

**ADDRESS BY HON'BLE THE CHIEF JUSTICE OF INDIA
AT THE FULL COURT REFERENCE
HELD IN THE MEMORY OF
LATE HON'BLE MR. JUSTICE H.R. KHANNA,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 5TH MARCH, 2008 AT 10.30 A.M.**

Mr. Attorney General for India, Shri Milon K. Banerji, President of Supreme Court Bar Association Shri P.H. Parekh, my esteemed Brother Judges, learned members of the Bar, family members of late Justice H.R. Khanna, dear friends.

We have assembled here this morning with a profound sense of grief and sorrow, to pay homage to Justice Hans Raj Khanna, a crusader of civil liberties and independence of judiciary and a former illustrious Judge of this Court, who adorned the Bench of this Court from 22nd September, 1971 to 12th March, 1977 and left for his heavenly abode on 25th February, 2008, having lived a fulfilled life, spread over 95 years.

Son of late Shri Sarv Dayal Khanna and late Smt. Ganga Devi, Justice Khanna was born at Amritsar on 3rd July, 1912. He lost his mother when he was less than 12 years old and the burden of bringing up the family fell on his grandmother. His father, who was a leading lawyer of Amritsar and a member of Amritsar Municipal Committee for 30 years, played a major role in developing his personality and inculcating right values in him. After schooling from D.A.V. High School, Amritsar, he did his F.A.

from Hindu College (1929 to 1930) and B.A. from Khalsa College, Amritsar (1930-1932).

He joined Amritsar Bar after graduating in Law from Law College, Lahore in July, 1934 and started as an apprentice with his father, who was a hard task master and would treat him like any other junior. Those were the days of hard work without commensurate return. He used to reach the Courts on bicycle, by about 8.00 a.m. and then work in the office after returning from the Court. By his sheer hard work, sincerity of purpose and meticulous preparation of cases, he was soon able to acquire a fairly good practice and earn recognition & respect for himself at the Bar of Amritsar district. On 1st February, 1952 he joined Judicial Service and appointed as Additional District and Sessions Judge, Ferozepur. Having served at various positions in the Judicial Service, he was appointed a Judge of Punjab and Haryana High Court on 7th May, 1962. He was transferred to Delhi High Court on 31st October, 1966 and appointed as its Chief Justice on 1st August, 1969. He was appointed to this Court on 22nd September, 1971.

As a Judge of this Court, Justice Khanna rendered a number of landmark judgments having far reaching implications. He was well known for his sound knowledge of law and the legal acumen, which he possessed in abundance. Courageous, fearless and candid he was uncompromising, firm and unbending when it came to upholding the Rule of Law and independence of Judiciary. His firmness and disregard of all considerations

except his principles and convictions were displayed on many occasions. He would not mind striking a new path and recording a dissenting Judgment even if it would amount to ploughing a lonely furrow. While concluding his judgment in *A.D.M. Jabalpur's case* [1976 Cr.L.J 945] he quoted Chief Justice Hughes to say "... ..*A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed*". It was probably this dissent, which led to his supersession. But having a strong belief & conviction in unassailability of fundamental rights and independence of judiciary, he lost no time in relinquishing the high office of a Judge of the Apex Court, for which people keep on aspiring throughout their life. On his resignation, Newyork Times wrote an editorial saying "*If India ever finds its way back to the freedom and democracy someone will surely erect a monument of Justice HR Khanna*".

Justice Khanna belonged to that creed of men who having dawned the judicial mantle, maintained highest standards in their judicial career. Hard working and painstaking, he was a highly capable Judge who was equal at home in almost all the branches of law. He never hesitated in taking an unpopular decision if his conscience so dictated. Invincible independence, originality of thought, a firm belief in ideals and uniqueness in expressions were the hallmark of his personality as a Judge. He maintained highest standard of judicial conduct and behaviour. He was a

great advocate of a robust and independent judiciary, freedom of press, freedom of speech and expression and came down heavily through his judgments, speeches and articles on any direct or indirect attempts at undermining any of these principles. He was one of those Judges who displayed admirable, courage and independence when India passed through a difficult period which is the mettle of a Judge in a constitutional democracy.

Law Reports of Delhi and Punjab High Court and of this Court bear testimony to his judicial acumen and versatility, his painstaking diligence and his fine understanding and exposition of legal principles.

Dynamic and flexible in approach, he said in *Kesavananda Bharati case* [1973 (4) SCC 225] “.....no generation has monopoly of wisdom nor has any generation a right to place fetters on future generations to mould the machinery of government and the laws according to their requirements. Although guidelines for the organization and functioning of the future government may be laid down and although norms may also be prescribed for the legislative activity, neither the guidelines should be so rigid nor the norms so inflexible and unalterable as should render them to be incapable of change, alteration and replacement even though the future generations want to change, alter or replace them.”. He, however, hastened to add, “amendment of the constitution necessary contemplates that the Constitution has not to be abrogated but only changes have to be made in it. it is not permissible to touch the

foundation or to alter the basic institutional pattern... .. The words 'amendment of the constitution' with all their wide sweep and amplitude cannot have the effect of destroying or abrogating the basic structure or framework of the Constitution”.

Patient and dignified he never lost his cool even in the face of unjustified provocation and had a strong sense of firmness. He had a very pleasing personality and use of harsh words was unknown to him. Always patient and courteous, he made the lawyers, appearing before him, feel at home and come out with their best in the course of arguments. All those who had the opportunity of coming into close contact with him held him in high esteem and regard because of simplicity, modesty and integrity. He was loved by the members of the Bar and the Judges alike as one of the finest Judges of this Court. He was a perfect Judge in the Court and a perfect gentleman inside as well as outside the Court. Those who had the privilege of either sharing the Bench with him or appearing before him at the Bar, acknowledge the great impact which Justice Khanna created as a Judge of the High Courts and of this Court. He was a rare combination of perfection with patience, Judge with gentleness, modesty with dignity and firmness with kindness.

After demitting office as a Judge of this Court, Justice Khanna was appointed as the Chairman of 8th Law Commission from 1977 to 1979. He also had a brief stint as Union Minister for Law and Justice but very soon he left that office. He was a

longtime Member and then Chairman of Press Trust of India (PTI).

Justice Khanna made immense contribution to development of legal jurisprudence and authored a number of books including *'Law Men of Law and Education, Issues before the Nation, Liberty, Democracy and Ethics, Society and the Law, Making of India's Constitution and Constitution and Civil Liberties'*. He also delivered a number of memorial lectures including *Tagore Law Lectures*.

In an article on *Judicial Activism* he said "...*The Courts, it is also pointed out, have to be much more circumspect in seeing that they do not overstep the limits of their powers because to them is assigned the function of being the guardian of the Constitution. It is a faith and trust reposed by the framers of the Constitution in the Courts and their position in this respect is akin to that of a trustee. When the other agencies or wings of the State overstep their limits, the aggrieved parties can always approach the courts and seek redress against such transgression*". In his book *Making of India's Constitution*, he said, "*A constitution is not a parchment of paper, it is a way of life and has to be lived upto. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people. Imbecility of men, history teaches us, always invites the impudence of power*".

In the passing away of Justice HR Khanna we have lost one of the ablest Judges of this Court and a jurist par excellence. Known for his unimpeccable integrity and sterling character Justice Khanna will be remembered for all times to come for the services rendered by him to the cause of justice and independence of judiciary in this country.

“Nothing can cover his high fame but heaven;
No pyramids set off his memories
But the eternal substance of his greatness;
To which I leave him.”

He is survived by three sons and one daughter. His wife Smt. Uma Khanna had predeceased him.

I and my Brother Judges convey our deepest condolences to the bereaved family and pray to Almighty God to give them strength, in this hour of need, to bear this irreparable loss with fortitude

May the eternal soul rest in peace.
