

FULL COURT REFERENCE TO BE HELD ON 11TH JANUARY, 2019 AT 3.00 P.M. ON THE SAD DEMISE OF LATE JUSTICE P.N. BHAGWATI, FORMER CHIEF JUSTICE OF INDIA

JUSTICE RAJENDRA MENON
CHIEF JUSTICE

My esteemed brother and sister Judges,

Shri K.C. Mittal, Chairman, Bar Council of Delhi;

Shri Kirti Uppal, President, Delhi High Court Bar Association;

Shri Anil Soni, Central Government Standing Counsel;

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

Other Standing Counsels of the Central and State Government;

Executive Members of the Delhi High Court Bar Association;

Office Bearers of other District Bar Associations,

Senior Advocates,

Members of the Bar,

Family members of Justice P.N. Bhagwati;

Ladies and Gentlemen.

We are assembled here today to express our profound sense of sorrow on the sad demise of Justice P.N. Bhagwati, the former Chief Justice of India. Justice Bhagwati breathed his last on 15th June, 2017 and is survived by his wife and three daughters.

Justice Bhagwati was born on 21st December 1921 at Ahmadabad, then in Bombay Presidency, in a family of Judges and lawyers. His father has been a judge of the Supreme Court of India. He completed his education from Bombay. He studied at Elphinstone College and received a degree in Mathematics (Hons.) from the University of Bombay in 1941 with distinction. Thereafter he graduated in law from Bombay University, as a student of Government Law College, Bombay in the year 1945. During his college life, he had also participated in the freedom movement. He was deeply associated with the Quit India Movement of 1942.

In 1946, Justice Bhagwati started his legal career as an advocate in the High Court of Bombay. At that time, his father Justice N.H.Bhagwati was a judge of that High Court. In 1960, when the State of Gujarat came into existence, Justice Bhagwati continued with his practice at High Court of Bombay and did not shift to the High Court of Gujarat. At a very young age of 38, he was appointed as an Additional Judge of the Gujarat High Court, i.e. on 21st July 1960 and was confirmed as a permanent judge on 6th April 1961. At the age of 45, he was appointed as Chief Justice of the Gujrat High Court on 16th September 1967. On 17th July 1973, he was appointed as a judge of the Supreme Court of India. He became the 17th Chief Justice of India on 12th July 1985 and demitted his office on 20th December 1986.

In his judicial career spanning well over two decades, he set very high standards of integrity earning him a name as the judiciary's conscience keeper. He maintained absolute integrity, punctuality and promptness throughout his career.

From the beginning, he rejected the theory that judges do not make law and that it was not part of the function of a judge to decide what the law should be. He was of the opinion that law making was an inherent part of the judicial process. He characterized the mere textual interpretation of law as a phonographic theory of judicial function, merely following "His Masters Voice".

Throughout his distinguished career as a Judge, Justice Bhagwati has delivered many landmark judgments, few of which deserve special mention. In ***Bandhua Mukti Morcha*** case, Justice Bhagwati observed that 'when the Directive Principles of State Policy have obligated the Central and the State Governments to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped, it is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected. In ***Peoples Union for Democratic Rights*** (Asiad case), where the workers were being paid less than the minimum wages, Justice Bhagwati held that the compulsion of economic circumstances which leaves no choice or alternative to a person in need in accepting anything less than the minimum wages is a clear violation of constitutional safeguards.

In the ***Maneka Gandhi case***, Justice Bhagwati, dealing with Article 21, held that the “procedure established by law” in Article 21 had to be read as a procedure which was just, fair and reasonable. In ***SP Gupta case***, Justice Bhagwati not only introduced the public interest litigation concept, but he also ruled that a person did not need any ‘locus standi to knock the doors of the court on the issue of fundamental rights’. “If we want human rights to become meaningful for the large masses of people in the country, this is the only way in which it can be done,” he said. In ***Bachan Singh case***, the Supreme Court upheld the constitutional validity of the death penalty. While the majority judgement opined that death penalty was a deterrent to murder, Justice Bhagwati had a different take on the matter. Quoting Bernard Shaw, he said: “Murder and capital punishment are not opposites that cancel one another but similar that breed their kind.” In ***M.C.Mehta case***, Justice Bhagwati elucidated the function of the law to inject respect for human rights and the social conscience. In a bold move, He proceeded to bypass the rule laid down in *Rylands v Fletcher* and introduced a new principle of “Strict and absolute liability”. He also made it clear that Article 32 does not merely provide for enforcement of Fundamental Rights, but also comprises significant scope for remedial justice.

In 1982, Justice Bhagwati was elected as a fellow of the American Academy of Arts and Science while being affiliated with the Colombia University. He had been a member of the United Nations Human Rights Committee (UNHRC) from 1995 to 2009, re-elected after every two years on expiry of his term. He was also chairman of the UNHRC in 2001-03. He had also served as a member of the Committee of Experts of the International Labour Organization. He was appointed as a Chancellor of Sri Sathya Sai Institute of Higher Learning on 6th May 2011.

I, on behalf of my brother and sister Judges, and on my own behalf convey our heartfelt condolences to the members of the bereaved family and pray to God to give them strength to bear this irrecoverable loss. May almighty bestow peace to the departed soul.

(AFTER REFERENCE BY LAWYERS IS OVER)

As a mark of respect to the departed soul, we shall now observe silence for two minutes.

(The Hon'ble Judges will take their respective seats for a moment after the silence, and it will be announced by Hon'ble the Chief Justice as under).

"As a mark of respect to the departed soul, the working in the Court is adjourned for the rest of the day.