

REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI MUKUL ROHATGI
IN THE MEMORY OF
LATE MR. ANIL B. DIVAN
AND
LATE MR. T.R. ANDHYARUJINA
SENIOR ADVOCATES
ON 2nd MAY, 2017

My Lord the Chief Justice of India, other Judges of the Supreme Court, Mr. Rupinder Singh Suri, President, SCBA, Mr. Ajit Kumar Sinha, Vice-President, Mr. Gaurav Bhatia, Secretary, Mr. Gopal Singh, President of the Advocates-on-Record Association, family members of late Shri Anil B. Divan and Shri Tehman Rustam Andhyarujina, Sr. Advocates and other Members of the Bar Senior & Junior, present today.

2. Exactly a week before, we assembled here to pay homage to the memory of the two our seniors and yet again today we are here to pay our homage and tributes to the two stalwarts of this Hon'ble Court, namely, **Shri Anil B. Divan and Shri Tehmtan R. Andhyarujina.**

3. I am saddled by the loss of these two legal luminaries with whom I shared a personal relationship and an acquaintance going back to more than a quarter of a century. Two leading lights have been extinguished by the wheels of time but their contributions to the law and society will forever shine.

Shri Anil B. Divan, Sr. Advocate

4. Anil Divan, senior advocate was born on 15th May 1930 in then what was called Bombay. He started his legal career at the Bombay High Court and rose to the top quite quickly. He shifted to Delhi nearly 40 years ago and was one of the most respected senior counsels in the Supreme Court of India.

5. Apart from arguing many high profile cases like the Bhopal Gas Tragedy, the Oleum Gas leak case, disputes on Cauvery Waters, Jain Hawala case, the Rupa Hurra Case relating to Curative jurisdiction, he spent a lot of time *pro-bono* in public interest matters. He was also one of the founders of an NGO called the Centre for Public Interest Litigation. He was also a member of the Committee on Judicial Accountability. He was often appointed as *Amicus Curiae* in many cases. He was closely associated with the Bar Association of India as also an organization called Law Asia. He was, in fact, the President of the Law Asia at one time.

He was also a counsel in the recent NJAC case and was recently appointed as an *Amicus* in the BCCI case.

6. He can truly be described as a lawyer with a clear and an astute mind. He never minced the words and called a spade a spade. He can truly be described as a ram rod straight lawyer. The Courts would always rely upon what he said.

7. He passed away at the age of 86 on March 20, 2017. He is survived by his wife and two sons and a daughter. His son Shyam Divan is a noted senior advocate in this Hon'ble Court. His daughter-in-law Madhavi Divan is also a promising and a keen lawyer who has made valuable contributions in several cases.

She has also written a book called "Facets of Media Law".

8. I have had several interactions with Shri Divan, originally as a young lawyer, briefing a senior advocate and thereafter opposing him in several cases. I will always miss his cheerful demeanor and his pet phrase "kya chalta hai".

9. He recently authored a book called "On the Front Foot" being a collection of his writings.

10. His passing away suddenly is a great loss to the legal fraternity, the Supreme Court Bar Association, the Bar Association of Mumbai and the Bar Association of India and of Law Asia.

REFERENCE MADE BY
Mr. RUPINDER SINGH SURI,
PRESIDENT, SUPREME COURT BAR ASSOCIATION

IN THE MEMORY OF
LATE MR. ANIL B. DIVAN
AND
LATE MR. TEHMTAN R. ANDHYARUJINA
SENIOR ADVOCATES

Hon'ble Mr. Justice Jagdish Singh Khehar, Chief Justice of India, my Lords Hon'ble Judges of Supreme Court, Attorney General Mr. Mukul Rohtagi, Solicitor General Mr. Ranjit Kumar, Mr. Maninder Singh, Tushar Mehta, Pinky Anand ASG's, Vice President Shri Ajit Sinha, Mr Gaurav Bhatia, Secretary, President Of AOR Association Mr. Gopal Singh, distinguished members of the Bar, family members of *Sh. Anil Divan and Sh. Tehmtan R. Andhyarujina*, ladies and gentlemen;

We all have gathered here to extend our heartfelt condolences to the family members of Mr. Anil Divan and Mr. Tehmtan R. Andhyarujina; and to share the pain of losing these role models, who have strived till their last breath, to maintain the supremacy of the Constitution.

I'm uncomfortable since I have to speak about those legends of the Bar who are dear to the entire Bar and highly respected by the Bench. They have contributed immensely to the march of law and it is impossible for me to share their journey and achievements in just few sheets and in few minutes.

SHRI ANIL B. DIVAN

Legendary senior counsel, eminent constitutional law expert, PIL pioneer and conscience of this Bar; left us for the heavenly abode on 20.3.2017 at the age of 86. A marvel hailing from Bombay High Court, known for his depth knowledge in different subjects and having exceptional legal skills, court craft and above all having humility. An alumini of GLC, Mumbai, who bagged a gold medal in jurisprudence as a student of Law.

Law was in the DNA of Mr. Anil Divan. His maternal grandfather, Sir Chimanlal Setalvad, was an eminent lawyer who had later served as vice-chancellor of Bombay University and part of the Hunters commission set up after Jallianwala Bagh massacre, wherein he cross examined General Dyer. His paternal grandfather, Jivanlal Divan founded the famous Proprietary High School in Ahmedabad and marched with Gandhiji to Dandi in 1930. His father Baburao is an alumnus of Columbia University and his mother Smt. Sharda ji, was the first

woman registrar who went on to become the vice-chancellor of the SNDT Women's University in Mumbai. There were so many other family members who rose to eminence: M.C. Setalvad, Mr. Divan's maternal uncle, was the first and longest serving Attorney General of India, for 13 years; Bipinchandra J. Divan, his paternal uncle, was Chief Justice of the Gujarat High Court. Anil Divan is also the brother in law of Mr. Ashok Desai (former Attorney general and is also a Padma Bhushan).

It is said that the kind of friends you have is a reflection of your own personality. Mr. Divan and his law college friends represent the entire legal fraternity. Sh. Anil Divan, Mr. Fali Nariman, Mr. Ashok Desai, Mr. Soli Sorabji and Mr. Murli Bhandare are alumni of GLC, Mumbai. Their Principal Late Shri B.R Ambedkar, must have blessed Constitutional wisdom upon these alumni's of GLC. Mr. Divan was the Prime Minister of the college Parliament and Mr. Fali Nariman was the speaker. It's like all of them had the same mission, i.e to **DEFEND AND FIGHT FOR OUR MOST CHERISHED BASIC FEATURES OF THE CONSTITUTION.**

Designated senior in 1972 by the Bombay High Court, after having a splendid practice in Bombay moved to Delhi in 1979. Never accepted fee in cash and was the highest tax paying lawyer of our country. He believed that as a lawyer you have to be fair to the court and to the client, and you must give your best to every case. A supporter of Anna Hazare's movement, said once *"that when the Basic structure of the Constitution denies the PM immunity from prosecution, how could it be argued that the office should not be brought under the scrutiny of Lokpal."* I'm sure Mr. Divan would be happy today, with the recent SC judgment which held; that Lokpal Act as it stands today is a workable legislation.

Mr. Divan is the co-founder of the **Centre for Public Interest Litigation**, a Non-governmental organization which conducts litigation on matters of public interest. It's first President was Hon'ble Justice V. M. Tarkunde, who is also the founder of the People's Union for Civil Liberties. Other founder members of this noble organization were Senior Advocates like Fali Nariman, Shanti Bhushan, Rajinder Sachar and Colin Gonsalves.

Mr. Divan was tall in body, mind and vision. He would often be appointed as an amicus in most of the sensitive matters. In the 1990s, he made waves as an amicus in the Jain Hawala political scandal. Mr. Divan has done several "pro bono" matters in many PILs, some involving high-level corruption matters as an "Amicus Curiae", in

Chandraswami Case and the Indian Bank Scam case. He had appeared in the Oleum gas leak case, as well as in the Bhopal Gas Tragedy case before this court. He was the favourite Counsel of the Karnataka government as he appeared for them from 1992 to 2016. Farmers in Karnataka honored him publicly for the services rendered by Mr. Divan.

He also appeared in the challenge to the Prevention of Terrorism Act (PoTA) and in the *Rupa Ashok Hurra* case, which laid down the law related to curative petitions

Anil B. Divan was the counsel for the Centre for Public Interest Litigation (CPIL) in 2005 seeking quashing of the CVC Act, 2003, which requires the CBI to obtain permission from the Union government before registering corruption cases against senior bureaucrats. The Supreme Court referred the question to a Constitution Bench of five judges.

He was also the co-petitioner with senior counsel Ram Jethmalani in the controversial public interest litigation (PIL), that challenged several governments to take action over black money stashed by Indians abroad.

He was Former President of the Bar Association of India, Former President of law Asia, member of International Law association. In 2004 he got nominated as a member of the committee on Water Resources Law of the International Law Association.

Divan saab was a member of the Committee on Judicial Accountability. Commenting on the Judges Enquiry Bill, 2006, he said "The aforementioned new bill is worse than the old Judges Inquiry Act and it needs to be scrapped in toto. This new bill is nothing but a sham".

In 2013, he was one of the few Bar leaders who had called for beginning of a sensible and "meaningful dialogue" w.r.t the entry of foreign law firms in India, while he was the President of the Bar Association of India. More recently, had been appointed by the Supreme Court to oversee the appointment of BCCI administrators, made convincing key submissions in the National Judicial Appointments Commission (NJAC) hearings in 2015.

A believer in the independence of the judiciary and In fact, during a conference, he was quoted as saying, "India is like a mini-Europe. There is great diversity. And what keeps this diversity together is our judiciary. Is it then not important that it be kept independent and separate from the executive?" The fearless people like Mr. Anil

Divan are ultimate insurance for independence of judiciary.

His love for golf started because of Law. When he used to come to Delhi for the Fundamental rights case with Nani Palkhiwala, he would during his spare time observe the golfers at the Delhi Golf Club from the adjacent Oberoi Hotel balcony and one day he decided to play golf and thereafter continued to play. Cricket was his other passion. He called his collection of writings on Courts, press, personalities as **"On the Front Foot,"** a title that indicated his love for the game as well as his stand on the issues that he took up. The other contents of this beautiful book are Supreme Court-Judiciary, Fundamental Rights-Human rights, Media- freedom of speech contempt, Judicial Review - PIL - Political Corruption, Parliament - Elections, Cricket, Sundry Reflections etc.

The second edition has two articles- **"A Trojan Horse at the Judiciary's Door"** and **"Upholding Judicial Independence"**, relate to the tension between the Executive & the Judiciary and analyses the provisions of the Constitutional Amendment and the Judicial Appointments Commission Bill (NJAC Bill) The article on **CBI advocates** an independent constitutional status for the CBI if it is to be free from political interference. The article on **death penalty** raises the question whether a death penalty executed against a terrorist is counterproductive. **"Criminal defamation"** abolished in many countries, requires India to follow in their footsteps. **"Gay Rights are Human Rights"** is critical of the Supreme Court judgment which reversed an internationally acclaimed judgment of the Delhi High Court decriminalising Section 377 IPC in case of adult consensual sex in private. The Convocation Address builds upon anecdotal events containing lessons for young lawyers. In **"Restrict Foreign Access to the Bar"**, it is argued, that it requires a strict court monitored structure.

He has left behind his wife Smita ji, son's Vivek and Shyam, a daughter (Gauri) who is a Doctor and daughter in law Madhavi Divan.

His great pillar of strength was his wife Smt. Smita ji. In her independent capacity, Smita ji has worked for the empowerment of women and was the President of the Maharashtra State Women's Council.

Mr. Vivek Divan works with the United Nations. Dr. Gauri and her husband Professor Vikram Patel work to promote child development and health.

Mr. Shyam Divan a leading lawyer is following the footsteps of his great father and making him proud each day. His daughter-in-law, Madhavi Divan is also a promising advocate practicing before this

court and has authored various books.

His message to the new entrants to our noble profession was that the youth must uphold the highest standards of integrity in the country.

This loss is a loss, not only to the Indian judiciary but a loss to humanity as well, as Mr. Divan not only fought for his clients but for the human rights of all classes.

REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI JAGDISH SINGH KHEHAR
IN THE MEMORY OF
LATE MR. ANIL B. DIVAN
AND
LATE MR. T.R. ANDHYARUJINA
SENIOR ADVOCATES

ON 2nd MAY, 2017 (TUESDAY)

Shri Mukul Rohatgi, Attorney General for India.

Shri Ranjit Kumar, Solicitor General of India.

Shri Rupinder Singh Suri, President of the Supreme Court Bar Association.

Shri Gopal Singh, President of Supreme Court Advocates- on-Record Association.

My esteemed Brother and Sister Judges.

Distinguished members of the Bar, family members of Mr. Anil B. Divan and Mr. T.R. Andhyarujina, ladies & gentlemen.

We have assembled here this morning, to express our deep grief and sorrow, on the sad demise of two distinguished and senior members of this Court. Mr. Anil B. Divan, Senior Advocate passed away on 20th March, 2017 and Mr. Tehmtan Rustomji Andhyarujina, Senior Advocate, breathed his last on 28th March, 2017.

MR. ANIL B. DIVAN, SENIOR ADVOCATE

Whether it was the advance drafting of a habeas corpus

petition for senior advocate Mr. Shanti Bhushan, under the apprehension, that he was to be detained, during the emergency; or drafting of an affidavit in a petition filed in public interest, for the removal of a CBI director, Mr. Anil Divan exhibited matchless skills. He would not proceed till he was satisfied, that he had the right word, in the right sequence and context, including the punctuation. I personally witnessed his drafting ability in the written submissions filed by him, in the NJAC case, to which I made extensive references, in the opinion expressed by me. No wonder, advocates flocked to him, for getting their drafts settled, in important matters. They returned educated, in the wise use of language, an area over which Mr. Divan had an acknowledged mastery.

Juniors briefing him, were privileged to see first hand, his forensic comprehension of law and facts, dovetailed into the sequence of the exact pages, where both could be found in the brief, and in the reports of cases. They could see, in the quality of his work, what makes a lawyer's confidence visible, in the chiseled legal propositions, that he put across. Behind this, lay his scholastic brilliance, and probably the genetic code he inherited, from a lineage of eminent lawyers, judges and educationists.

The effectiveness of a Constitution, is dependent on

the fact, whether it is a truly living document. The Constitution can be a living document, only if it has zealous patriots to defend it, against the venality of the powerful. Regardless of personal consequences, Mr. Anil Divan, as a constitutional lawyer, defended the values and the morality enshrined in the Constitution. He endeavoured to accomplish this, with his fullest might. His love for candid openness, was reflected, in his incisive submissions in the 'NJAC', the 'Kesavananda Bharati', and the 'Subramaniam Swami' cases.

As a founder member of the Centre for Public Interest Litigation, he fought cases for the transparency and accountability of institutions, like the Central Vigilance Commission, and the CBI. He assisted Courts, in numerous cases *pro bono*, where he canvassed for causes for public justice, which reflect, his deep commitment of the values he lived by. While fighting such cases in this Court, from the front foot, he kept these fights within the bounds of politeness, sportsmanship and kindness. His commitment to the cause of justice, and the position he commanded amongst the legal fraternity, is evident from his having represented two eminent senior counsel of this Court. One - Mr. Shanti Bhushan, wherein a judicial appointment to the Madras High Court, was questioned; the other - Mr. Ram Jethmalani, in a legal crusade, seeking adoption of

measures, against black money.

The experience of the powerful and the rich, approaching him with their concerns, ended up with an understanding of a different nature. He was engaged to represent the son of a Prime Minister. And he was asked to meet the Prime Minister, for a conference. He declined to meet him, in a place other than his professional chamber. In another incident, a powerful politician, engaged him to appear before the Election Commission. On getting the expected reprimand from Mr. Divan, for settling the fee by cash, the politician in shocked awe confessed, that this was the first time he was paying a lawyer, by cheque. In stark contrast, he worked on complex public interest issues, without charging anything.

He had a passion for wildlife, and the outdoors. He visited the African continent six times, enchanted by its beauty. Not surprisingly, his other great passion was golf, and its greens.

A lover of Perry Mason's novels, and a collector of postal stamps, Mr. Divan was an extraordinary man of law. He was recognised by this Court, along with other distinguished jurists, on the Constitution Day, in 2016. As President of Law Asia and the Bar Association of India, he put India on the world's legal stage.

He leaves behind his wife Smita Behen, and three

children - Gauri, Shyam and Vivek, who are all happily settled. His son Shyam Divan is a designated senior advocate, practising in this Court, as is his wife Madhavi Divan. Vivek Divan, his other son, is also a practising lawyer.

It will be difficult to fill the void left behind by Mr. Anil Divan's demise. I, on behalf of my brother and sister Judges, extend our heartfelt condolences to the family, and pray to the Almighty, to bestow peace to the departed soul. May his soul rest in eternal peace.
