for your own information and notice it is a 30 day period.

Further she talked about the procedure which has two stages. Phase-1 of the investigation occurs the moment somebody files or gives a notice to the commission, the commission has to ascertain whether there is an appreciable adverse effect on competition will take place. If the commission at that stage decides that there is no appreciable adverse effect and approves the combination the procedure is finished. She also said that in some scenarios there may even be a phase-2 investigation where the commission initially has a little doubt on whether a combination has an appreciable adverse effect or not in that scenario it show causes the parties to give reasons as to why they think that it is not causing adverse appreciable effect on competition. In the same scenario it may also ask for an investigation to be done by the Director General and in the end take all these factors and decide whether to approve or reject the combination.

She said that this entire period has to be completed within 210 days, which is the time limit for the commission to pass an order as regard the combination and if it does not do so the combination will have deemed to take effect. Certain category of combinations which financial institutions or a bank or a venture capital fund in pursuant of a loan or investment agreement do for any acquisitions is done by just providing information and filing form-3 as it is unregulated. The commission may



approve or reject combinations. The commission may even suggest some modifications into the combination which on being modified are approved. If you do not file within the 30 day time period for regulation of combination there may be a penalty of 1% of total turnover of assets. A belated notice however is accepted by the commission but you still have to pay the penalty. Providing false information and a penalty not less than 50 lakhs would make it 1 Cr. The Ministry of Corporate Affairs has released two notifications where they have exempted two categories of acquisitions from the purview of the regulation of combination for an initial period of five years. Schedule-1 of the combination regulation gives details of normal scenarios of combinations for which a notice may not be filed. The commission through some orders has said that you yourself have to do a competitive assessment in those cases which even may fall schedule-1 if the cause an appreciable adverse effect on competition then filing for regulation of combination is mandatory.

Banking law in general, enforceability, SARFAESI, important RBI guidelines, management of NPAs and changing scenario of banking

- ✚ Session Moderator :Mr. Nilanjan Sinha - GE Capital's –General Counsel
- ✚ Mr. B. Gopalakrishnan, Legal Advisor & Head Legal Operations ,Asset Reconstruction Company India Ltd.
- ✚ Mr. Shashank Kumar – Advocate of Parekh & Co



Session Moderated by Mr. Nilanjan Sinha - GE Capital's –General Counsel



**Mr. B. Gopalakrishnan, Legal Advisor & Head Legal Operations, Asset Reconstruction
Company India Ltd**

He said that banking is governed by the RBI with Regulation Act which is bi polar and was enacted in 1947 which was recently amended in 2013. He said that he had a disagreement regarding that the justice Sri Krishna committee report has concerned in creating a super regulator because they are not effective. He said that one has to be a master of the field for that. From his experience he said that if you look at the Banking Regulation Act sec 6 talks about the things which bank can do. Today's banking system sells everything from insurance and gold coins. So the regulators research only in one product. Now we have many different kinds of regulations and problems to look into. RBI in India comes up to the banks to find loopholes in their system and may ask them to take legitimate action to secure the same.

Corporate governance in banking is concerned under sec 10 of the Banking Regulation Act envisages that not more than 50% of the directors of bank shall not have any connection with the promoters. They shall have adequate knowledge in various subjects. Sec 35 of the Act says that the RBI has liberty to give banks any kind of direction.

Consumer forum-enacted in 1986-people who are deciding about the banking, the deficiency in services as far as bank is concerned I fear that they are not very well equipped to understand the banking and transactions for ex: a bank account is hacked, the victim has two options one is to fight against the bank under the IT act and the other way is to write to the banking ombudsman, who sets the limits by which they cannot order anything which is above Rs. 10 lakhs. On the other hand no such limit is prescribed by the consumer forum. The members sitting to decide these cases are inefficient to decide the same, as they do not have idea of how an attack could occur.



Monitoring is absent here. When someone gives a huge amount to somebody, the bank has to ensure that the money goes to the right person and for the right purpose. Banks fail to do these too. He said that we have to enact a law like the Bankruptcy Chapter 11 of USA.

Topics-regulatory environment in general concerning banking and finance, consumer protection, corporate governance of bank, companies act which are banking regulations which RBI stipulating. There conflicts and conversion in laws.

He had a simple suggestion, he said that it is not correct to say that all tribunals are bad. The best example according to him was the income tax tribunal which has been in existence since 1961 onwards and as far as the question of fact are concerned they are the final authority and as far as the question of law is concerned then the matter has to be referred to the high court.

He said that in Pune the DRT judge presiding officer is a man who has in his entire life been a motor accident claim tribunal judge, he doesn't understand what a guarantee, letter of credit, lending etc. What he does is give a date for the next year as the matter is too complicated. He said that this is where training has to be there. Another foolish move by the government is that they have deputed bank officers and retained their lien from the bank. He said that ideally when one goes to the judiciary one has to sever all connections and it has to be a separate cadre by itself where they can work independently. That is the reason for the Supreme Court question that when you keep lien on your parent cadre. He said that the deputation should be stopped and officers who want to join the judiciary should resign their parent lien and then join.

He said that the DTR does submit a report daily to the High court although the data is not public. He said that now DRTs add impose a penalty and additional costs in case of absence or non filing of reply within the required time of 45 days. He said that it has to be a joint effort of practitioners and judges. Lack of infrastructure is a problem. If there is seriousness in making the forums good, then dedicated and interested people should be in charge rather than people who want to sit on the chair as it is close to their home town.

He said that the appellate court DRAT always has a retired High Court judge. He questioned on why this position was not for serving judges or as a promotion so that an officer could look forward to it. He said that currently one DRAT chairperson handles cases in three states in one week. He said that the government has not taken this court as a serious one. He also said that adding more benches is not the solution.

Answering the queries of Mr. Nilanjan Sinha - GE Capital, General Counsel, he said that joint lenders meetings do take place very often these days but still banks are reluctant to share are reluctant to share entire details as they still have certain reservations as they have a lot of baggage to carry and do not open their books for anybody. He said that they are allowed to go to other banks to for debt aggregation for up to 60 -75%. The other way to go is through the bidding system, where there are 14 ARCs of which 6 or 7 are very active. The major concerns for RBI which has forced it to revise the guidelines that ARCs should hold 15% of the assets which they purchase from the



banks, earlier it was 5%. Earlier the banks and ARCs used to collude and then they would get it at a higher price. Due to this they can show that a sale of a non performing asset has made a profit



Mr. Nilanjan Sinha - GE Capital's –General Counsel

From the perspective if NBSC there is lot of change happening. The RBI is trying to make fundamental conversions between bank and NBFCs. The change they want is like having core Investments Company who regulates themselves. There are certain powers and privileges which banks enjoys such as DRT and access to a special tribunal and a do it yourself regulation which allows to enforce security without intervention of court, these are not provided to NBFCs. Things like having a unified regulator. Not having RBI, SEBI and IRDA instead having one or two unified regulator one for RBI for banking and other for everything else. Regarding consumer protection we have moved to caveat emptor principle to that seller has to be aware of what he is selling.

On the point of long delayed date he talked about the concept of name and shame. He said that is may be a good thing to make each DRT to publish its report card and send it to the ministry of finance. This report would show the number of cases that are pending, filed, disposed off, number of recovery certificates issued and he also said that today with the RTI Act etc the people can have access to those statistics.

He raised another topic to Mr. B. Gopalakrishnan, Legal Advisor and Head, Legal Operations Group, Asset Reconstruction Company (India) Ltd. which was about coordination amongst various lenders. Latest circular being the distress asset circular. Firstly he asked if there is a positive move in respect of all of these actions and has theses distress assets created a kind of problem. Is there a sense of confusion in the CDR SCHEME?



Mr. Shashank Kumar – Advocate of Parekh & Co

Mr. Shashank asked whether the power to interpret the law is given to tribunals or not? In most cases if appeal directly lies to the SC you are basically using power of HC which would be the last forum where facts are thrashed out and then they refer matters to HC

Delay to grant extent is cause of volumes we have to tackle with, lack of proper training. Whether banking cases with deficiency in services should go to consumer forum or not?

Presently consumer forums are not equipped with to deal with such matters.eg railway claims tribunal could be a solution as banking services involve recovery and the consumer and bank relationship about deficiency and consumer problems and claims. Railway tribunal deals with both these issues

As far as SARFAESI Act and DIT Act are concerned, SARFAESI is a very potent piece of legislation, but it does not have its full effect because of intervention by the courts of India. Equity is not applied in system.

He said that one needs to have a separate mechanism for looking into vacancies in all treatments.

He said that there should be something on the likes of the UPSC exams should be there. He said that officer can be groomed when they are in the subordinate judiciary.

He said there are a few issues before blaming them and holding them liable was that the judicial officers never trained to handle new situations. Secondly punishing them for not passing orders would lead them to pass wrong orders as they would then depend on the High Courts to take the matter. Thirdly if it is about disposals and quality of judgments which is mandated then they would go slow. He said that these were a few problems

Role of education participative democracy in India



- ✚ **Session Moderator: Ms. Lata Krishnamurti, Partner, The Ram Jethmalani Law Chamber**
- ✚ **Dr. Alka Chawla, Associate Professor, Faculty of Law, University of Delhi**
- ✚ **Ms. Meenakshi Lekhi, MP & National Spokesperson, BJP**
- ✚ **Mr. Mark Snyder, Vice President & Patent Counsel, Qualcomm Incorporated**



Session Moderated by Ms. Lata Krishnamurti, Partner, The Ram Jethmalani Law Chamber



Dr. Alka Chawla, Associate Professor, Faculty of Law, University of Delhi

After humble salutations and thanking the Indian National Bar Association and Mr. Kaviraj Singh for providing the opportunity to speak on the occasion of National Law Day Dr. Alka Chawla an esteemed professor at Campus Law Center, Faculty of Law, Delhi University, highlighted the role and importance of education in a democracy.

Firstly she talked about the education scenario in India, regarding this she brought to our view the “UNESCO education for all global monitoring report 2014” , according to which it was seen that



India has the largest illiterate adult population in the world, which constitutes for 37% of all global illiterates. She also pointed out that out of 781 million Indian people 287 million are illiterate. Surveys show without any doubt that literacy levels have risen from 48% in 1991 to 63% in 2006. Although these figures may seem to show a substantial increase, the problem at hand is that the rise in percentage has also been negated by the rise in population which has not been taken into account.

Shining light on the above mentioned statistics Mrs. Alka Chawla mentions two problems rising from them. Firstly, the positive growth in education is correlative to the negative growth in population, bringing about a sense of stagnation. Secondly, the literacy rate in 2011 was 74.04%, which in the first glance looks like a progressive growth in numbers, but when the data was analysed it was seen that male literacy rate was far more than the female literacy rate being 82.14% and 46% respectively, thus it cannot constitute progress in the true sense. The gap of 35% must be eliminated to achieve true development. These points basically highlighted the quantitative increase rather than the much needed qualitative increase which yet again cause stagnation and bring out the problems related to learning and the education system. Hence both quantitative and qualitative growth has to be harmonized for a better tomorrow.

Mrs. Alka Chawla also shared her views about private higher educational institutions and how they are being criticized by the government educational institutions, she stands that these private institutions play an essential role by being socially responsible. Even though they charge higher rates than subsidized government institutions, they do provide quality education and high end infrastructure which is a must have for any institutions. The students who do not make it to government colleges sometimes get a better education at private colleges.

Secondly, Mrs. Alka Chawla talks about the importance of education, not only in India but at an international level. She mentions the “Universal Declaration of Human Rights”, which says that we must grant education to everyone, following which she diverted everyones attention to the situation in India, saying that the right to education has become a fundamental right and the “The Right to Education Act 2009” has also been implemented.

Sharing her experience about a meeting with distinguished members of the Bar council of India she brought to our attention the condition of legal educational institutions in the country. She pointed out that many law colleges exist only on paper i.e. there is no provision for machinery, infrastructure and even man power. Her question to the audience was simply about the whereabouts of the allocated funds.

She also stated that even though we recognize the right to education at primary level (i.e. till age 14 years) as compulsory, we will still not be up to mark unless we give higher education the same importance. Both levels of education must be implemented. Even here many educational institutions exist only on paper. The need of the hour is that the government must start to value education and devote its resources in the betterment of the same, just as it strives to defend its citizens because education is important as defense.



Finally before concluding Mrs. Alka Chawla talks about the true meaning of democracy and how education is important. She emphasized on the phrase “The government of the people, for the people and by the people” and if we truly knew the meaning behind it. She proceeded by educating the audience about the correlation of education and participatory democracy. Stating points such as, uninformed people seldom make informed choices, lack of awareness, lack of knowledge, no idea about the kind of rights available and how these same people elect the government by way of corrupt buying and selling of votes and how all this contributes to a system that cannot be truly called “a democracy by the people”.

Further on she talked about how the supreme power is to be vested in the people, and how this can only be achieved when “freedom is institutionalized”. This can be achieved if there is an end to intimidation, and no one can assert any form of dominance on another person.

Steering her speech toward an introspective outlook over the prevalent situation today she suggested that even after having various rights available to us we as humans still have not been able to achieve what we set out for. People still die despite the right to food, there still exists illiteracy despite the right to education, we people are still are not clear about our own views despite the freedom of speech and expression. Concluding this thought she said that political democracy has no meaning if the citizens are uneducated.

She further talked about equality and how our law treats all as equals, which as she pointed out has many loopholes in itself, such as equality between the aware and unaware, the knowledgeable and those who lack knowledge and the informed and the uninformed and how all of these together will harm a democratic setup. There is a difference between the right to possess a right and the knowledge to exercise the same.

Concluding her speech she said, education is important for participative democracy and the 21st century being the “knowledge economy”, India’s democratic progress completely depends on the development of her education system.



Ms. Lata Krishnamurti, Partner, The Ram Jethmalani Law Chamber



Ms. Lata Krishnamurti discussing the various provisions of law regarding education Ms Lata Krishnamurti started with the Constitution of India and talked about an amendment in the chapter on fundamental rights where it is said that the right to education is fundamental right, but it will be provided through legislation in the manner the state chooses. She stressed on the wording of the new amendment. Looking back at the time before the right to education became a fundamental right she pointed out that the courts recognized its importance because without the right to education all other rights are without meaning or purpose. Even before the constitutional amendment was brought about the courts read the fundamental right to education into article 21 of the Constitution in the year 1992. Soon after that in 1993 came another landmark judgment which proclaimed that the right to education was indeed a part of article 21.

Ms. Krishnamurti further enticed the audience by taking them back to the time when the constitution makers were debating if the right to education should be a fundamental right or a non enforceable right and should the reins be given to the government. She further said that it was decided that the right to education was relegated to the Directive Principles of State Policy. She continued and explained that this move was a failure as the target of implementing it within 10 years (1950-1960) could not be achieved because of financial constraints. The courts finally read it into article 21 in 1992. Only in the 2009 Supreme Court case of Ashok Kumar Thakur, it was held that a fundamental right cannot be detained because of financial constraints.

She further mentioned that the wording of article 21-A “the state will legislate and provide it in the manner it can do it” which also was not done since it lapsed 3 times in front of the parliament. Then in 2009 the bill finally passed after the assent of the President, and came into existence on 1st April 2010 after 8 year gap. Even still the new act was porous and almost impossible to enforce. Following that a new provision in the Income-Tax Act was added and an education cess of 2% was to be enforced which would be gathered in the national fund and would never lapse but always accumulate. An additional 1% was to be enforced for higher education. The fund was started to be collected from 2006 onwards. Ironically there was a decrease in the funds allocated for education in the budget, but on the other hand there was a consistent increase in the national fund.

Citing the case of Ashok Kumar Thakur, Ms. Krishnamurti said that the courts suggested that there should be a provision for punitive measures against parents like in the USA for the protection of children. Our main concern is the prevalence of child labor. According to 2001 statistics 12.6 million or more children are in child labor. These children cannot be pulled out from work and sent to school as these families depend on their income as well. This is prevalent because there are no penal measures for parents even after the Supreme Court suggested it in the Ashok Kumar Thakur case.

Further on Ms. Krishnamurti expressed her views the situation of Indian law where there exists the discrimination in age boys and girls in the children act 1960 which is plainly visible, even though India is a signatory to the International convention to the rights of child ratified in 1992, wherein child is defined as anybody below the age of 18. Yet we did not update our law and the same is still present in our law books. She even put up a question that why education was compulsory for



children between the ages of 6 to 14 and not for ages of 0 to 18? What was the rationale behind this number? The problem as she perceived is that legislations are extremely laudable but are seldom enforced.

She explained that most vital information is not provided, causing a hindrance in the application of the act. And it is visible that many children are still excluded from the application of the act as there are children still begging on the streets and there are children living in remote areas who still do not have access to education. Lack of recorded data like birth certificates etc. are only causing waste of resources, rather than making the situation better.

Concluding her speech with some of her own experience where she highlighted the poor financial condition of Indian states, she put up a question to Mrs. Meenakshi Lekhi regarding the seriousness of the government for the betterment of the system and the improvement in the condition of street children

Competition Law Essay Competition-2014 prize presented & words of encouragement to students by Ms. Meenakshi Lekhi & Mr. Mark Snyder



Ms. Meenakshi Lekhi, Member of Parliament & National Spokesperson, BJP

Taking out time from an important parliamentary session to be available for the occasion of National Law Day, Mrs. M. Lekhi addressed the audience by responding to the question by Ms



Krishnamurthi, on what the government is endeavoring to achieve in the education system. She talked about the current situation on why human resources in the nation are not being utilized to their optimum potential. Bringing out the reasons for the inefficiency of the system to streamline skilled labor was one of the key ingredients of her speech.

According to her, the main reason for this is the unexplained gap in the labour force of the country, on one hand there are educated professionals and on the other hand there are the masses which are not being able to contribute to society in any way just because of lack of skill. The primary goal is to set up a system wherein the mediocre population gets their basic needs and this can be done by ensuring their employment. But our country lacks skilled labour which is the primary reason for slow development and low quality services in the common local market.

As a realist Mrs. M. Lekhi promotes innovation, skill harnessing, and designing of simple commercially viable models so that the minimum requirements of each citizen can be attained. She also pointed that the government does not have the resources to achieve this process on its own. What is required is “public private partnerships”, as this is the only way to generate sufficient resources to fund projects specially to impart skilled training to people in need of employment so that they can earn their livelihood and can contribute to society in a positive manner.

Although the nation has experts like scientists, engineers, mathematicians which undoubtedly are important, the need of the hour is to have a skilled blue collar workforce. Institutions to train them would automatically improve the quality of work and would be beneficial for them too. The current problem is that due to lack of training, poor quality work and lack of faith by consumers jeopardizes the plight of the average workman.

“Skill Training is as important as achieving academic excellence”. By this, Mrs. M. Lekhi meant that the education system prevalent today only looks at academic excellence as the ultimate goal of getting educated. As a progressive thinker, she upheld that both skill training and academics should go hand in hand, and leaving one out would continue harming the system.

Regarding homeless people she said that most of them even after being homeless live a simple honest life by doing menial work and even after living in such adverse conditions they still do not engage in anti-social or criminal activities. These poor people are brandished as drug addicts and are shunned away by society. Instead of boycotting them and treating them as untouchables, the government should apply its resources to make them skilled so that they can work on improving their standard of living.

She also answered the query in affirmation, and focused on the need of prioritizing human resource because without it there is no skilled India, no build India and no make in India. Priority is also to be placed on the quality of life where everyone can get basic working hours, access to clean drinking water and provision for toilet facilities for all. Only after this anything ancillary can be achieved.

While speaking about the conditions of schools, she admitted that they are not running on official requirement of space etc but she made it very clear that imparting education is the primary focus,



because if there is no quality education what will the students do with extra land at schools. She suggested that there can be an arrangement of common play grounds for all, but making sure that there is no compromise on academics.

The solution lies in bringing to use the intelligent masses who are not being used to their potential and those who are completely do not contribute to society. She encouraged the legal community to help her to bring change by way of CSR, adoption of schools and promoting education etc.

She promoted education by reciting the age old phrase "Those who achieved great things in life are the ones who studied under the streetlight." Parents have to be responsible enough to set standards for their children and to ensure their wholesome development keeping in mind the importance of education in achieving it.



Mr. Mark Snyder, Vice President & Patent Counsel, Qualcomm Incorporated

Mr. Mark Snyder from Qualcomm, being one of the official sponsors of 64th National law day was requested to share a few words about what inspired Qualcomm to give Indian law students such an honorable prize for their efforts in the essay writing competition. Mr. Mark talked about how Qualcomm supported the development of competition law in India. The issues in competition law are difficult to grasp for practicing lawyers and even more challenging for law students who are already engaged in their legal study programs. He personally believes that competitions like these help to develop the critical and analytical skills needed to make lawyers more successful in their everyday work. He also pointed out that it was important to keep in mind the amount of work and research which went into the writing of the essays. The process was a competitive one as there were more than a hundred essays out of which only three winners were selected. Mrs. Meenakshi Lekhi and Mr. Mark Snyder went ahead and distributed the prizes.



Role of GC in today's legal environment

- ✚ Session Moderator : Mr. S. Ramaswamy, Group General Counsel, Escorts Ltd.
- ✚ Mr. V. Chakradhar, Executive Vice President-Corporate Legal, Godrej Industries Ltd
- ✚ Ms. Shukla Wassan Sr. Vice President Legal & Co. Secretary at Hindustan Coca-Cola
- ✚ Mr. Badrinath Durvasula Vice President & Head Legal - Larsen & Toubro Limited
- ✚ Mr. Zameer Nathani, Director – Legal, Raymond Limited
- ✚ Mr. Vineet Vij, VP-Head Legal, HCL Technologies



Session moderated by Mr. S. Ramaswamy, Group General Counsel, Escorts Ltd



Ms. Shukla Wassan Sr. Vice President Legal & Co. Secretary at Hindustan Coca-Cola

Ms. Shukla Wassan Sr. Vice President Legal & Co. Secretary at Hindustan Coca-Cola said that over the span of her career what she found was that GC apart from having the legal acumen have not moved far ahead from the role of just looking into the books and sections. Today a GC would always find a seat on the table. Unless you don't have a seat on the table and are not a part of the decision making one cannot grow in an organization. She said that today GCs can be found on



the board of the company, they are an integral part of all decision making in the company such as financial, transaction etc. Today CEOs and board members rely on GCs not just as legal advisors but also to steer the business decisions and to take strategic calls when in need. She thinks that GCs can merge legal and business knowledge to come with the best solution oriented situations



Mr. V. Chakradhar, Executive Vice President-Corporate Legal, Godrej Industries Ltd, said that a GC should have a client focused service environment delivered with clear value addition. While talked about building a value addition that can be delivered to the business by partnering and understanding to be a trusted advisor to the business is most important. He said that it is also important to speak with conviction and courage is fundamental to be a GC. As a strategy advisor one needs to have conviction in what you deliver and that's the clear kind of value addition that a GC must be able to give. He said that in being a GC the basic fundamentals are to build a basic partnership with the business and the business head. At the same time one has to have the integrity to tell the business leader not what to do but also to tell him the dimensions in which things can be done by the business. Giving the business leaders shortcuts does not necessarily mean leading them the right way, but to tell the business leader that the fundamentals of the business are not only doing the business in the strictest legal sense but looking at how to mitigate future risks, what kind of reputational risk one may have, what is the most important thing for the organization and how to behave. He said that complex problem solving, having a board influence etc are the most important aspects one must have while going on the path to become a GC. He said that the businesses do not need a light house but need a compass on the ship.



Mr. Vineet Vij, VP-Head Legal, HCL Technologies

Mr. Vineet, said that the ecosystem has changed and we don't work the way we did 30 years ago. Now we work in multiple jurisdictions. Your actions here in India will affect you and your business at other place in the world. The role of the GC and the in-house legal department has completely changed. Apart from being the strategic advisor a GC has to be a business enabler. On one hand a GC advises strategy while sitting with the management and is a part of the leadership team. The GC brings to the table the legal provisions and the ramifications. Apart from this a GC has to bring to the table the solutions that are to meet the situations. This is perhaps the most important role a GC has to discharge today. On one hand there is the business and on the other there is the external council, the GC has to reconcile what the external council feels.



Mr. Badrinath Durvasula Vice President & Head Legal - Larsen & Toubro Limited, The GC culture is not wildly prevalent in India, every company does not have a GC it s also not true that they are not aware of the fact that what a GC can bring to the table. The two challenges before a GC community are:

- How well to drive the value of a GC for an organization.
- Are GCs really creating value for the system?



As a GC for Larsen & Toubro, he said that it is an extreme possibility that somebody doing a \$15 Billion business could envision what he would do without consulting a GC. He said that when the critical mass comes into business that's when the role of a GC comes in. He said that there could be a focus on the issues. When a company gets into a soup the GC has to tell them about the potential pitfalls. He put the role of a GC into a matrix of four:

- The basic fundamental duty of a lawyer or general council is advisory.
- The next most important paradigm for a GC is the structure of documentation.
- The GC needs to handle the people in terms of litigation.
- The last critical element of the working of a GC is a strategy.

The value added to the business by the GC is directly proportional to the amount of hard work a GC puts in the abovementioned duties. The Most important thing for a GC would be to really learn himself unwind himself and to create a value for himself. He said that the Managing Director of a major company in terms of going ahead with a billion dollar job taking the absolute consent and consultation of the GC shows in absolute good light the value of a GC. He said that in India now there is an absolutely regulatory environment, to handle the same it is only the GC who can see the dimensions of what is likely to come through because of their experience and exposure. These are the reasons a GC would definitely add value to an organization.

Question session

- **James P. Duffy, Attorney-at-Law, U.S.A.**

His question was related to the role of a GC, as in the USA a GC does not purely get involved in the business of a company. In case a professional is a GC and a vice president then they do have additional responsibilities. He said when the line between legal advice and business advice is not defined there may be a number of problems such as attorney client privilege etc. Another issue he pointed out was that a lot of people worry about is that when one is at the centre of things for ex. At the centre of a circle, at best one is able to see only half the circle and as one moves a little bit of the center one is able to see more of the circle, similarly if one is to step out of the circle one can visualize the entire circle. He explained that one may have conflicts in rendering legal advice from the centre of the circle and in those circumstances one may probably welcome the independent view of an outside counsel. He also said that every employee is supposed to add value to the business and it is not solely the role of the GC. He also said that it is important for a GC to know what functions are to be imparted as a GC and when to involve an outside counsel.

Response by the panel:



Mr. S. Ramaswamy, Group General Counsel, Escorts Ltd.

He responded by reaffirming that James raised a very valid point which shows a fundamental difference that a GC in the west even while being employed at a company holds an independent view, which is not the same in India as here the GC is still not considered as an independent opinion maker.

Mr. V. Chakradhar, Executive Vice President-Corporate Legal, Godrej Industries Ltd.

He responded by saying that the attorney-client privilege clause which exists for a GC in USA is not the same in India as here a GC is considered to be a non practicing legal professional and are not treated at par with an attorney under the Advocates Act of 1961. He thinks that this should not be the case and the most recent Bar Council of India rules do talk about recognition being made periodically relevant and license being renewed is applicable only to attorneys who practice in courts. He said that it is a big and fundamental difference in this jurisdiction. He said that the reason why the concept of privilege will not exist is because in India a GC would be an employee who would advise the business as an in-house counsel. He also said that it's a misnomer to some extent that the term GC is applicable in India in a manner as equitable to what is done in the US. As a GC he said that they advise the management in the spirit of actually upholding law, regulation and even an executive action which is proper visa vie the business. The GC in India has the status of an employee who is trying to lobby around with the management of the company. He closed by saying that yes a GC in India is a responsible legal professional in the company who will look at all the dimensions affecting the business visa vie the law and regulation. If a GC has to superimpose a particular position for the company beyond their own advice then they do approach external councils for their opinions. This is a practice that has been in existence.



Ms. Shukla Wassan Sr. Vice President Legal & Co. Secretary at Hindustan Coca-Cola.

She said that as a GC one does take the support of external council and do not always work in isolation. This helps because that an external council may provide additional insight as they are dealing with other industries too and this helps to find solutions from other angles. Harmonizing with an external council helps to get a sense of reinforcement and to ensure that every decision made is in sync with the business interest and the law of the land.

Mr. Vineet Vij, VP-Head Legal, HCL Technologies.

He said that in India independence does not exist as a GC is a part of the organization and as an employee the opinion that is brought at the table has the best research and legal advice. He said that at the end of the day as an employee the GC brings forth the problem and the best possible solution which is topped up with external advice which is put forward to the management as the best solution for the given circumstances.

Mr. S. Ramaswamy, Group General Counsel, Escorts Ltd.

He asked Mr. Gagan about his opinion on the matter from the UK perspective; to which Mr. Gagan replied that there is no uniform UK perspective. He said that in his experience he has come across various kinds of GCs from different organizations. Some of them were a lot more hands on, others were more interested in the academic side of law, few of the see themselves almost as external lawyers to an internal business client and others rely on external counsels to different extents. He said that external lawyers need to regularly work with in house counsels to understand their needs and the challenges they face and to give them all the required support.

Mr. S. Ramaswamy, Group General Counsel, Escorts Ltd.

He said that in India there are multiple roles performed by the GC, such as being a company secretary, risk officer etc. He thinks that a GC should not take on all of these various roles but should have a team which handles all other responsibilities. He asked the panelists for their opinion.

Mr. Badrinath Durvasula Vice President & Head Legal - Larsen & Toubro Limited,

gave his opinion on this that there is a clear conflict of interest between a compliance officer, a company secretary and a GC. In his opinion and as per established conventions and principles that they are mutually parallel activities and that there may be a reporting relationship but there can never be the same person who would be responsible for it. The role of a GC is predominantly to advice the company and to facilitate the best possible way to do a particular thing. Secretarial compliances and compliance related issues would probably inhibit this kind of a perspective in the GC. To an extent the role of a GC could be diluted if the other functions are taken over. He said that his personal opinion is to completely delink the secretarial functions from the role of the GC.



Mr. Vineet Vij, VP-Head Legal, HCL Technologies.

While supporting the view of Mr. Badrinath Durvasula Vice President & Head Legal - Larsen & Toubro Limited, he said that there is definitely a conflict of interest as the position of the GC gets diluted. The role discharged by the risk and compliance officer is completely different from the role of a GC. He thinks that in a conflict situation it would be best to delink and keep the roles separate.

Ms. Shukla Wassan Sr. Vice President Legal & Co. Secretary at Hindustan Coca-Cola.

Holding a different view she said that there was no conflict of interest as there is no compromise in compliance or legal while holding the portfolio of a company secretary and a general council. She said that one has to have the bandwidth and ensure that there is no compromise in either of the two roles and one must also know the responsibilities to be handled by each role.

Mr. V. Chakradhar, Executive Vice President-Corporate Legal, Godrej Industries Ltd.

He held a view, which dwelled on a mix and match. He said that there are organizations and companies which impact the economic system irrespective of their status. In a country where you see systematically important organizations or groups functioning at a major level of impacting the industry, the role of a GC is at a very high and elevated position in terms of authority that needs to come with it. He said that that role should not be compromised by giving additional capabilities. He gave this idea from his own experience at Godrej where he saw that the group itself looked at CS, compliance, governance issues of independent corporate bodies that the group had promoted. While there are independent company secretaries, the general council position for the corporate legal is now surviving on the basis that one is empowered to give an opinion of a particular scenario having been looked by the management committee. The management committee cuts across all the business entities as they are only vehicles for the business. This is why corporate governance, compliance, secretarial compliance are left over to the individual businesses. Issues like anti-bribery, FCBA, governance, reputational risk laws related to sexual harassment toward women become more paramount than the corporate entity's existence. As these issues crop up it is the general counsel who will set the ball rolling and decide the standards to be set by the organization. He thinks that this is where the dichotomy needs to happen in organizations which have a bigger impact on the economy. He said that if they lose faith and reputation then what will happen to the entire sector and the economy. He concluded by saying that systematically important corporate organizations of an economy need to elevate the role of the general counsel and do not have to bundle the roles of governance and secretarial compliance.



INDIAN
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Evolution of Indian legal industry & role of young lawyers

- ✚ Session Moderator : Mr. Yash Mishra, Founder, Alliance Law Group
- ✚ Ms. Yogini Joglekar, Ph.D. Asia Pacific Director, Corporate and Academic Relations, Mountbatten Institute
- ✚ Mr. D. Baliga, VP-Legal, Coca-Cola India
- ✚ Ms. Kaadambari Puri, Managing Partner, UCOL



Session moderated by Mr. Yash Mishra, Founder, Alliance Law Group

Dr. Yogini Joglekar, a renowned international education professional gave a brief overview of the study program offered by the Mountbatten institute.



**Ms. Yogini Joglekar, Ph.D. Asia Pacific Director, Corporate and Academic Relations,
Mountbatten Institute**

While appealing to young lawyers she laid out the essence of the program so that they could make an informed decision and explore their future carrier options. She talked about a wide array of legal jobs related to regulatory compliance in the financial sector, the latest emerging trends in the job market and other opportunities for young lawyers.

According to the job market statistics the Compounded annual growth rate (CAGR) has been predicted to increase to 4.2%. Growth areas in the job market according to the VETO India Advisors study report show that global banks are hiring mid to senior level professionals for risk, audit, compliance and legal jobs. Team sizes are predicted to increase by 20-30 %. For the large number of investment banks and international financial institutions in India there are only a mere 240 legal and compliance professionals, an increase of 30% would mean another 80-100 jobs in the next year or so.

Regarding the Indian legal job market, a lot of investment banks are hiring professionals in compliance, Surveillance, monitoring and risk roles and also the compensation is quite well as CTC payouts have increased by 30-50%. Though there still exists a need for a culture change within the banking sector.

Data from the Indian legal industry shows that there is a general sense of discontent among young law graduates about:

- The Lack of practical training.
- Unsatisfactory remuneration and financials, as the returns are not at par with the investment.
- The classic catch 22 situation where experience is requirement and yet the leading law firms are reluctant to provide such an experience.

Young lawyers should be aware of best practices and regulations across a variety of sectors and borders. This can be achieved by taking a geocentric perspective rather than a polycentric or



ethnocentric perspective. It is not only enough to be global but it is also essential to be worldly, which means that it is now important to bundle subject matter expertise with communication competency so as to be able to bridge the gap between partners.

Dr. Yogini Joglekar, proceeded to inform the young crowd about the internship opportunity available at the Mountbatten institute, she laid out the following information:

- A one year paid internship experience in locations such as New York and London.
- 20% of the 500 interns in the program are Indian, showing a substantial number.
- A year abroad would positively enhance their personal and professional development and it would be a life changing experience.

It would be a full time internship in the financial sector such as investment banking, a number of law firms, and some communication and media companies. The curriculum would also include a post graduate qualification from a university in UK. Since it is a work and study modal there will be evening and weekend classes. Prospects of job placements in MNCs such as Thomas Reuters, McGraw hill and AIG (insurance sector). Within investment banking, legal internships include regulatory analyst positions etc. In the past 5 years internships have increased by about 50%. The internships are substantial and can be compared to analyst level roles. The valuable experience can be learnt and applied in Indian firms upon the return of the candidate.

Explaining the fee structure Dr. Yogini Joglekar informed students that total fee is \$12000 and that their stipend will be \$1000 which means that they would recoup their investment in the 12 months. She also mentioned that all relevant information and clauses may be acquired on their official website, and students can also clarify their queries by calling on any of the contact numbers available therein.

Further on she talked about the process of application for the March intake where the deadline would be December 1st. Application forms would be available on the website. There would be an interview scheduled in Delhi within the first half of December. During January and February the selected profiles would be sent to the managers. The final selection will be done by mid February, following which the relevant Visas would be sent to the selected students.

Regarding minimum requirements and eligibility to apply for the program the following were to be duly noted:

- Work experience of 12 months and 3 months compulsory for US and UK visa respectively.
- Work experience may be either full time, part time, internships, traineeships and even work in the family business would be considered as valid.
- The candidate should be a graduate, having excellent English, should possess good analytical and technical skills and should also be proficient at MS Excel.



- The candidate should have 2 references for work and 2 references for academics.



Ms. Kaadambari Puri, Managing Partner, UCOL

Highlighting the issues regarding young lawyers, she said that specialization in a particular field of law is the key for success. There exists a need for knowledge and information about all the available fields that exist in the legal domain. Usually young lawyers continue working in the field where they initially join and never get the opportunity to choose the most appropriate career path for them. According to her, success can be achieved both in private practice and even in an organization although it all depends on the level of effort applied by the individual. As a lawyer handles more responsibility, the more their earnings will increase. One should not worry about remuneration in the initial stages of their profession.

Sharing her own experience she informed the young lawyers about the importance of billing and the discipline required to maintain an office. She also acknowledged that working under a senior lawyer would definitely be a better option as one would learn the discipline and regulations which are required to work in the legal field.

Expressing her views on the Bar Council of India's notification of only allowing those lawyers with a minimum five years of experience to appear in the Supreme Court, she said that though experience is crucial, a five year period was too long and the rule is harsh. The notification required modification. The duration of experience should either be until one year or maximum of two years of experience. While talking about quality she also said that in some cases even five years may not be adequate.

The criteria should be changed and the following points should also be taken into consideration:

- The young lawyers should have had exposure in certain courts.
- Lawyers should be well acquainted with the law and the legal procedures involved in the courts.
- More than the years of experience the focus should be on the number of matters the lawyer has handled and how many times the lawyer has appeared in court.



Mr. D. Baliga, VP-Legal, Coca-Cola India

A lawyer since 20 years Mr. D. Baliga gave a brief overview of the change in the legal profession over the last two decades and how young lawyers now have a vast sea of opportunities in front of them. Gone are the days where the average middle class in Indian just wanted to work as a doctor or an engineer, now many young people consciously choose law as a profession. Earlier one perceived a lawyer as a person who would only be found in courts, busy drafting hundreds of documents and would always have a relative who would be a senior lawyer. Globalization and changing times brought with it new career opportunities in the legal job market, apart from litigation lawyers can now work as in-house counsels and at MNCs and many law firms have sprouted who need lawyers who have specialized in a particular field of law. Recently companies started to realize the importance of having their own in-house legal counsels as legal advice is a mandatory requirement at each stage of business affairs. This in turn created hundreds of jobs for law graduates.

Mr. D. Baliga talked about the concept of brain drain in the country where young lawyers and professionals left India to seek a better life and better job opportunities. With the boom in the private sector there was a drastic change in the legal profession in India. Coming of the Depositories Act etc. changed the business world leading to the need of competent lawyers. This led to the growth of law firms and in-house counsels. To cater to the huge demand for lawyers a large number of law schools sprouted all across the country. Although India churns out a sea of lawyers each year what should be understood is that there is an increase in their quality too.

As a profession law needs to be viewed deep and broad, there is a need for specialization just like any other discipline and being a generalist is no longer recommended. Large corporations have now realized that Indian lawyers are competent enough to handle work not only in India but also across borders. As the days go by Indian lawyers are being given more responsibilities as their western counterparts, which means that there is no dearth of jobs for a lawyer who knows where to look. It is easy for an Indian lawyer to understand and master the laws of another nation and provide quality services which meet global standards. All this can be achieved only by updating yourself as a legal professional. According to Mr. D Baliga” to reach to great heights in this profession you ought to provide quality services.”



Expressing his views on the Bar Council of India's notification of only allowing those lawyers with 5 years of experience to appear in the Hon'ble Supreme court, Mr. D. Baliga said that law as a profession is a service and is expected to maintain a certain standard of quality. Having an experience cannot be the only criteria for quality today. The level of knowledge and excellent analytical skill should be the deciding factor while judging a lawyers caliber. Even today judges of the Supreme Court are unsatisfied by the poor quality and lack of preparedness of the lawyers appearing before them. Even lawyers with a practice of 25 years may deliver a poor performance showing that years of experience cannot be deciding factor of quality. Times have changed and now people who are reaching the top of their professions are getting younger by each passing year, showing that quality not only depends on experience but also depends on the individuals own skill set.

Unlike USA, Indian lawyers have the opportunity to appear in front of various courts and tribunals. Their American counterparts do not get the similar opportunities mostly because their system tends to resolve the case in an out of court settlement. Sure enough the Supreme Court has to lay down a benchmark for the quality of lawyers appearing before it. It is not about the years of standing but the quality of work, as the rules of the game have completely changed.

According to Mr. D. Baliga, law certainly requires commitment and sacrifice and it is best if this is done after choosing an area to specialize in. Since law is a vast field, it is impractical to be associated in all fields. Young lawyers should choose their field of interest by keeping in mind their ability and aptitude. For instance a mathematical background would be helpful in understanding concepts regarding to financial services, similarly a good eye for detail and an ability to grasp technical aspects would help them to excel in the field of patents. To be a constitutional law expert one has to be well versed in history, philosophy and jurisprudence. One has to be knowledgeable about the various inputs by British and other European Judges throughout history.

All young interns are attracted to the glamorous side of law and are only aware of the output which is just the visible end of the whole process. They are ignorant about the fundamentals and foundation laws. They need to realize that the input/specialization is the most important aspect of being a lawyer, and this requires a lot of dedication.

There is a huge difference in quality of Indian lawyers and those from different jurisdictions. They have an extra edge to understand the intricacies of law even after not knowing anything about Indian law. This ability is absent in most of the lawyers in India, there are some who are up to mark according to global standards all because of individual efforts. Although we produce hundreds of lawyers majority of them do not measure up to industry expectations. The problem is that the legal education curriculum is still not up to global standards and focuses on academic excellence rather than quality and professional development.

Closing Ceremony/Valedictory Session

Good Governance in Legal System



- ✚ **Shri Tushar Mehta, Additional Solicitor General, Supreme Court of India**
- ✚ **Adv. D.Bharath Kumar, General Secretary, Rashtriya Adhivakta Parishad**
- ✚ **Mr. Manoj Narula, Sr. Journalist**



While commencing his speech Mr. Tushar Mehta requests the audience not to treat the session as one which would conclude the event but as a session based on which some infrastructure could be built, a thought process could be evoked, in which discussions would take place and ultimately a concrete result would be formulated.



Shri Tushar Mehta, Additional Solicitor General, Supreme Court of India

Mr. Mehta talked about the three facets of good governance in law:

- The Judiciary
- The Bar
- The Government

He further said that if we demarcate the perceived system of good governance into these three facets and correlate them with each other then the result would be good governance in the legal system.

Focusing on the role of the judiciary in good governance of the legal system Mr. Mehta, explained that there is a need for competent and efficient judges to man the system. There cannot be good governance in the legal system unless the judicial officers are competent. In most of the countries including India good governance is ascertained by the number of cases decided in a year. Mr. Mehta personally believes that this method is incorrect, as good dispensation of justice cannot be a matter of statistics.

The first step is the appointment of efficient and competent judges. Following which there would be speed in delivering justice. Mere speed would not mean dispensation of justice but an equipped, competent and an enlightened judge would be able to deliver justice faster and reduce the number of arrears. We today work in a system which is in danger of collapsing under its own weight, there is an urgent need to ensure that this does not occur.

Another important way by which the judiciary can benefit the legal system is to recognize the need for short judgments. If we look at the judgments of the 1950's up to the 1980's we notice that even in full bench decisions which decided the extremely complex issues of law used to end within 4-5 pages without missing any important aspect. On the other hand nowadays judgments tend to consist of hundreds and even thousands of pages. This Practice must be discouraged as judgments are not supposed to be a thesis on the subject but are supposed to be a decision regarding the real issue between the two litigants.



While discussing the contribution of the Bar in good governance, Mr. Tushar Mehta said that lawyers need to take, accept, file and argue good causes where one's conscience is satisfied that there has been injustice. Although difficult to implement it is a must if we want the system to function well. If the system does not function well we in turn will not be able to survive as we ourselves are a part of the same.

Secondly, Mr. Mehta highlighted the need for short submissions by lawyers as they tend to argue endlessly resulting in exhaustion of judges and the lawyers themselves and ultimately add to arrears. According to Mr. Mehta lawyers can contribute to the system by being precise and concise. This quality can only be harnessed by being fully prepared with the brief, because if one has the knowledge and clarity on the subject, then one would have the knowledge about what to concentrate on and how to formulate the argument. This would allow the lawyer to convince the judge in a very precise manner.

Thirdly, Mr. Mehta said that the Bar could contribute by controlling the number of adjournments. Lawyers have now elevated the right to seek an adjournment as a fundamental right under part three of the Constitution of India. Adjournment laws are to be used only for the furtherance of justice and not as a beneficial legislation for lawyers. In many cases judges have maintained a check over it, and some lawyers impose a sense of self-discipline to assist the cause of justice.

Mr. Tushar Mehta continued by discussing the importance of the government and its contribution in the legal system. The government has the duty to provide infrastructure which includes the requisite buildings, staff, paraphernalia, libraries, funds etc. Even though the government is committed to achieve this, there still is the need for the organizations to work out a suitable modal and present the suggestions to the government. This would strengthen good governance in the field of law. Secondly, there is the need for immediate appointment of judges and filling up of all judicial vacancies. The problem of judicial vacancies is serious in nature. The government is not the only party responsible in the delay in the appointment of judges. But the government has its own role by which it can expedite the process for the appointment of judges. Thirdly, there is the need to appoint competent government lawyers as the government is the largest litigant. The government is party to almost 80-90% of the cases in courts. If a government lawyer is ill-equipped, insufficiently prepared and non-conversant with the law even the best legal system would suffer. The best government infrastructure would be of no use if the litigant who contributes to 80% of the litigation is represented by a lawyer who knows nothing or by someone who knows less than what is expected of them. Digitalization of courts makes the functioning more effective and also makes the process transparent and litigant friendly.



While talking about corruption Mr. Mehta, says that the legal fraternity can contribute immensely on the curbing corruption in the legal system if we work ethically and develop the habit to think from our hearts and not only from our minds.

Mr. Mehta suggests the government, the executive and the legislature is to reduce the number of laws, as more laws mean more complications leading to more litigation which would bring in more lawyers. The system is bound to be affected adversely if the number of lawyers is to increase. Mr. Mehta was confident that if the government would do everything possible to ensure that good governance in the legal system would not remain a dream but become a reality.

Mr. Tushar Mehta, concluded by calling the 26th of November a day to be proud as this is the day on which our constitution was formally accepted and we should salute our legendary constitution framers each of whom contributed immensely and brought out such a sacred document that has stood the test of time and ensured a sense of unity in diversity which is still growing with each passing day. He gave reasons for the success of the Constitution of India especially the foresight and expertise of the framers of the constitution.

Mr. Mehta, also paid homage to the heroic actions of the defense forces who ensured our safety on the 26th November 2011 when terrorists attacked the sovereignty of India.

Application of good governance in law



Adv. D. Bharath Kumar, General Secretary, Rashtriya Adhivakta Parishad

He shined light on the concept of good governance in our system by giving examples of cases depicting the slow and negative side and another for the fast paced and positive side of the Indian judiciary. The first case cited was the L. N. Mishra case which is a perfect example of the snail pace of the judiciary as the case was lagging since 40 years resulting in expiration of many witnesses and a pending judgment. On the other hand the positive side of the judiciary is seen in the case of Bitti Mohanti case wherein the commendable Jaipur fast track court gave the judgment within 20 days.



Advocate Bharath Kumar also talked about the United Nations Development Program showed that India ranks 135th in the Human Index Report. In the 2013 report India ranked 136th, seeing the progress he said that this was the best time to have a discussion on the aspect of good governance.

He further went ahead to talk about the core elements of good governance:

- Transparency
- Democracy
- Access to information
- Financial stability
- Reporting and evaluation

Discussing the concept of transparency in the legislative process, Mr. Bharath Kumar cited the famous case of the sethusamudram canal project wherein the estimated expenditure was Rs. 2,240 crores. This project was condemned by prominent activists on the grounds that it would harm the environment in a negative manner, by filing a writ petition in the Chennai High Court which was dismissed. The matter was carried forward to the Supreme Court which declined the stay order, but subsequently the stay order was passed. After the coming of the green tribunal it was seen that the definition of “aggrieved party” existing in the bill was not in consonance with law and was Draconian in nature. The same was opposed and there was an immediate change in the definition. This case shows the level of transparency in our system.

Further Mr. Bharath Kumar talked about democracy in the decision making process. He explained this with an example of the Unique Identification Bill which was rejected by the standing committee due to the clause which said that every resident of the country is entitled an aadhar card. An aadhar card as a document is sufficient enough to get a sale registration, a gas connection, a bank account and entry into airports. These benefits are strictly for citizens. This provision had a negative effect by indirectly giving all illegal infiltrators a citizen status, as the wording “residing” applies to even those residing on the streets.

The standing committee of the parliament stated that it cannot be implemented. Even after knowing the problems the government went ahead and launched a project worth 1000’s of crores of rupees by an office memorandum. Following which activists like retired Justice Puttuswami from Karnataka volunteered and challenged the bill, whereby the Supreme Court issued a notice and has granted that it should be limited to the extent that all illegal holders will not receive an aadhar card. This shows that just like a transparent system we have democratic system and if the democratic system doesn’t work in the parliament, we always have the judiciary to take charge.

Further talking about access to information Mr. Bharath Kumar talked about the Right to Information Act. Before starting this he talked about a case in Andhra Pradesh where the OBC, SC and ST students were denied their basic mess scholarships. Student bodies were protesting for their rights. On the other hand the state government was funding a foreign trip to Jerusalem. The activists challenged this using the Right to Information Act asking how the state government was able to



fund a foreign trip while failing to provide scholarships for its students. The activists then challenged the same in the High Court of Andhra Pradesh on grounds of violation of Article 27 which prohibits the state from using allocated funds for any religion. The Hon'ble High Court of Andhra Pradesh came to the rescue of the students. This example shows us the benefit of the access to information in our system.

Mr. Bharath Kumar went ahead and discussed the next important aspect of good governance which is having a sound financial management. The budget allocated for the legal system is 0.4%, the request of the Supreme Court for Rs 176 crores the government has granted Rs 145 crores. Looking at the data it can be seen that for an efficient legal system there has to be a sound financial management system. Today there are 3.1Cr cases pending in courts across the country. According to the latest update of November 1st, the Supreme Court website the number of pending cases is 65,000. In the High Court the number of pending cases is 46 lakhs. In the trial courts the same number is 2.23 crores.

In order to tackle the pendency of cases there is a need of more judges, courts and infrastructure. This is the only solution to this problem. Mr. Bharath Kumar pointed out the need to use the existing infrastructure to its optimum usage, by using the same for both morning and evening courts. He also suggested that the evening courts can handle lighter matters like summary and petty cases. To tackle the pendency of the system Mr. B. Kumar requested everyone to be responsible and not to oppose it if the government brings in the system.

Talking about the reporting and evaluating mechanism, Mr. B. Kumar said, that one can find out the data regarding the number of cases pending, number of civil appeals, number of SLPs, Number of cases mature and the number of cases still not mature for hearing on the Supreme Court website. The same is updated every month as all this is reported to the registrar. This same system of reporting should be done in both the High Court as well as the trial courts this in turn would allow the clients to understand that advocates are trying to help the judiciary and are not only there to take adjournments. The judges also have constraints as they cannot be expected to read through 60 cases per day. There has to be understanding and mutual cooperation between the judiciary, bench and bar. Hence without a sound financial and reporting system there will always be the problem of pendency in courts.

Mr. B. Kumar showed that there is a large number of vacancies for judges in High Courts and trial courts. The ratio of judges to the population in India is 10-15 per million. Compared to Europe and the USA this number is very low. In Europe the judge to population ratio is 150 per million, and in the USA the judge to population ratio is 100 per million. According to Mr. B. Kumar, India needs to improve this number and that is possible if more law students opt for litigation rather than joining high paying corporate law jobs. He also said that to have an effective legal system we need to act as watchdogs and also be a pressure group.

Another problem he highlighted was in case there is a PIL case advocates tend to rush from their native place to High Courts or to the Supreme Court. There are more lawyers in trial courts than in



the High Courts or the Supreme Court. He also requested them to understand that the similar remedy of Article 32 and 226 can be applied for in trial courts under sections 91 Cpc and section 133 Crpc for getting a declaration or injunction.



Mr. Manoj Narula, Sr. Journalist

As a journalist and having done work on good governance Mr. Manoj Narula was invited to moderate the discussion. He started by talking about the Indian context of good governance which is mostly about eliminating corruption and to reduce lag time. He further said that across the globe good governance meant good intent. The good intention leads to good governance and that leads to perfection and it is a continuous improvement process, adoption of best global practices to make a process lean and perfect by applying various scientific rules and techniques like six sigma etc. The USA has good governance as a subject and there are even certain awards given by the President. Good governance automatically leads to perfection. If a process is perfect then an average person will always yield good results. A perfect process will always be followed by continuous improvement.





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Indian National Bar Association would like to thank all the participants for their valuable time and dedication in making the celebration of the Indian National Law Day a success. We also would like to thank all the speakers and panelists who shared their valuable insight and ensured that the sessions maintained a very high quality. The knowledge imparted by them was certainly appreciated by the audience which constituted of Senior Advocates, young lawyers, government officials, various dignitaries from India and abroad and students.

We believe that we have turned a new leaf by bringing the most important legal issues out in the open. The National Law Day celebration was not only a medium to learn and educate the legal community, but was intended to bring forth a sense of responsibility, and a positive change in the mindsets of all those who took an active interest in it. We truly believe that future National Law Day celebrations would be on a much larger scale and would truly make a difference in the governance of the nation. This dream will surely be lived owing to the constant support and encouragement by all the partners and associate bodies of the Indian National Bar Association.



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