

**FAREWELL SPEECH ON THE ELEVATION OF HON'BLE MS. JUSTICE
HIMA KOHLI TO CHIEF JUSTICE OF THE HIGH COURT FOR THE
STATE OF TELANGANA**

Justice Hima Kohli,

My esteemed brother and sister Judges,

Shri Chetan Sharma, Additional Solicitor General of India,

Shri Ramesh Gupta, Chairman, Bar Council of Delhi,

Shri Mohit Mathur, President, Delhi High Court Bar Association,

Shri Jatan Singh, Vice-President, Delhi High Court Bar Association,

Shri Abhijat, Secretary, Delhi High Court Bar Association,

Shri Rahul Mehra, Standing Counsel (Criminal), Govt. of NCT of Delhi,

Shri Ramesh Singh, Standing Counsel (Civil) Govt. of NCT of Delhi,

Standing Counsels of the Central and State Government,

Executive Members of the Delhi High Court Bar Association,

Office Bearers of the Bar Council of Delhi and District Bar Associations,

Senior Advocates,

Members of the Bar,

Family members of Justice Hima Kohli,

Members of the Print and Electronic Media,

Esteemed attendees,

1. We have virtually assembled today in this Full Court Reference to bid farewell to our esteemed colleague, Justice Hima Kohli, who has been elevated to the post of Chief Justice of the High Court for the State of Telangana after a distinguished and fulfilling career spanning over 14 years at her parent High Court of Delhi. While bidding farewell, I can only say that it is a pleasant and delightful event, for she is going to head the High Court of Telangana. At the same time, we are also saddened by her departure as all of us will indubitably miss her presence personally, as well as institutionally.

2. Born and brought up in Delhi, Justice Kohli studied in St. Thomas School, where she was the Head Girl. Having graduated in History (Hons.) from St. Stephens' College, University of Delhi, she completed her post graduation in History from the University of Delhi. She studied law at the Campus Law Centre, University of Delhi and got enrolled as an Advocate with the Bar Council of Delhi in 1984.

3. She established a practice mainly in the High Court of Delhi in civil, appellate and writ jurisdiction including commercial and arbitration matters. She was the Legal Advisor to the Public Grievances Commission, Delhi Pollution Control Committee, National Agricultural Co-operative Marketing Federation of India, National Co-operative Development Corporation and other private organizations, banks, etc. and a member of the Delhi High Court Legal Services Committee, a statutory body constituted under the Legal Services Authority Act.

She served as the Standing Counsel and Legal Advisor to the New Delhi Municipal Council from 1999 to 2004 and till her elevation to the Bench in the year 2006, she remained the Additional Standing Counsel to the Govt. of Delhi in the Delhi High Court. Appointed as an Additional Judge of the High Court of Delhi on May 29th, 2006, she took oath as a permanent Judge on August 29th 2007.

Over the past 14 years, Justice Kohli has heard matters in almost all jurisdictions, including civil suits on the Original Side of the High Court, civil appeals, arbitration petitions and appeals, commercial matters, education matters, matters relating to unauthorized construction in Delhi, matters relating to Public Premises Act and the Family Court Act etc. She has also sat on the Criminal Board, both as a Single Judge and on the Division Bench.

4. Justice Kohli has been presiding over several Division Benches since April 2017 and as of yesterday, she was dealing with matters relating to Tenders, appeals

from orders of the AIFR, BIFR, DRAT, Matrimonial Appeals, matters relating to Co-operative Societies, LPAs, FAOs and matters to be heard by the Commercial Appellate Division Bench.

5. Justice Kohli has always been willing to take responsibilities beyond judicial work for the growth of this institution. She is the Executive Chairperson of the Delhi State Legal Services Authority. She was appointed as the Chairperson of the DSLSA in March, 2020 during the unprecedented times when COVID-19 pandemic had forced shut countries worldwide. In this duration, under her guidance, DSLSA had collaborated with Mother Dairy booths, pharmacists, chemists, Aanganwadi and Asha workers throughout Delhi to identify and reach out to women and children, who became victims of domestic violence during the lockdown. A dedicated helpline was also started where a missed call was treated as an SOS for reverting back. In this duration, 5,300 women facing domestic violence have been provided legal assistance. Justice Kohli also helped in paving way for creating more Permanent Lok Adalats. The first virtual E-Lok Adalat was conducted by DSLSA on 08.08.2020, where on negotiating settlements, a sum of over Rs.73 crores has been defrayed.

6. Justice Kohli has been chairing the Committee of the Delhi Judicial Academy. She was nominated as a Member of the Editorial Board of the journal, 'Nyaydeep' published by NALSA. She has been a member of the Administrative and General Supervision Committee and the Chairperson of the Delhi High Court Building & Maintenance Committee. She has also been heading the Mediation & Conciliation Committee and the Committee to take up matters with the Govt. for providing infrastructure for the subordinate judiciary. As the Chairperson of the Family Courts Committee, she has been instrumental in setting up Family Courts in District Courts at Saket, Patiala House, Tis Hazari and Karkardooma.

7. During the recent lockdown declared by the Central and the State Governments due to the COVID-19 pandemic, a High Powered Committee was directed to be constituted by the Supreme Court for decongesting jails in all States/UTs. Justice Kohli has been heading the said High Powered Committee constituted by the Government of Delhi. The Committee has granted extension of interim bails to undertrial prisoners by evolving a criteria whereby 5000 (approx.) inmates have been released on interim bails and paroles. She has also been chairing the Committee for preparation of Graded Action Plan for restoring normal working of the High Court and Subordinate Courts in Delhi post the lockdown

period. Additionally, she is a Member of the Governing Council of the National Law University, Delhi and has been a member of the Governing Council of the West Bengal National University of Judicial Sciences, Kolkata. She has also been the Chairperson of the High Court Middle Income Group Society.

8. Throughout her distinguished career as a Judge of the Delhi High Court, Justice Kohli has delivered several significant judgments in various jurisdictions relating to matters of civil law, criminal law, commercial law, labour and service law and family law, which have immensely contributed towards the growth of procedural and substantive law. However, keeping in view paucity of time, I am referring to a few decisions which deserve a special mention.

9. Particularly notable are Justice Kohli's contribution to the development of family law. In the case of ***Rajat Gupta v. Rupali Gupta***¹, authored by her, detailed guidelines were issued for recording undertakings given by parties in cases of divorce by mutual consent. It was directed that the settlement agreement should *inter alia* record an undertaking of the parties that they will abide by and be bound by the agreed terms/stipulations of the agreement, as also stipulate a fine or penalty as may be agreed upon, in the event of a default of the agreed terms/stipulations by either side and provide for the consequences of breach of the terms/stipulations of the settlement agreement. It was held that no one could be compelled into a divorce by mutual consent even where one party decides to retract from the undertaking given to the court at the time of filing the First Motion for dissolution of marriage. However, the court ruled that the defaulting spouse could still be held liable for civil contempt for breaching the terms and conditions agreed upon before the court.

10. Sitting singly, Justice Kohli authored the judgment in ***Krishna Gupta and Ors. v. Rajinder Nath and Co. and Ors.***² holding that the 2005 amendment to the HMA was retrospective in nature i.e., it would cover even daughters whose fathers had died before the amendment came into force. In other words, it was ruled that such daughters would be treated as coparceners in their own right in the same manner as sons. Justice Kohli was also part of the Division Bench that significantly advanced the legal position on cruelty by holding in the case of ***Anil Kumar Bhutani v. Manya Bhutani*** that in order to constitute legal cruelty, the erring spouse's conduct must be of such a nature that it is reasonably not possible to live

¹ MANU/DE/1813/2018

² MANU/DE/0419/2013.

with the other. Mere disappointment, frustration, or agitation caused to the wronged spouse is not by itself sufficient.³

11. Sitting on the criminal roster, Justice Kohli authored the Division Bench judgment in *Mukesh Yadav v. Union of India*⁴ that held that the identity of persons against whom a criminal case was lodged when they were a minor, cannot be disclosed at any stage of their life as that would defeat the very purpose of the Juvenile justice law. In the case of *Sadhan Haldar v. State of NCT of Delhi and Ors.*⁵, the Division Bench headed by Justice Kohli has recognised the importance of streamlining the process of monitoring, tracing and recovering missing children belonging to the economically weaker sections of society in the NCT of Delhi. The bench passed a series of orders to enforce the 48 hours golden period for recovering a missing child that has resulted in the improvement and upgradation of facial recognition software and adoption of a Standard Operating Procedure for sensitization of police officers in such cases. As a Single Judge, in the case of *Chandni Sharma v. Gopal Dutt Sharma*⁶, Justice Kohli has also ruled that voluntary deductions were to be excluded while ascertaining the net income for the purpose of fixing the amount of maintenance payable to wives under the CrPC.

Justice Kohli was a part of the Division Bench that recently ruled in the case of *Rumy Chowdhury v. Department of Revenue, Government of NCT of Delhi and Ors.*⁷ that children of Single mothers belonging to the SC community whose fathers belong to a forward caste cannot be accorded caste certificates unless it is established that they have suffered disadvantages and deprivations faced by persons belonging to that caste community.

12. *Harish Relan v. Kaushal Kumari*⁸ is one of the many judgments of Justice Kohli, where the well-known adage, “*Not only must Justice be done; it must also be seen to be done*” is reflected. To reconstitute the 94-Year old bed ridden and ailing widowed mother (respondent), as a Single Judge she not only upheld the judgment and decree of possession granted by the trial court in her favour, she also imposed costs to the tune of Rs.5,30,000/- on the appellant/son, for wrongfully keeping his mother out of her own premises for nearly two decades. Justice Kohli opined that it was imperative to put a curb on frivolous and vexatious litigation by imposing realistic costs in favour of the disadvantaged mother who had been dragged into

³ D v. P MANU/DE/5450/2017; Anil Kumar Bhutani v. ManyaBhutani MANU/DE/2854/2017

⁴ MANU/DE/7977/2017

⁵ WP (Crl) 1560 of 2017

⁶ 2011 V AD (Del) 493

⁷ MANU/DE/1731/2020

⁸MANU/DE/0137/2017

protracted litigation by her own son. It was highlighted that Justice is not blind and nor do courts wear blinkers when it comes to vexatious litigation. Rather, Courts remain uninfluenced by the background, connections, status, power or authority of a litigant.

13. In another notable judgment in the case of *Manisha Priyadarshini Vs. Aurobindo College Evening and Ors.*⁹, a Division bench headed by Justice Kohli quashed the decision of a private college that had refused renewal of the service contract of an ad-hoc professor who had opted to take maternity leave, particularly observing that such a denial would amount to penalizing a woman for electing to become a mother and such a conduct is violative of the basic principle of equality in the eyes of law.

14. In the judgment entitled, *Guru Gobind Singh Indraprastha University v. Naincy Sagar &Anr.*¹⁰, speaking for the Division Bench, Justice Kohli emphasised that the requirement of a minimum percentage of attendance in BA LL.B program is non-negotiable. Allowing the appeal filed by the University against relief granted to students who had failed to meet the requisite criteria of attendance and minimum credits for promotion to the next academic year, the importance of interactive classroom learning and skill development in a professional degree course like law, was highlighted.

15. Yet another noteworthy judgment by Justice Kohli in the field of public contracts and tenders was in the case of *L&T Hydrocarbon Engineering Ltd. vs. Oil and Natural Gas Corporation Ltd. and Ors.*¹¹ where she aptly observed that “gone are those days when it was said that when someone does something at the “eleventh hour”, they do it at the last possible moment. In today's day and time, when technology is advancing at lightning speed, even a fraction of a minute is akin to the “eleventh hour”. This is amply demonstrated in the present case, where the fate of the petitioner's bid in response to a Global Tender floated by the respondent No. 1/ONGC, hangs on those very fleeting seconds.”. In this case, the Division Bench headed by her has analysed the provisions of the Indian Contract Act and the Information Technology Act while considering a challenge to the rejection of the petitioner's bid on the ground that it was not submitted within the prescribed time line.

⁹ 2020 LLR 814 Del HC

¹⁰2019(178)DRJ372

¹¹MANU/DE/1973/2018

16. Justice Kohli has also been instrumental in developing the law in the field of commercial law and arbitration. Amongst some of her significant judgments in this field, in the case of *Prasar Bharti Vs Starcon India Limited &Ors.*¹² a Bench headed by her has dwelled on the interplay between the provisions of the Commercial Courts Act and the Arbitration and Conciliation Act and held that an appeal directed against an interlocutory order passed in proceedings under Section 36 of the Arbitration and Conciliation Act was not maintainable under Section 37 of the Arbitration and Conciliation Act and that since Section 37 was amended in the year 2019 and a non-obstante clause was introduced in the provision, it will have to prevail over the Commercial courts Act.

17. In a pending PIL filed by Mr. Rakesh Malhotra, Advocate [W.P. (C) 3031/2020], highlighting the problems faced by the public due to delay in getting the reports after conducting the Covid-19 test, the Division Bench headed by Justice Kohli has passed a slew of directions to ensure that the test results are furnished to patients within 48 hours, testing to be undertaken by the RTPCR method which is the gold standard, is ramped up instead of focusing on the Rapid Antigen Test method which has the propensity of giving false negative results; adequate testing facilities are provided at all Inter-State Bus Terminals and Railway Stations, Mobile Vans are made available to facilitate testing in each of the 11 districts. Directions were issued to do away a prescription from a Doctor for getting tested for the infection. When there was a recent spike in the number of cases of Covid-19 infection in Delhi, the scope of the said petition was expanded and directions were issued to ensure that appropriate quarantine facilities are made available, the number of beds with ventilator facilities is increased and availability of beds in hospitals is adequately publicized.

18. To assuage problems being faced by the migrant labourers who were rendered jobless, homeless and without any adequate means to go back to their native places due to the lockdown in Delhi, in a petition filed by **Rozi-Roti Adhikar Abhiyan** [W.P. (C) 2161/2017], directions were issued to ensure that dry ration is made available even for non-PDS beneficiaries, that there is adequate supply of cooked food at the Hunger Relief camps and Night shelters, all ration shops remain operational and disburse PDS food grains on all seven days of the weeks and food grains are distributed to the poor, needy and marginalized non-

¹² MANU/DE/1371/2020

PDS residents from the PDS and other distribution centres. Grievance Helpline Numbers were also directed to be adequately publicised.

19. In a batch of pending writ petitions filed to highlight the plight of Class III and Class IV employees working in Municipal Corporations, teachers working in schools run by the Corporations and teachers teaching in Colleges of the Delhi University, run by the Delhi Govt., who were not being released salaries, the Division Bench headed by Justice Kohli issued directions to the GNCTD and the three Municipal Corporations to ensure that arrears of monthly salaries are released at the earliest.

20. Apart from performing her official duties as a Judge, Justice Kohli takes keen interest in promoting mediation as an alternative dispute resolution forum, in highlighting the role of the judiciary in preservation of the ecology and environment and the role of Family Courts in resolving disputes relating to divorce, custody, maintenance, visitation rights, etc. She has participated in and presented papers at several national and international symposiums and conferences on these subjects.

21. A true leader normally has four qualities: vision, being in touch with reality, uncompromising ethics, and courage. In Justice Kohli, we find all these qualities. As a Judge of this court, Justice Kohli has rendered all possible assistance that an institution expects from a Judge in discharging constitutional obligations. But what sets Justice Kohli apart is her dedication to the cause of justice, having remained a pro-citizen judge, always. The lawyers she has heard and the courtrooms she has addressed are a testimony to her exemplary court-craft, brilliant play of words and eloquence. Her inherent sense of fair play, utmost discipline and punctuality reflect in the ingenuity with which she delivers her remarkable judgments. The bar has a deep admiration and respect for her not just as a Judge, but also as a patient mentor and guide.

22. Apart from being an excellent Judge who imparts great sincerity and pragmatism to the duties she performs, Justice Kohli is extraordinarily humane and remedy-centric in her approach. She is tough yet humble, practical yet empathetic and a visionary in the truest sense.

I extend my best wishes and congratulate her family members, Mother: Mrs. Mohindar Kohli and Sister: Ms. Neelu Kohli on this occasion. While we bid farewell to you Justice Kohli, I, on behalf of the entire court, extend

congratulations and best wishes to her for a very successful tenure as Chief Justice of the High Court of Telangana and we are confident that she will achieve greater success and glory.

Jai Hind!