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दिल्ली विधिज्ञ परिषद्
BAR COUNCIL OF DELHI

(Statutory Body Constituted under the Advocates Act, 1961)
2/6, Siri Fort Institutional Area, Kheḷ Gaon Marg, New Delhi-110 049

Ref. No. :

Dated :

**FULL COURT REFERENCE
IN THE MEMORY OF
LT. HON'BLE JUSTICE SH. P.N. BHAGWATI
FORMER CHIEF JUSTICE OF INDIA
ON FRIDAY, THE 11TH JANUARY 2018 AT 3.P.M.
BY
K.C.MITTAL**

Hon'ble Mr. Justice Rarjendra Menon, Chief Justice, Delhi High Court, and other Hon'ble Judges, Mr. D.K. Singh, Vice-Chairman, Mr. Vishnu Sharma, Hony. Secretary and members of Bar Council ; Mr. Kirti Uppal, President and other office bearers, Delhi High Court Bar Association; Mr. Anil Soni Central Government Standing Counsel; Sh. Rahul Mehra and Sh. Ramesh Singh, Standing Counsels, Govt. of NCT of Delhi; Sr. Advocates, the family members of Justice Bhagwati, fellow colleagues at Bar, ladies and gentlemen.

We have assembled to pay our tributes to the man known across globe as "One of India's most distinguished jurists" and "the father of Human Rights in India". He was the 'pioneer of PILs' and 'crusader of common man'. Justice Bhagwati achieved so much that he is an ideal role model for generations of judges, lawyers and those engaged in the challenging task of delivering justice.

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He was a true Gandhian and deeply inspired by the father of the nation, so much so that he gave up studies to join the freedom struggle and went to jail after being caught distributing the banned journal 'Congress Patrika'. He even went underground with the Congress Socialist party during 1942 Quit India Movement. In fact, apparently one of the first memories that Jagdish Bhagwati, his younger brother, has of late Justice P.N. Bhagwati returning home bloodied one night after being beaten by the authorities.

The simple teachings imbibed in Justice Bhagwati and his siblings from their parents, goes to define each of them and their approach to life. Justice Bhagwati completed his law degree from Govt. Law College, Bombay in 1945 in first division. He began practice in commercial, company and constitutional law at Bombay High Court in October 1946. He was sworn in as an Addl. Judge on 21st July 1960 of Gujarat High Court, and was appointed as the Chief Justice of that Court in September, 1967 at the age of 45.

His landmark verdict in case of "Manubhai Patel Tribhuwandas Vs. State of Gujarat showed the glimpse of "Champion of fundamental rights of the people". He held that ban imposed by the then Gujarat Government on the book titled "Quotations from Mao-tse-tung" was unconstitutional and further observed that it is for the people to

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decide as to whether or not to follow the philosophy of communalism as expounded by Mao-tse-tung.

He was elevated to Supreme Court in July, 1973 and became Chief Justice in 1985. He was very concerned of working condition of trial Courts and I remember having gone with him in Tis Hazari Courts, when he visited the court premises.

PIL originated in 1979 when the judicial ruling in the *Hussainara Khatoon v. State of Bihar* case led to the release of more than 40,000 under trial prisoners. In a subsequent judgment (*S.P. Gupta v. Union of India*, 1981), Justice P.N. Bhagwati and Justice V.R. Krishna Iyer articulated the concept of PIL, stating that any member of public can file a petition in the High Court against a violation of the legal or constitutional right(s) of any person or class of persons who are helpless in approaching the court for relief, and can directly approach the Supreme Court in case the latter's fundamental right has been breached. In the *People's Union for Democratic Rights v. Union of India* case, 1982, Justice Bhagwati clarified the purpose of PIL, stating that it is "a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity. [PIL] is a totally different kind of litigation from the ordinary traditional litigation."

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Having recently gone through numerous articles, interviews and speeches delivered by him, the case that appears to be closest to his heart was that of Hussainara Khatoon (1979). As a champion of PILs, he had ruled that there were no need for a person to have any locus standi to knock the doors of a Court on the issue of fundamental rights. It casted a big blow against Anglo-Saxon jurisprudence when he admitted the petition of the pioneer of PILs, Mrs. Kapila Hingorani, who approached the court for release of Husainara Khatoon and several detenues.

This new dimension of public interest litigation in the country over the years had attained significant role, although various questions about being motivated have been raised and the Court have laid down broad guidelines. No doubt, PILs have added to the court dockets, and noticeably, sometimes sweeping orders do deprive individual basic rights, so much so even legally permissible remedies.

There is also a serious debate about PILS being entering into adversarial litigation; conduct of parallel proceedings or even surpasses the fundamental norms of justice delivery system.

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Justice Bhawati's reputation and impact, through his judicial and legal aid work is so enormous that the public response has been quite phenomenal. An example of his reach and impact is where tribal people who benefited from his judgement, renamed the village after him calling it "Bhagwati Puram".

As a Supreme Court judge, Justice Bhagwati Saheb broke away from our inherited jurisprudence and introduced the new concepts to the Indian judicial system in **MC Mehta v. Union of India (1987)** also known as the **Oleum Gas Leak Case**. It would be remiss if I did not quote a passage from the landmark case that introduced the world to the concept of Absolute Liability and catapulted India as a global leader in law and jurisprudence:

"Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign

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country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence."

The observation of the present judgment to build our own jurisprudence is most important in the present day context.

Justice Bhagwati was also honoured with various awards for his contribution to the society such as "the Padma Vibhushan in 2007; 'the Vijaya Ratna"; 'the Bharat Gaurav Award' in 1988; the International Bar Association's highest award for his promotion of legal aid in 1985; and 'the National Citizen Award' in 1987. His accomplishments will remain as a lasting legacy for all of us. His death has left a gaping hole among the ranks of Distinguishing Jurists, but he leaves behind a solid foundation for others to build upon.

His daughter Pallavi also shaped up very well as a litigating lawyer. She is married to Mr. Shardul Shroff, who are running a law firm successfully.

He leaves behind his wife Prabhavati-Ji and three daughters- Parul, Pallavi and Sonali each of whom are shining in their chosen fields.

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Our thoughts and prayers go out to the bereaved family and we express our deepest sympathies and condolences to them and in paying our very humble tribute to the memory of the great man.

I on my behalf and the members of Bar Council of Delhi convey our heart full condolences to the bereaved family and pray to God to give strength to bear the loss.

(K.C.Mittal)