INBA

Indian National Bar Association

NATIONAL LAW DAY

26TH -27TH NOVEMBER, 2012

HOTEL LE MERIDIEN, NEW DELHI

INBA ANNUAL CONFERNCE 2012:

A REPORT

INDEX

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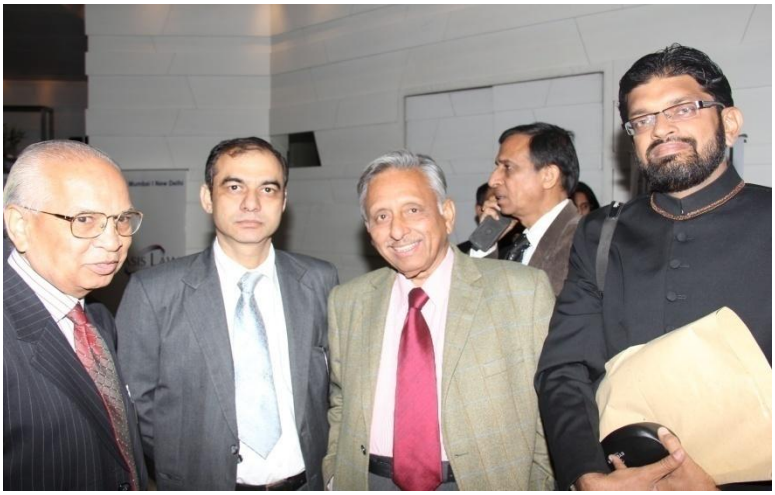
DIGNITARIES GRACING THE OCCASION

Hon'ble Shri Ashwani Kumar, Minister of Law, India.



Shri Mani Shankar Iyer, Member of Parliament with other dignitaries at the conference.

Shri Ram Jethmalani, Member of Parliament.

M. Krishnamani, President- Supreme Court Bar Association of India gracing the occasion.

Hon'ble Justice Santosh Hegde, Former Lokayut, Karnataka

Shri KTS Tulsi, Senior Advocate, Supreme Court of India

Former Chief Justice of Supreme Court of Pakistan, Shri Rana Bhagwan Dass

KEYNOTE MESSAGES

Shri Ashwani Kumar, Minister of Law & Justice, India:

"I am pleased to know that Indian National Bar Association (INBA) is celebrating National Law Day on November 26th-27th, 2012 at New Delhi and have invited several eminent national and international speakers from Legal fraternity, Corporate Sector, Government, Law Firms, Senior Lawyers and Judges across the globe.

The legal and judicial fraternities of our country as well as people at large celebrate November 26 of each year as National Law Day, because it was on this day in 1949 the Constituent Assembly of India had adopted our Constitution, which subsequently came into effect on January 26, 1950.

Law Day is an occasion on which we pay our humble tribute to the unique vision and genius of the framers of our Constitution. It prompts us to reflect upon and renew our pledge to protect, preserve and enhance the values enshrined in our Constitution. It is a special day when we all should celebrate and support those who have played active role and taken the efforts to uphold the rule of law and protect our rights and liberties.

With this, I wish this conference a great success."

Shri Ram Jethmalani, Senior Advocate and Member of Parliament :

Shri Ram Jethmalani expressed his delight to see the distinguished guests from Pakistan, Former Chief Justice of Supreme Court of Pakistan, Shri Rana Bhagwan Dass. He shared his experience from coming from Pakistan to India as a refugee to being one of the youngest lawyers to be admitted to bar for practicing as an advocate. He said that his favorite profession is teaching law, then advocacy and then a politician. He emphasized that he understood that politics is not going to solve problems. He said that role of lawyer is most essential for society at large. He encouraged young lawyers to have experience of all courts i.e. lower courts as well as High Court & Supreme Court.

"I am more of a lawyer and very much less of a politician and I am not, therefore, a successful politician in the normal sense of the word. I am happy to see that our Law Day is being celebrated by INBA through this conference. I always celebrate this day with my students and also encourage everyone from legal fraternity to celebrate it proudly. All lawyers should pledge by high repute and honor of this profession."

Hon'ble Justice Santosh Hegde, Former Lokayut, Karnataka:
"*Elements of strong Anti-Corruption legislation for India's business and economic growth*"

Hon'ble Justice Santosh Hegde stated that in India, law of prevention of corruption is of a recent origin and earlier it was a part of Indian Penal Code (IPC). He stated that Prevention of Corruption Act was introduced in 1947 and then in 1988 the need to bring change in law was felt which led to substantial amendments in this Act. He stated that the first scam which happened was Jeep Scandal for an amount of money around 52 lakhs. Then later this trend was set and every year a scam came to notice ranging from Mumdra Scam, import of sugar scam etc. He apprised that with time the

amount involved in each scam is increasing rapidly and when such is the area of corruption in administration, it is natural for people to bring change in law.

Justice Hegde stated that first Administrative Reform Commission was set up in the year 1966 and after studying various systems available internationally, the commission suggested for setting up of Lokpal (Ombudsman). He apprised that we have 9 states with effective Lokayukt. He emphasized that if Lokayukts are given powers it can help in prevention of corruption to a great extent. He also highlighted upon the shortcomings with central and state vigilance commissions and Prevention of Corruption Act which states under a provision that the lokayukt needs sanction from superior authority before prosecuting or investigating public servant. However, he also came up with Supreme Court decision wherein it was declared that there should be automatic sanction. Justice Hegde further spoke on Jan Lokpal Bill which was passed due to movement across country against corruption. He said more focus should be on containing the amount of corruption. He also raised the concern about the prolonged delay in disposal of anti corruption matter which attracts further corruption due to low risk. He added that strong anti corruption law should be framed and implementation of the same should be taken into account by judiciary.

Shri K.T.S Tulsi, Senior Advocate, Supreme Court of India:

Mr. K.T.S Tulsi supported Justice Hegde view and stated that an efficient criminal justice system is necessary. Corruption is one of the bad products. He stated that we do not have to amend the laws to streamline the existing anti corruption system, but modernization of criminal justice system is the need of the hour. He submitted that the root cause for inefficiency is delay in judicial system which has paralyzed criminal justice system as the risk involved in scams are low with high value returns. It is essential that justice is delivered on time or else corruption will grow its branches all over. He said that total number of cognizable and non cognizable cases pending last year in courts were 1,74,12,083. The said numbers shows that 1 crime is committed against woman in every 2 minute, 1 molestation takes place every 12 minute, rape takes place every 22 minutes, 1 dowry case every 61 minutes, 1 murder every 16 minutes.

Mr. Tulsi also raised the concern that crime is rising at much larger proportion than population of India and no easy solutions are possible. He further highlighted that jails are packed to the extent of 65% with undertrial prisoners. He further highlighted the consequences of decline in conviction rate and delay in disposal of cases. He stated that corruption gallop and enters all fields from top to bottom. He quoted several scams namely 2G Scam, Commonwealth, Adarsh Scams. And added pharma adulteration, piracy etc. The only way to counter corruption is active and effective judiciary and police. A criminal justice board may be set up. Use of technology at police stations can improve accessibility.

Shri Rana Bhagwan Dass, Former Chief Justice of Pakistan:

Shri Rana Bhagwan Dass thanked INBA for inviting him for the conference in India and enlightened the participants about his experiences of becoming Chief Justice of Pakistan owing to fair and equitable treatment from the Bar and Bench. He emphasized that both countries should participate and exchange thoughts and opinions on law through such conferences.

Justice Rajesh Tandon, Chairman - Uttranchal State Human Right Commission :

Justice Rajesh Tandon gave vote of thanks to the organizers, participants, panelists and guests for two day conference. He said that celebration of Law day is an important event and this conference was very enriching as it contained wide range of laws ranging from intellectual property to

taxation. He said that it is extremely essential for law students and budding lawyers to have knowledge of newly developed laws including intellectual property and cyber laws. He touched upon Article 21 of the Constitution and discussed Kapila Hingorani & Maneka Gandhi case.

Kaviraj Singh, President of Indian National Bar Association:

Kaviraj Singh presented the welcome speech and expressed gratitude to the registrants, attendees, event partners - ABA Section of International Law, Witness Magazine, International Section of State Bar of New York, Clasis Law. Mr. Singh highlighted that the main objective of celebrating Law Day is "We want to be a coherent democracy governed by the rule of law. True democracy and the rule of law always go together. It is the rule of law which guards the democratic polity. Therefore, the real purpose of celebrating Law Day is to rededicate ourselves to the following cardinal principles which formed the solid foundation on which this grand constitutional edifice is erected: (i) the rule of law, (ii) independence of the Judiciary, and (iii) the independence of legal profession. These three principles are intimately interconnected."

K.C. Kaushik, Secretary of INBA:

K.C. Kaushik stated that the constitution of India has been available to us for more than 60 years now and has been undergoing several changes as per the need of hour. He said that INBA is the 3rd institution to recognize and celebrate national law day at such level. He gave a brief insight of INBA as an institution which can aid in accessing & communicating with government officials for contribution in the policy making, media interactions on corporate and policy matters, networking opportunity with legal departments of multinational corporations, law firms, Senior Counsels etc. He mentioned that we have to glorify Indian legal set up to attract the foreign contribution. He added that budding lawyers are the future and face of our legal system and thus should be groomed and educated in a right manner.

Mr. Vijay Kumar Sharma, Secretary General of INBA:

Mr. Vijay Kumar Sharma read out the message given by Shri Ashwani Kumar, Hon'ble Law Minister of India who was pleased to know that INBA is celebrating National Law Day and has invited several eminent national and international speakers from legal fraternity, corporate sector, government, law firms, senior lawyers and judges across the globe.

Mr. James Duffy, Esq., International Law Section of American Bar Association:

Mr. James Duffy apprised that he was the Founder of International Section in New York State Bar. He said that India is an important player in the international stream and the lawyers from different countries including India should come together to support various transactions. He asked for participation of lawyers at international level.

Dinesh Jotwani, CEO of National Bar Association:

Dinesh Jotwani enlightened the participants about the conception of INBA and that it is a brain child of Mr. Kaviraj Singh. He said Law day is an important day and we all should celebrate and recognize those who have played active role in upholding the rule of law and protected our rights and liberties. He highlighted that little steps give lot of recognition to legal fraternity and thanked the partners, panelists, sponsors and participants for their presence. He stated that INBA Arbitration Centre is a well structured forum with specialized legal and technical experts and panelists which will aid the Indian Legal Community, multinational Corporate & Business organizations, Non Governmental Organizations, Groups, and Associations in resolving the disputes through ADR mechanism.

DAY 1 - November 26, 2012

Topic –
OPENING OF INDIAN LEGAL MARKET
Session Moderator: Mr. Kaviraj Singh, President - INBA
Panelists:
Mr. James P. Duffy, Esq., American Bar Association, International Section
Mr. Sanjay Chaubey Esq., New York State Bar Association,
Mr. Sudeesh Sharma, Partner & Head, Fox Mandal and Little

Mr. James P. Duffy, Esq., enlightened the participants about his professional experience and how opening of Legal Sector will be a gainful step for India. He stated that he is presently working to facilitate transport building of lawyers. He apprised that New York is one of the key international legal centres across the world since its State Bar Association is most liberal where lawyers of different countries can work together. Long back in 1950's, it was not the scenario as there was no need of such policies. He said presently New York is willing to welcome lawyers from all over the world to support various transactions. He highlighted that Singapore & Hong Kong too are emerging as an important international legal centers due to its liberalized changes. He emphasized that India is an important player in the international sphere and presently, in the era of globalization, required steps should be taken and liberalized approach should be followed by opening the Indian legal market to explore new growth avenues from foreign firms and lawyers.

Mr. Sanjay Chaubey, supporting Mr. Duffy's views stated how late India is in opening legal markets. Sharing his personal experience he said that he was the practicing attorney in India in the matter of M.C.Mehta v. Union of India and felt that set of laws were not adequately addressing the environmental laws in India which made him go abroad and do his LLM from one of the leading institute of New York. The only criterion for doing LLM was clearing bar exam in New York. He shared that by the time he entered into practice, New York was one of the most liberal state. New York is liberalized to absorb practitioners from different countries and look for different ideas and different backgrounds to see how diversity can bring different colours in dispensing justice. He said in India, resistance of foreign lawyers should be stopped. He urges everyone to think on the benefits of opening up of legal markets. He said that we should change according to changing scenario in order to grow, excel and survive at the national and international platform. He highlighted that today we are outsourcing from US.

Mr. Sudeesh Sharma highlighted that in the light of ongoing wave of globalization and liberalization, the incontrovertible fact remains, that the need of liberalizing the Indian legal sector is unarguable and beyond doubt. He quoted that Hon'ble Supreme Court of India observed that Reserve Bank of India should not grant any permission to foreign law firms to open offices in India. He said that there is a need for mutually acceptable mechanism for each other's law firms into two countries. He highlighted that by liberalizing the legal fraternity will get the best of both the world. Indian lawyers and firms will have easy access to clients, global exposure, participation in trans-national deals, greater career opportunities, improved pay and work conditions.

Topic:
PREPARING FUTURE LAWYERS: STATE OF GLOBAL EDUCATION

Panelist:
Mr Ian Fox, Deputy Head of School of Law - Birmingham City University (BCU), UK
General Nilendra Singh, Director- Amity Law School

Mr Ian Fox, Deputy Head of School of Law, Birmingham City University (BCU), UK. He spoke on "UK Legal Education for Advocates: continuing professional development transnationally". He said that there is a dire need of internationalisation of education by creating international and transnational practitioners through transnational legal education and bringing transnational postgraduate legal education and continuing professional development to Advocates in India. To become a transnational lawyer it is important to have a good substantive knowledge of law and procedure, command of a diverse range of specialist and interdisciplinary skills. He added that School of Law, Birmingham City University (BCU) has very close links with Birmingham Law Society which is one of the biggest in the UK. He claimed that practitioners have regular and continuous involvement with students at BCU throughout the courses. He also informed that BCU in ccollaboration with Bar Council of India is in the process of creating an innovative four-year programme which has been provided by few universities across the World. He further informed that BCU is currently working with INBA of India in order to potentially develop a course that allow suitably qualified lawyers to top up their education with internationally recognized LLM which will be a one year course. He emphasized the importance of knowledge and understanding of legal ethics and good written and verbal communication in the field of law. Mr. Fox enlightened the audience by saying that the law school at BCU has over 40 years of rich experience in delivering legal education, global and international laws research. He added that the globalisation of our legal education has truly become a reality; not only through the increasing number of international students choosing to study at BCU, but also as a result of our strategic business plan to internationalize our curriculum.

Major General Nilendra Singh, Director Amity Law School started his speech by thanking INBA for its focus on legal education. He said that he is deeply obliged to INBA for its efforts. He said that there are around 1000 law schools in the country yet the education system is faulty particularly with regard to its relevance. The main challenges before law schools in India are providing clinical education, internships, mock trials and legal entrepreneurship. He explained that the second generation reforms in legal education in India came up with the setting up National Law Schools. He emphasized that law students should be given opportunities to work/intern with courts, lawyers, regulatory authorities, firms (in India & across the World), NGOs, PSUs, financial institutions, banks to see the application of law in different spheres. The students should be given education imparting legal aid to poor by associating with children home, Nari Seva Samiti etc. Rendition of legal aid provides exposure to students in client interviewing. It has been noticed that advice rendered by students is qualitatively superior to lawyers. He further emphasized the need to organize moot courts at national and international level wherein students should also be provided exposure to appellate trial mechanism and examination of witnesses. He urged that the law firms should impart legal entrepreneurship. Students should be given opportunity to carry out market survey. General Singh emphasized the need of amendment and reforms in laws. He said that students should be encouraged to write articles, precise writing and assignment writing in order to improve their writing skills. Corporate law firms should impart corporate legal education to students. They should mark some percentage of their profits to promote research, consultancy and making acceptable standards of entrepreneurship. General Singh said that BCI should collaborate with law schools to see the areas of improvement. He added that elbow space should be given to faculties as

TOPIC:
LEGAL CHALLENGES TO RAPID INFRASTRUCTURAL GROWTH

Session Moderator: Ms. Rashi Anand Suri, Partner -SNG & Partners
Panelists:
Dr. Rajiv Uberoi, General Counsel- IDFC
Mr. Nihar Ranjan Dash, CGM (Fin) – NHAI
Mr. P.K.Malhotra, Chief Gen Manager, Project Finance & Leasing SBU-SBI
Mr. Ravi Raina, President- Astonfield Renewables

Ms. Rashi Anand Suri highlighted about deficit of infrastructure in the country.

Dr. Rajiv Uberoi stated that challenges should be identified and necessary steps should be taken to bring in infrastructure.PPL model is a success but with its own pitfalls. He said a robust framework should be adopted for enhancing infrastructure and economic growth. He further added that power, telecom sectors highways, nodal agencies, concessionaire, money lender, public and market should be taken care of. Taking into account these essential players, concession agreement should be revisited which is a brainchild of lawyers. He submitted that government only lays down a policy for PPP, effective contractual framework is the key for successful infrastructural projects. Thus, it is important to revisit contractual framework, as the ambiguity in the contracts and to resolve the disputes affecting investment and growth

Mr. Nihar Ranjan Dash provided recommendations for infrastructure development from developer's perspective. Mr. Dash pointed out that financial year 2011 was very successful for NHAI as it made financial closure of 37 projects. However presently in 2012 only 9 projects have been achieved which makes it obvious that developers are facing issues. He emphasized that any PPP model based project would depend on how good the contract is covering risk and rewards etc. Contracts need to be unambiguous and simple to avoid conflicts of interests. Securitization of Future Cash Flow could help the developers in investing it in new projects. Repayment of loan based on the tenure of the loan could an option too. Further, external commercial borrowings could be another option.

Mr. P.K. Malhotra brought out the challenges faced by financial institutions and banks in lending long term loans. Mr. Malhotra highlighted about the inception of PPP model and said that what lenders saw in PPP model is that there can be three partners with individually assigned role. This was the time when thought of putting five trillion dollars came. All competencies of government were pooled, contractors had their competencies in execution, tie up of the finances which the country desperately needed so ultimately it led to growth. However, bidding now has come to a standstill which shows pitfalls of the model. He further stated the problem of total project cost shots up unexpectedly and gets stuck due to various approvals.

Mr. Ravi Raina stated that solar energy takes 6 minutes to hit the ground defines how powerful the energy is. He stated that 60 kms can give 160 thousand kilo watts of power energy. He underlined that in next five years 50% of the energy is coming from conventional and 50% from renewable. He submitted that it is surprising to know that solar energy is not considered as pure form of energy and time has come to revisit our policies and legal framework.

Topic:
GOVERNMENT RELATIONS PRACTICE FOR LAWYERS

Session Moderator:
Mr. Hitesh Barot, VP, Technology Policy- GE
Panelists:
Mr. Hitesh Barot, VP, Technology Policy- GE
Mr. Rishi Chawla, Director, Government Programs- IBM India
Mr. M.N. Krishnamani, Senior Advocate and President of the Supreme Court Bar Association

Mr. Rishi Chawla said that opportunity exist for lawyers in advocacy work at legislative level. He said policy formulation has evolved in US. Mr. Hitesh Barot asked Mr. Chawla that how does he became a lawyer for public policy? Mr. Chawla said that he has been associated with lots of government agencies, regulators in the past which helped him to understand how laws are made. He stated that it further helps in developing strategic point. He said it brings excitement to discuss about the proposed policies and laws. He stated that the popular term by which government relations lawyers are referred are lobbyist. He stated that in India, every industry has their own policies and standards and we are moving into transparent ways of making policies and laws to make them more effectual. More lawyers will be required in the process of enhancing or making a draft policy as for drafting or framing an effective policy or law. He further stated that judicial members should not be tainted merely for interacting with industry.

Mr. M.N. Krishnamani said that draft of bill before becoming a law is discussed at legislature, sometimes it is referred to special committee, some regulations are brought by Law Commission of India. Law Commission suggests law being made at the need of hour. Law Commission has lawyers who draft the provisions and the finalized draft is presented to the Parliamentary sub-committee. Parliamentary sub-committee invites lawyers, bar leaders for their suggestions. Bill is improved before making it as Act and referred to Attorney General. He stated that the role of lawyers in policy or law making is vital and thus government relation practice for lawyers is essential.

Mr. Hitesh Barot said that lobbying for bringing law into existence is essential. He mentioned that there is no wrong done if lawyers or industry leaders interact with government bodies. Lobbying is taken up as a corruption in Indian system? Many law firms have realized the importance of government relations and has particular department for government affairs.

Topic:
ALTERNATE DISPUTE RESOLUTION
Session Moderator: Shri Atul Sharma, Managing Partner- Linklegal
Panelist :
Ms. Deborah Tomkinson, the Dispute Resolution Manager - Australian International Disputes Center
Vivekanand N.,Head, South Asia- Singapore International Arbitration
Sumeet Lall, Partner -Clasis Law
Ajay Thomas, Registrar- London Court of International Arbitration
Denis Gebhardt- Rechtsanwalt / Attorney-at-Law (New York).

Ms. Deborah Tomkinson joined the session through skype. She shed light on taking recourse to Australian Dispute Resolution Mechanism in case of International Arbitration. She mentioned the key features of International Arbitration in Australia as its modern legislation, supportive judiciary, sophisticated legal professionals, right to representation by counsel of choice, established facilities and logistical support, proximity to key regional business hubs, political stability and arbitration-friendly nature of the jurisdiction among others. Ms Tomkinson further explained the history and working of Australian Centre for International Commercial Arbitration (ACICA) and Australian International Dispute Centre (AIDC). In 2005, ACICA launched its own set of arbitral rules.

Mr. Sumeet Lall cited some famous judgments related with jurisdiction of Indian courts in International Commercial Arbitration (ICA). He explained the ratio of Bhatia International v. Bulk Trading wherein it was held that interim measures can be granted even if the parties have stated a foreign law and seat of arbitration is outside India; it was further observed that an ouster of jurisdiction of a court cannot be implied but has to be express. Further, Part I of the Arbitration and Conciliation Act, 1996 (the Act) is applicable to both domestic and ICA, outside India unless parties excluded it -expressly or impliedly. Mr. Lall also shed light on the ratio and impact of BALCO versus Kaiser.

Mr. Ajay Thomas spoke on the Role of Arbitral Institutions in Promoting Speed and Reducing Costs in Arbitrations. He rightly said that, "Arbitration is to have all the virtues which the law lacks. It is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife". He quoted the eminent lawyer Nani Palkhivala, "If I were appointed the dictator of a country, in the short period between my appointment and assassination, I would definitely impose a law making arbitration compulsory in all commercial contracts". He further said that taking recourse to Arbitration becomes more important looking at the number of pending cases in the Indian courts. He pointed out the importance of speed in arbitration.

Mr. Denis Gebhardt spoke on conducting effective international arbitrations. He said that effectiveness is a combination of time and cost. The proceedings should be short but appropriate at minimal costs. He further shed light on the factors making international arbitration ineffective. The main factor is Structure of the process which includes pre-trial discovery which adds 6 to 8 months in the process of arbitration, taking of evidence which again is pretty time consuming and number of hearings involved to conclude the proceedings make most arbitrations ineffective. Mr Atul Sharma said that discipline is the most important aspect of the institutional arbitration.

Mr. Vivekanand explained how institutional arbitration is better than ad hoc arbitration in resolving disputes. The main factors that makes institutional arbitration effective are defined rules of procedure, defined costs and timelines, qualified panel of arbitrators, facilities for conduct of arbitration, scrutiny of awards, and control over process and conduct. He pointed out the most important factors of institutional arbitration as cost, timelines and enforceability. He further explained the due process used by the SIAC. SIAC Rules 2010 provides for expedited procedure, emergency arbitrator, interim relief, confidentiality, multi party arbitrations.

Mr. Atul Sharma wrapped up the session by adding that in an ADR session or conference we forgot to mention an important point that we have an Arbitration Centre adjunct with the Delhi High Court and also a Mediation Centre adjunct with the Delhi High Court.

Topic:
LEGAL CHALLENGES IN SETTING UP SUBSIDIARIES BY FOREIGN BANKS IN INDIA

Session Moderator:
Mr. Rajesh N. Gupta, Managing Partner- SNG & Partners
Panelists:
Mr. Alok Nigam, Joint Secretary (BO) Ministry of Finance Dept of Financial Services
Mr. Sandeep Beri, Head, Legal- Citibank
Mr. Sunil Kumar, Senior Compliance Officer, Wholesale Banking Compliance, India- Standard Chartered Bank
Mr. Rajesh Tanna, Head of Compliance-First Rand Bank Limited

Mr. Alok Nigam gave overview about the financial institutions of India and how the Banks in India came out clean and robust at the time of global recession and meltdown. Mr. Rajesh N. Gupta inquired Mr. Nigam about the reasons why government of India thinks that Foregin Banks should be converted into wholly owned subsidiary model? Mr. Nigam apprised that conversion of Foreign financial institutions, banks in wholly owned subsidiary (WS) Model will provide a regulatory comfort to Reserve Bank of India (RBI). He said that seeing the outcome of financial crisis, the regulator has come up with this suggestion.

Mr. Sandeep Beri outlined the benefits in adopting WS Model and the downsides. Mr. Beri said that from governments perspective, Mr. Nigam has outlined the benefits while from Banks perspective if WS Model will be adopted it will be more participating and there will be parity in treatment. He added that current existing asset book will be transferred to WS and all connected issues will be shifted to WS but there will be huge implications including stamp duty, assignment. Mr. Gupta further inquired on ease about transfer migration. Mr. Beri said it is a painful aspect and foreign banks are concerned about stamp duty, tax implications etc. Other challenges would be technical one and could be handled. RBI will have to take an expensive view of Section 44A of Income Tax Act.

Mr. Nigam quoted a new Section 80 is proposed to be inserted in Indian Stamp Act as per which a WS is not required to pay a stamp duty. He added that a new Section 12BB is further proposed to be inserted in Income Tax Act by which some taxes including capital tax will be waived off. He said that RBI is finalizing the scheme in this regard. Mr. Gupta asked Mr. Nigam whether there is any categorization for larger banks on which Mr. Nigam informed that as on date there is no categorization and it will be at the option of government to include it or not.

Mr. Sunil Kumar mentioned about Standard Chartered challenges in adopting the WS model. Mr. Kumar enumerated the challenges that a new independent Board will have to be incorporated, voting rights will be restricted to 10% and there will be only 3 directors. He further stated that we need to look at the larger background about import export issue etc. apart from this; foreign banks will get sufficient international market by adopting this model. He added that although the advantages by conversion will be pacified by dividends and there are no direct tax benefits.

Mr. Rajesh Tanna stated that banks who are late entrants and who keen to do retail would get benefitted. Regarding adopting the structure he stated that his bank would be looking at the guidelines to reach at a decision. He added that conversion challenge will be a onetime pain but will address the long term goals.

Mr. Gupta asked Mr. Kumar and Mr. Tanna whether dilution of 25% would be an issue to which they replied that it can be taken as an advantage as there is a flexibility given to bank for dilution. It will also insulate the foreign banks from domestic pressure.

Topic:
DOING BUSINESS IN INDIA

Session Moderator:
Mr. Anand Dayal Esq., Chair, FCPA- American Bar Association,
Partner, Koura & Co.
Panelists:
Mr. Anand Dayal Esq., Chair, FCPA -
American Bar Association, Partner- Koura & Co.
Mr. Hemant Batra, Managing Partner- Kedan Borris

Mr. Anand Dayal said good news is that entrepreneurship thrives in India and new businesses are welcomed. He said that the critical need is to think how to improve business? He said that business climate in India is satisfactory with some spoilers and delighters. He enumerated spoilers as presence of corruption, lack of IPR enforcement, policy uncertainty and delighters as tax incentives, soft infrastructure, improvement in capital market insurance etc. He said that corruption increases the cost of business and that bribe denies market businesses that are ethical and the products which are best. He said that the legal framework is not uniform to address the issue of corruption and transnational frameworks like FCPA are battling the issues of corruption in India. . He stated that Power plus discretion minus transparency is equal to corruption.

Mr. Hemant Batra said the question which needs to be thought upon is how easy it is to do business in India as Indian business climate has its own pros and cons. He stated that law is essential for fiscal reforms. He said India is selling that it is a big market. He stated that there is no clarity in law and it needs to be deliberated upon.

Topic:
STIMULATING ECONOMIC GROWTH THROUGH NATIONAL IPR POLICY

Session Moderator: Sudish Sharma, Partner, Fox Mandal & Little
Panelist:
Tabrez Ahmed, Director, IP Policy - Microsoft
Dr. Sheetal Chopra, Head, IPR Division- FICCI
Hitesh Barot, VP, Technology Policy -GE
Mr. Trilochan Verma, IP, Lead - Samsung

Mr. Sudish Sharma started the session with speaking on the importance of IPR. He said that we require an IPR policy, if we want to give the right signals to the investors that their investments are safe in India. He added that the need of the hour is to have a mechanism to curb corruption.

Mr. Tabrez Ahmed, spoke on "Finalizing National IP Policy: Are we stuck". "We require a National IP Policy to act as an enabler for the nation's existing innovation. Mr. Tabrez pointed out there should be public-private policy in the field of IP in India. Creating and protecting creation is very important for which creative and protective mechanisms need to be in place. More importantly, it is essential to support grass root innovation. It is also very important to streamline IP prosecution. There should be IP courts or specialists should sit with judges to get into the technicalities of the IP issues to reach at the right decision. The balance should be maintained between IP rights and public policy. India should develop some low threshold model under which people can come and register."

Mr. Hitesh Barot, shed light on the positive changes that have been seen in Indian IP regulatory regime and praised the government to put a National IP Policy in place. He explained that we do not have an index whereby we can see the progress that has taken place in IP over the years. He cited a recent suit that GE has filed against one of its employees with whom they have a contract whereby the employee was bound not to use or disclose trade secrets. However, the employee disregarded the contractual obligation and GE took 8 months to file the case of breach of contract against him. He was amazed to receive the order of injunction against the employee within a few days of filing the suit. He added that it is a great step on the part of the Indian government which will help in the long run.

Dr Sheetal Chopra, spoke on the serious menace of piracy that is ailing the entertainment industry. She rightly said that most people do not watch movies on theatre but by downloading them from internet. She said that piracy is one issue which should be tackled efficiently and quickly. She shed light on the fact that 90% of the pirated movies are originated from cinema halls. She said that the reason of increase in piracy cases is rooted in our flawed laws. Section 52 of the Copyright Act, 1957 allows making copy of a film for personal or private use. Therefore, we need National IP Policy to specifically deal with the issue of piracy.

Mr. Trilochan Verma said that we are filing patent applications just for getting a license to file in other countries to generate license and cross-licensing fees. He added that foreign filing patent is not easy to get that is why companies file an application in India so that they become eligible to license the technology across the globe. He rightly said that we require huge human resource to develop innovations.

Topic:
MEDIA ADVERTISING AND ENTERTAINMENT

Session Moderator: Mr. Rajiv Mishra, CEO- Lok Sabha TV
Panelists:
Mr. Rajiv Mishra, CEO - Lok Sabha TV
Mr. Zameer Nathani, Head, Legal- Balaji Motion Pictures
Ms. Suman Arora, Advocate - Vakilhelp
Mr. Anurag Batra, Chairman & Editor in chief- Exchange4media

Mr. Rajiv Mishra started with carrier fees of distribution of TV Channels which is the major part of expenditure incurred by entertainment industry. He enlightened the participants over the problems faced by media and entertainment industry in distribution. He stated that cable operators have limited bandwidth and due to limited bandwidth cable operators are unable to show all the channels. He said that for receiving the space, people started offering money and things became troublesome since then. He stated that Distribution is becoming a major issue and Ministry of Information and Broadcasting has come up with a policy of digitization. He also spoke on the risks involved in doing sting operations from journalist perspective.

Mr. Zameer Nathani started his oration by saying that Entertainment is a serious business and Balaji is the pioneer of entertainment business house. He spoke on successful brand of "The Dirty Picture" of Balaji which grossed 120 crores worldwide. Further, he spoke on the growth of entertainment industry. He said that entertainment business is serious as it touches the life of people and involves high stakes and thus everything is on paper in the form of legal contracts. He further stated that huge risks are involved especially when film is complete and due for release as it has to go through the scanners of several people and there is constant threat of last minute litigation relating to infringement of IPR or re-certification or FIR, complaint, PILs from social service groups, religious groups, political groups, community associations, minority commissions etc. He stated that the entertainment sector has to take lots of approvals and ensure several laws and regulations. He further raised a question on the uncertainty of laws and raised a question when a censor certificate is granted to you whether you have 100% right to broadcast or government intervention is allowed touching upon the issue of broadcasting of "The Dirty Picture" on Sony Channel.

Ms. Suman Arora advocated for RTI's and transparency. She said it is legal fraternity and media's collective social responsibility to create awareness amongst the industry and people. Ms. Arora stated that the future of RTI should be pro active transparency and people should know the laws well enough so that they are aware what they want to know. The public institutions can publish the laws on notices, boards and websites to enable the public to understand law so that they can participate in policy making. She said it will also curb corruption.

Mr. Anurag Batra enlightened the participants that the business of media communication is changing. Brands and content matters in today's age. He said we are living is the wikileaks era. He apprised that the digital media is throwing challenges for content writers, readers and stakeholders. He added that media is a self regulator. He stated that with time presumptive credibility of media has gone down, judiciary has lost functioning, social media is frivolous. He stated that new laws are required to be made to curb the uncalled comments. He said that government wants weak media as it benefits from it. He further said that Press Council of India is ineffective. He stated that legal fraternity with media fraternity is required to come together to suggest a regulation which could curb credibility issues.

Topic:
COMPETITION LAW ISSUES FOR INDIAN INDUSTRIES

Session Moderator: Santanu Mukherjee,
Senior Attorney and IPR-Competition Lead- Qualcomm
Panelists:
Avi Singh, Esq, Delhi High Court & Supreme Court
Pranav Mehra, Founder and Managing Editor-Indian Competition Law Group.
James P. Duffy, Esq., American Bar Association (International Law Sec)

Mr Santanu Mukherjee, started the topic by addressing the argument whether we need a central regulator or are we satisfied with state regulators.

Mr Pranav Mehta spoke at length on the issue of cartelization. He defined cartelization as collusion amongst association of producers, sellers, distributors, traders. He further elaborated as to how cartelization hurt consumers. It reduces consumer welfare, reduces choice, consumers loose out a lot of money. Cartelization is one of the most heinous economic crimes. He cited many cases related with media industry. He also spoke about the whistleblower leniency application.

Mr. Avi Singh, spoke on "Competition Law Issues in Indian Industry". He said that nobody likes competition but competition is good as it makes the market efficient. Inefficiency will be driven out. Market efficiency is better with more players in the market. Competition produces better results. He added that there are very often regulators regulating particular sectors without thinking of other sectors. He explained the provisions of the Competition Act, 2002. He said that MRTP Act said that all monopolies are bad whereas under the Competition Act, monopolies per se are not bad, it is the abuse of dominant position that is bad or punishable. What is prescribed in the Competition Act is the relevant market which includes geographic market and product market. Abuse of dominance is of two types exploitative which is against consumers and exclusionary which id against entry of new players in the market. It leads to price discrimination and output restriction.

Mr. James Duffy rightly pointed out that the Competition law or anti-trust law is an intersection between law and economics. He said that we have had monopolies. We have guilds in Europe. They were seen protecting consumers. We have copyright monopolies, trademark monopolies. Monopoly is not good or bad but it affects the market .He shed light on the adverse economic consequences of monopolies. He also delved on the history of legislation on anti-trusts laws in US and EU.

Mr. Santanu Mukherjee supported the views of all the panelists. He concluded the session by emphasizing that a strong and effective law is needed to promote good competitive practices and curb unfair trade practices and unhealthy competition and efforts needs to be made both at state and union level to devise a robust competition regime.

Topic:
TAX & FINANCE UPDATES IN THE GLOBAL ENVIRONEMENT

Session Moderator: Mr. Sakate Khaitan, Partner -Clasis Law
Panelists:
Mr. Krishnan Malhotra, Head, Tax- Amarchand Mangaldas & Suresh A. Shroff & Co.
Mr. Uday Ved, Senior Partner, Tax - KPMG
Mr. Sunil Jain, Partner -J. Sagar Associates
Mr. Sujit Ghosh, Partner- BMR Legal

Mr. Krishnan Malhotra spoke on implementation of GARR (General Anti-tax Avoidance Regulations). He said that India moved to close loopholes in the country's tax laws with the introduction of General Anti-tax Avoidance Regulations (GARR), rationalizing definitions of international transactions and introduction of many new penalties for tax avoidance, non-compliance, and unaccounted money, in its budget 2012. He quoted, in re Vodafone-Hutchinson Essar SC ruled that Income tax department had "no jurisdiction" to levy tax on overseas transaction between companies incorporated outside India.

Mr. Uday Ved started with transfer pricing mechanism. He said transfer pricing is one area where and when business is done globally, it does not matter in which pocket the money is going. He quoted a the case of Glaxo Smithklein Asia Pvt. Ltd. wherein transfer pricing tax issues were existing but Supreme Court has to rule in favor of assesses but suggested amendment by Finance Ministry to include transfer pricing for domestic transaction which triggered the need for amendment in Income Tax law for domestic TP. Finance Bill 2012 proposed transfer pricing regulations for the transaction entered into by the domestic parties. He further suggested that Advance Pricing Agreements (APAs) should also be made applicable for domestic transactions. He further enlightened on APO's which are introduced in US and is new to India. He said that the opportunities are positive and with time we can expect a reduction in tax litigation.

Mr. Sunil Jain highlighted that a private limited company issuing shares can invite tax implications if the shares are not given at the fair market value. The difference between issuing value and fair market value is taxable. The calculating the fair market value is derived from net asset value method. Central Board of Direct Taxes (CBDT) has not prescribed a method for calculating the fair market value.

Mr. Sujit Ghosh discussed about Goods and Service Tax (GST), impact on people conducting business, about Service Tax Act and reverse charge mechanism. He said that the biggest tax reforms, the Goods and Service Tax (GST) which is all set to integrate State economies and boost overall growth. He further suggested of developing a structure where federal and central tax can run parallel. He emphasized that there is a difference in pattern of consumption in each state and some are distributing while some are consuming. He spoke on uniform network of information flow for all states (GSTN). He said that there is a progressive movement towards GST.

INBA TEAM PHOTO

MEDIA COVERAGE

Hindustan Times- 27th Nov
Page-5 (Delhi, Mumbai, Patna, Lucknow, Ranchi, Bhopal, Chandigarh)

Foreign, NRI lawyers seek permission to practise in India

NEW DELHI: Foreign lawyers and Indians practicing law abroad on Monday raised a fresh plea to permit foreign lawyers to practice in India. They demanded appropriate amendments in the advocates act to enable foreign lawyers to practice in India and set up law firms. The demand opposed by India's legal fraternity led by the Bar Council of India (BCI) was made at a seminar hosted by the National Bar Association of India.

Rashtriya Sahara- 28th Nov- Page 7, Delhi

वकालत बेहतरीन व उच्च दर्जे का पेशा : जेठमलानी

नई दिल्ली (एसएनबी)। नेशनल बार एसोसिएशन ऑफ इंडिया द्वारा लॉ डे पर आयोजित सेमिनार में जाने-माने वकील राम जेठमलानी ने राजनीति को एक गंदा पेशा बताते हुए कहा कि वकालत बेहतरीन व उच्च दर्जे का पेशा है और उन्होंने अपने इस करियर को बतौर वकील व कानून के टीचर के तौर पर खूब मजे से जिया है। भाजपा के राज्यसभा से सांसद राम जेठमलानी ने हाल में अपने भाजपा से निष्कासन पर कुछ न बोलते हुए कहा कि वह कभी राजनीतिज्ञ नहीं थे। उन्होंने भारत-पाक संबंधों को बेहतर बनाने की बात करते हुए कहा कि हिंदुस्तान में वकालत के पेशे का एक उज्जवल भविष्य है और उसको एक ऊंचे मुकाम पर पंहुचना है क्योंकि युवा पीढ़ी ने इसे बतौर करियर चुनने में दिलचस्पी दिखाई है।

नेशनल बार एसोसिएशन ऑफ इंडिया द्वारा ली मैरिडियन होटल में आयोजित दो दिन के सेमिनार में पाकिस्तान के सुप्रीम कोर्ट के पूर्व चीफ जस्टिस राना भगवान दास, उत्तराखंड के जस्टिस राजेश टंडन, कर्नाटक के पूर्व लोकायुक्त संतोष हेगड़े, सीनियर एडवोकेट केटीएस तुलसी आदि ने भी हिस्सा लिया। नेशनल बार एसोसिएशन के अध्यक्ष कवि राज सिंह व महासचिव केसी कौशिक ने बताया कि कर्नाटक के पूर्व लोकायुक्त संतोष हेगड़े ने भ्रष्टाचार से लड़ने के लिए जहां एक सख्त कानून होने की वकालत की वहीं पाकिस्तान सुप्रीम कोर्ट के पूर्व चीफ जस्टिस राना भगवान दास ने भारत-पाकिस्तान भारतीय न्याय प्रणाली को दुनिया का एक बेहतरीन सिस्टम बताते हुए भारत-पाकिस्तान के हालिया बेहतर रिश्ते बनाने की दिशा में बढ़ने पर खुशी जाहिर की।

▶ लॉ डे पर राम जेठमलानी ने कहा, वह कभी राजनीतिज्ञ नहीं थे
▶ नेशनल बार एसोसिएशन ऑफ इंडिया द्वारा लॉ डे पर सेमिनार

सेमिनार में सोशल मीडिया की जरूरत पर जोर देते हुए इसके बढ़ते इस्तेमाल को लोकतंत्र मजबूत होने की एक पहचान बताया गया। सेमिनार में इंटेलेक्चुआल प्रोपर्टी राइट्स पॉलिसी (आईपीआर) पर विचार व्यक्त करते हुए बताया गया कि इस दिशा मे काम करने के चलते संपूर्ण दुनिया में हिंदुस्तान की छवि बेहतर हुई है। उत्तराखंड हाईकोर्ट के जस्टिस राजेश टंडन ने इंफार्मेशन टेक्नॉलोजी एक्ट पर प्रकट किए।

नेशनल बार एसोसिएशन ऑफ इंडिया द्वारा लॉ डे पर आयोजित सेमिनार में वकील राम जेठमलानी व अन्य। फोटो : एसएनबी

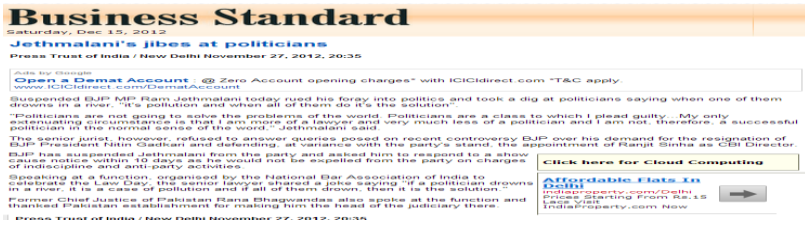
Hindustan- 27th Nov
Page No. 6, Delhi

राष्ट्रीय कानून दिवस शुरू

नई दिल्ली (का.सं)। भारतीय समाज में कानून की महत्ता को दर्शाने के उद्देश्य से सोमवार को दिल्ली में दो दिवसीय राष्ट्रीय कानून दिवस का आयोजन किया गया। कार्यक्रम का शुभारंभ राष्ट्रीय बार एसोसिएशन के अध्यक्ष कविराज सिंह ने की। इस मौके पर देश-विदेश के कई बड़े कानूनविद ने कार्यक्रम में शिरकत की।

कविराज सिंह ने इस मौके पर कहा कि इस आयोजन का मुख्य उद्देश्य देश के आम आदमी को कानून से रूबरू कराना है ताकि वो इसे समझ सके। इस क्रम में हम हर साल युवा प्रतिभाओं को इस क्षेत्र में प्रोत्साहित कर रहे हैं। पहले दिन पाकिस्तान के पूर्व न्यायाधीस राना भगवान दास, अमेरिकन बार एसोसिएशन के सदस्य जेम्स पी डुफ्फी जैसे बड़े नाम शामिल हुए।

Rashtriya Sahara- 28th Nov- Page 7, Delhi



Business Standard

Saturday, Dec 15, 2012

Jethmalani's jibes at politicians

Press Trust of India / New Delhi November 27, 2012, 20:35

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Suspended BJP MP Ram Jethmalani today rued his foray into politics and took a dig at politicians saying when one of them drowns in a river, "it's pollution and when all of them do it's the solution".

"Politicians are not going to solve the problems of the world. Politicians are a class to which I plead guilty... My only extenuating circumstance is that I am more of a lawyer and very much less of a politician and I am not, therefore, a successful politician in the normal sense of the word," Jethmalani said.

The senior jurist, however, refused to answer queries posed on recent controversy BJP over his demand for the resignation of BJP President Nitin Gadkari and defending, at variance with the party's stand, the appointment of Ranjit Sinha as CBI Director.

BJP has suspended Jethmalani from the party and asked him to respond to a show cause notice within 10 days as he would not be expelled from the party on charges of indiscipline and anti-party activities.

Speaking at a function, organised by the National Bar Association of India to celebrate the Law Day, the senior lawyer shared a joke saying "If a politician drowns in a river, it is a case of pollution and if all of them drown, then it is the solution."

Former Chief Justice of Pakistan Rana Bhagwandas also spoke at the function and thanked Pakistan establishment for making him the head of the judiciary there.

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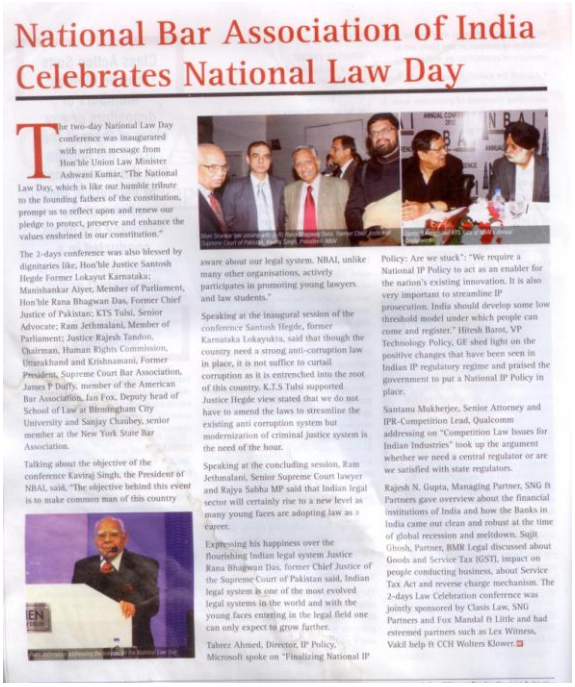
Press Trust of India / New Delhi November 27, 2012, 20:35



National Bar Association of India Celebrates National Law Day

The two-day National Law Day conference was inaugurated with written message from Hon'ble Union Law Minister Ashwani Kumar, "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 2-days conference was also blessed by dignitaries like, Hon'ble Justice Santosh Hegde Former Lokayut Karnataka; Manishankar Aiyer, Member of Parliament, Hon'ble Rana Bhagwan Das, Former Chief Justice of Pakistan; KTS Tulsi, Senior Advocate; Ram Jethmalani, Member of Parliament; Justice Rajesh Tandon, Chairman, Human Rights Commission, Uttarakhand and Krishnamani, Former President, Supreme Court Bar Association, James P Duffy, member of the American Bar Association, Ian Fox, Deputy head of School of Law at Birmingham City University and Sanjay Chaubey, senior member at the New York State Bar Association.

Talking about the objective of the conference Kaviraj Singh, the President of NBAI, said, "The objective behind this event is to make common man of this country aware about our legal system. NBAI, unlike many other organisations, actively participates in promoting young lawyers and law students."

Speaking at the inaugural session of the conference Santosh Hegde, former Karnataka Lokayukta, said that though the country need a strong anti-corruption law in place, it is not suffice to curtail corruption as it is entrenched into the root of this country. K.T.S Tulsi supported Justice Hegde view stated that we do not have to amend the laws to streamline the existing anti corruption system but modernization of criminal justice system is the need of the hour.

Speaking at the concluding session, Ram Jethmalani, Senior Supreme Court lawyer and Rajya Sabha MP said that Indian legal sector will certainly rise to a new level as many young faces are adopting law as a career.

Expressing his happiness over the flourishing Indian legal system Justice Rana Bhagwan Das, former Chief Justice of the Supreme Court of Pakistan said, Indian legal system is one of the most evolved legal systems in the world and with the young faces entering in the legal field one can only expect to grow further.

Tabrez Ahmed, Director, IP Policy, Microsoft spoke on "Finalizing National IP Policy: Are we stuck"; "We require a National IP Policy to act as an enabler for the nation's existing innovation. It is also very important to streamline IP prosecution. India should develop some low threshold model under which people can come and register," Hitesh Barot, VP Technology Policy, GE shed light on the positive changes that have been seen in Indian IP regulatory regime and praised the government to put a National IP Policy in place.

Santanu Mukherjee, Senior Attorney and IPR-Competition Lead, Qualcomm addressing on "Competition Law Issues for Indian Industries" took up the argument whether we need a central regulator or are we satisfied with state regulators.

Rajesh N. Gupta, Managing Partner, SNG & Partners gave overview about the financial institutions of India and how the Banks in India came out clean and robust at the time of global recession and meltdown. Sujit Ghosh, Partner, BMR Legal discussed about Goods and Service Tax (GST), impact on people conducting business, about Service Tax Act and reverse charge mechanism. The 2-days Law Celebration conference was jointly sponsored by Clasis Law, SNG Partners and Fox Mandal & Little and had esteemed partners such as Lex Witness, Vakil help & CCH Wolters Kluwer.

Lex Witness Magazine, December 2012 Issue

Other Online Media Coverage

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