

ADDRESS BY THE HON'BLE SHRI JUSTICE A.P. SHAH, ACTING CHIEF JUSTICE, HIGH COURT OF JUDICATURE AT BOMBAY, AT THE FULL COURT REFERENCE TO LATE MR. JUSTICE PRABODH DINKARRAO DESAI, FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT, ON MONDAY, 14TH JUNE 2004.

My learned Brother and Sister Justices, Mr. Vahanvati, Advocate General of Maharashtra, Mr. Joshi, President of Advocates' Association of Western India, Mr. Dada, President of the Bombay Bar Association, Mr. Mehta, President of the Incorporated Law Society, Members of the Bar, Ladies and Gentlemen.

Today we have assembled here to mourn the sad demise of Hon'ble Mr. Justice Prabodh Dinkarrao Desai, former Chief Justice of this, Himachal Pradesh and Calcutta High Courts, who, after a brief illness, left for his heavenly abode on 17th May 2004.

Born on 14th December, 1930 at Broach Justice P.D. Desai, after graduating from St. Xavier's College at Bombay with Honours in entire Economics in 1950 joined the University School of Economics and Sociology at Bombay and obtained Master's Degree in Advanced Economics in 1952. Simultaneously, he pursued his studies in law at Government Law College, Bombay, and obtained his LL.B. Degree in the year 1953.

Justice P.D. Desai joined the Bar on the Appellate Side of the Bombay High Court in 1955 and on the bifurcation of the State of Bombay in 1960, he shifted to Ahmedabad. Coming from a family of astute lawyers both on paternal and maternal sides, legal acumen had been in his blood; it did not take long for him to make his own mark in the legal profession, which was not an easy task in those days when giants were holding the leadership at the Bar. But by his outstanding ability he came to the forefront of the profession even at that early age and soon acquired confidence of his clients, esteem of his colleagues at the Bar and respect from the Judiciary.

At the young age of 39, Justice Desai was appointed Additional Judge of Gujarat High Court on 19th February, 1970. He was perhaps one of the youngest judges to be appointed as a Judge of a High Court in India. Justice Desai assumed the charge of office of the Chief Justice of Himachal Pradesh on and from 7th December, 1983 and continued as such till he was transferred as Chief Justice of Calcutta High Court on 14th November, 1988. Justice Desai was transferred, and took over as the Chief Justice of Bombay High Court on 7th January, 1991.

Justice P.D. Desai, as a judge was extremely conscientious in the strict performance of his judicial duties. He was known for his humane approach, robust common sense and industry with sound knowledge of law and has proved himself a very capable judge. Volumes of Law reports are replete with his rulings and which are land marks in the field, inter alia, of Constitution, Service, Labour, Preventive Detention, Taxation and Motor Accident Claims. A special mention may be made about his

judgment in Gujarat Steel Tubes, which was later on confirmed by the Supreme Court and the Full Bench decision in the case of *Commissioner of Income Tax, Gujarat v. Smt. Kamalini Khataw* where Justice Desai's dissenting view was approved by the Supreme Court.

Justice Desai earned high reputation as an activist judge and has made significant contribution in the field of Public Interest Litigation. Some of his judgments in public interest cases involving issues, such as, problems concerning undertrials and convicts, bonded labour, orphans, lepers, environmental pollution, casual workmen, have made great impact in the field of social action litigation and earned the gratitude of large sections of people.

Justice P.D. Desai retired from Bombay High Court on 14th December, 1992 with unique distinction of becoming the Chief Justice of three High Courts - long career of 23 years as High Court Judge and 9 years as the Chief Justice.

Pursuant to the announcement made by the then Speaker in the Lok Sabha on 12th March, 1991, Justice Desai was appointed a Member of the Committee constituted under the Judges (Inquiry) Act, 1968 along with Hon'ble Mr. Justice P.B. Sawant and Hon'ble Mr. Justice O. Chinnappa Reddy for the purpose of making an investigation into the grounds of removal of Justice V. Ramaswamy from the office of the Judge of the Supreme Court of India. The Committee submitted its report on 20th July, 2002 holding that the acts committed by Justice V. Ramaswamy were of such a nature that his continuance in office would be prejudicial to the administration of justice and to the public interest.

Justice P.D. Desai was the pioneer of the movement of conciliation in India. He introduced innovative Pre-trial, In-trial and Post-trial Conciliation Scheme in the Subordinate Courts in Himachal Pradesh with the end in view of dispensing expeditious and substantial justice to a large number of litigants waiting for justice. The Law Commission of India, the Conference of Chief Justices and the Arrears Committee, 1989-90, have recommended that the said Scheme, should be applied by all the High Courts in their respective States.

After retirement Justice P.D. Desai was appointed as the Chairman of the Grievance Redressal Authority for Sardar Sarovar Project affected persons. Justice Desai not only made the functioning of the Authority effective but innovated new mechanisms for dealing with the grievances of Project Affected Families. During his tenure as the Chairman nearly 182 sites fully equipped with the requisite civic amenities like hospitals, schools, houses came to be developed and about 8565 project affected families came to be rehabilitated. The Supreme Court described the functioning of the Authority under the Chairmanship of Justice Desai as a role model to be followed by all other participating States. Justice Desai acted as the Chairman for nearly 2 years without charging any remuneration. Throughout this period he worked from 9 in the morning till 7 in the evening. He did not accept any arbitration work or any other assignment during this time.

In his passing away, we have lost an eminent jurist and a great humanitarian and social activist. In his speech which he had made in February 1970, when he was felicitated by the Bar Association on his appointment as a Judge, he said:

"I have nothing more assuring to offer to you today than a solemn promise to be a conscientious, courteous and patient Judge and a pious resolve to dispense justice without fear or favour between haves and have-nots and between the ruler and the ruled. I am aware that the Judges of today have a special responsibility to take a note of the aspirations of the people and mould the law to suit the needs of the changing society; Judges are often faced now with the delicate task of maintaining a just and fair balance between the fundamental freedoms of an individual and reasonable restrictions required to be placed thereupon in the interest of the society at large. I believe that this onerous task will fall with greater impact on the shoulders of the Judges of the younger generation and I shall make an honest endeavour to meet the challenge".

I am sure that the words of Justice P.D. Desai would continue to inspire us in future.

In this hour of grief, on my behalf, on behalf of my esteemed colleagues, and on behalf of all of you assembled here, I convey my heartfelt condolences to the members of the bereaved family. May the Almighty give them strength to bear this great loss and may the departed soul rest in eternal peace.

FULL COURT REFERENCE TO LATE MR. JUSTICE PRABODH DINKARRAO DESAI, FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT ON 14TH JUNE 2004 BY GOOLAM E. VAHANVATI, ADVOCATE GENERAL OF MAHARASHTRA.

My Lord the Chief Justice, Hon'ble Judges, Mr. Dada, President of the Bar Association, Mr. Balkrishna Joshi, President of AAWI, Mr. Prakash Mehta, President of the Incorporated Law Society and friends. It has been my experience over the years that when we reassemble in June after a long vacation in May, on several occasions we are sadly faced with news that people in the legal world have died during the May vacation. Such news always comes as a rude shock. It has happened again this time. We got the rudest shock when we learnt that during the vacation, Justice P D Desai, former Chief Justice of our Court had passed away in Ahmedabad on 17 May 2004.

When Justice P D Desai was transferred from Calcutta to Bombay as Chief Justice of this Court, for him it was like coming home. Though he was born in Bharuch in what is now Gujarat State, Justice P D Desai's higher education was in Bombay, since his father, Shri Dinkarrao N Desai was Minister of Law, Education and Civil Supplies in the former State of Bombay between 1946 and 1956. He graduated from St. Xavier's College with an Arts Degree in 1950 with Honours in Entire Economics. He went on to attain the Masters Degree in 1952 in Advanced Economics and thereafter studied law in our very own Government Law College in Bombay, an institution which means so much to so many of us. Justice P D Desai continued to be in Bombay between the period 1955 to 1960 when he practiced on the Appellate Side of this Court. It was only when the State of Bombay was bifurcated that he shifted to Ahmedabad to practice in Gujarat High Court. He was elevated as Judge in the Gujarat High Court at the early age of thirty-nine on 19 February 1970.

His career in the judiciary is well known. During his long stint as the Chief Justice of the Himachal Pradesh High Court between the period 23 December 1983 to 13 November 1988 he made his mark in every branch of law. Those were early days as far as public interest litigation was concerned but Justice P D Desai passed some landmark orders in relation to protection of environment in Himachal Pradesh. He then spent three years as the Chief Justice of the Calcutta High Court and came to Mumbai as Chief Justice of our Court on 7 January 1991.

I distinctly remember the day on which he sat in Court Room No.52 for the first time along with another Senior Judge of our Court. I happened to be briefed in the very first matter on board. It had been our experience earlier that Chief Justices on transfer from other courts took a little time to settle and initially relied on the colleagues who sat with them. The members of the Bar used to think that one had to convince the other judge first. In the very first minute I discovered how wrong this assumption was. Justice P D Desai was in total control of his court. He shot off one searching question after another. The answers had to be to the point. The moment he was convinced, your task was done.

He was a strict and stern disciplinarian. He had an extremely quick grasp and profound knowledge of the first principles of law. He never hesitated to pass bold orders once he was convinced of injustice. If one were asked to describe Chief Justice P D Desai in one word then I would choose the word 'integrity.' He moulded his approach on the basis of George Bernard Shaw's words who said, "Better keep yourself clean and bright. You are the window through which you must see the world."

Chief Justice P D Desai had incredible integrity, coupled with unbending independence and an indomitable spirit. He lived his life according to the standards which the great Abraham Lincoln had set for himself. Lincoln had said, "I desire so to conduct the affairs of this administration that if at the end, when I come to lay down the reins of power, I have lost every other friend on earth, I shall have at least one friend left, and that friend shall be down inside me." Justice P D Desai did not socialize freely but he had a legion of admirers and well wishers.

He was very involved with the administration of this court. As Chief Justice he was responsible for many far reaching changes and innovations. It was during Justice Desai's tenure as Chief Justice that the Chief Justice's court came to be described as the 'First Court.'

All those who came into contact with Chief Justice P D Desai knew that he was Supreme Court material. However, this is not the time or the moment to delve into the injustices of life. This is a time to pay tribute to a man who did not sacrifice his principles at the altar of personal progress.

There is an old dictum which says, "Courage is the decision you take yourself in the face of adversity, choosing right over wrong, ethics over convenience and truth over popularity." These are the choices that determine how your life will be measured. Justice Desai had his choices and he was measured by what he chose to be. He traveled the path of integrity without looking back because he knew, as Martin Luther King Jr. said, "The time is always right to do what is right."

I humbly join you, my Lords in paying tribute to this fine person.

May his soul rest in peace.

FULL COURT REFERENCE TO LATE MR. JUSTICE PRABODH DINKARRAO DESAI, FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT, ON 14TH JUNE 2004, BY MR. RAFIQ DADA, PRESIDENT, BOMBAY BAR ASSOCIATION.

My Lord the Acting Chief Justice, My Lords, Mr. Vahanvati, Advocate General, Mr. Joshi, Mr. Prakash Mehta, and Members of the Bar.

On behalf of the Bombay Bar Association and on behalf of myself, I endorse the sentiments expressed by my Lord and by the Advocate General. Chief Justice P.D. Desai was a member of the Bar of this Court. He secured his higher education in Bombay. He was an outstanding lawyer and was elevated to the Bench at a young age of 39 years.

He presided as Chief Justice of the Himachal Pradesh High Court from 1983 to 1988. He introduced pre-trial procedures to help control the mounting arrears. He came to us as Chief Justice in 1991.

He was a tough judge and by all accounts a hard task master. He worked very hard himself and left the court premises in the late evening. During his tenure, he helped to tone up the Administration.

Chief Justice Desai made a great contribution to dispute resolution by consent. Every matter was given a preliminary hearing and many matters which could be settled were kept under the caption "For Settlement". The court evolved a system of mediation which helped settle many a difficult matter.

The Chief Justice's Court rendered many orders under the provisions of the Central Labour Abolition Act. This helped the underprivileged workmen against the might of huge public Corporations. Chief Justice P.D. Desai's court was a lively court. Every one was kept on his toes.

On 14th December, 1982, on a cold wintry evening, Chief Justice P.D. Desai went into retirement. As his car faded away into the distance, one felt that an unforgettable chapter in the life of this Court had come to a close.

In retirement, Chief Justice responded to the call of duty. He was appointed as a Chairman of the Grievance Redressal Authority for those affected by the Narmada Dam Construction. In this capacity, he helped to rehabilitate many Narmada Dam oustees. When I went to Ahmedabad, I spoke to him sometimes briefly over the telephone. He fondly enquired about the members of the Bombay Bar. Some time back he suffered a great setback when his wife passed away. He continued indomitably. Even during the turmoil in Gujarat, he came out with a voice of sanity.

Finally he passed away. He joins the distinguished Chief Justices of this Court. Even if his tenure was as short as one year, his place is secure in the history of this Court. Let us pray to the Almighty that his soul may rest in eternal peace.

FULL COURT REFERENCE TO LATE MR. JUSTICE PRABODH DINKARRAO DESAI, FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT ON 14TH JUNE 2004 BY MR. BALKRISHNA JOSHI, PRESIDENT, ADVOCATES ASSOCIATION OF WESTERN INDIA.

The Hon'ble the Acting Chief Justice Shri A.P. Shah and other Hon'ble Judges of the High Court of Judicature at Bombay, Shri. Goolam Vahanvati, Advocate General, Maharashtra State, Shri. Rafiq Dada, the President of Bombay Bar Association, Shri. Prakash Mehta, President of incorporated law society and friends.

1. Sir, I fully endorse the views expressed by the Hon'ble the Acting Chief Justice and my colleagues and I beg to add few words.

2. Sir, It is really necessary to pay tribute to the then Chief Justice Shri. Probodh Dinkarrao Desai of the Bombay High Court who expired on 17th May 2004. Justice Desai was born on 14th December 1930 at Bharuch, in Gujarat State. He was the youngest son of late Shri. Dinkarrao Desai Ex- Minister of Law, Education and civil supplies in the former State of Bombay from 1946 to 1956 After completing his primary and secondary education at Bharuch Justice Desai joined the St. Xavier's College at Bombay and Graduated in Arts in 1950 with Honours and there-after joined the university school of Economics and sociology at Bombay and obtained Master's Degree in Advance Economics in the year 1952 simultaneously he prosecuted study in law at Government Law College, Bombay and obtained LL.B Degree in the year 1953. Justice Desai joined the Bar on the Appellate side of the Bombay High Court in the year 1955 and he practised there till the bifurcation of the State of Bombay in the year 1960. Thereafter he shifted to Ahmedabad and soon made a mark in the Gujarat High Court with his persuasive and forceful Advocacy. He worked as the Hon. Secretary of the Gujarat High Court Advocates Association in the year 1964-65. He was professor of Constitutional law in the City Law college Ahmedabad in the year 1967-68.

3. Justice Desai was appointed as an Additional judge of Gujarat High Court on 19th February 1970 at the young age of 39 years and was made permanent Judge on 24th April 1974. On 15th March 1983 Justice Desai was appointed as Acting Chief Justice of the Gujarat High Court and he continued to hold the said office till he took over as the Chief Justice of Himachal Pradesh High Court on 23rd December 1983. Justice Desai was transferred as Chief Justice of the Calcutta High Court on 14th November 1988. Justice Desai also acted as the Acting Governor of the Himachal Pradesh from 7th March 1985 to 16th April 1985. Justice Desai was transferred and took over as the Chief Justice of the Bombay High Court on 7th January 1991 and succeeded Justice Chittatosh Mookerjee. His Lordship retired as Chief Justice of Bombay High Court on 14th December 1992.

4. Justice Desai approached each and every legal problem with his wide outlook and deep insight. Justice Desai's vast experience of Law and social issues and human approach helped to solve many legal problems Justice Desai has given many important decisions in different branches of law such as Constitutional Law, Taxation and

Company Law, Labour Law, Motor Accidents compensation Law etc. To each and every legal problem civil of criminal constitutional or taxation, industry or labour. Accident or Insurance, Justice Desai in his judicial pronouncement demonstrated his legal acumen, sharp intellect and deep understanding of human nature, Justice Desai's reasoned judgments bear the impress of a seasoned jurist. Justice Desai had earned high reputation all over the country as an activist judge and has made significant contribution in the field of Public Interest litigation. Some of his judgments in public interest cases involving issues such as Ragging, Problems concerning under-trials and convicts and Jail inmates, bonded Labour, Pollution etc. have made great impact in the field of Social action litigation and earned the gratitude of large section of people in Himachal Pradesh.

5. Justice Desai was appointed as a member of Arrears Committee appointed by the Government of India on 17th January 1989. The Committee has submitted its report making wide ranging and important recommendations with a view to reduce arrears in court. Justice Desai introduced innovative pre-trial, In-trial and Post-trial conciliation scheme in the subordinate courts in Himachal Pradesh with the end in view of dispensing expeditious and substantial justice to a large number of litigants waiting for Justice. Justice Desai could not tolerate Lawyers who were ill prepared or Lawyers who could not fairly put the facts before him. Despite his approach and intellectual impatient with some lawyers appearing before him he did no injustice to the cause of such Lawyers clients.

6. Justice Desai was a Diamond Hard Person who could not compromise on fundamentals. We find very few people of such unflinching conviction and commitment. No inducement can buy them and no threats can cow them down. We at the Bar lost a judge before whom it was an intellectual challenge to appear, a judge with a passionate desire to do justice. The Members of the Association share the grief of the Members of Justice Desai's family and we sincerely hope that the family of Justice Desai will find Courage to bear this loss. **MAY GOD REST HIS SOUL IN PEACE.**

Government of India, on 17th January 1989. The Committee has submitted its report making wide ranging and important recommendations with a view to reduce arrears in court. Justice Desai introduced innovative pre-trial, In-trial and Post-trial conciliation scheme in the subordinate courts in Himachal Pradesh with the end in view of dispensing expeditious and substantial justice to a large number of litigants waiting for Justice. Justice Desai could not tolerate Lawyers who were ill prepared or Lawyers who could not fairly put the facts before him. Despite his approach and intellectual impatient with some lawyers appearing before him he did no injustice to the cause of such Lawyers clients.

**FULL COURT REFERENCE TO LATE MR. JUSTICE PRABODH
WINKARRAO DESAI, FORMER CHIEF JUSTICE OF BOMBAY HIGH COURT
ON 14TH JUNE 2004 BY MR. PRAKASH MEHTA, PRESIDENT OF BOMBAY
INCORPORATED LAW SOCIETY.**

My Lord the Acting Chief Justice, the Hon'ble Judges of the Bombay High Court, Mr. Goolam Vahanvati, the Advocate General, Mr. Rafiq Dada, President of the Bombay Bar Association and Mr. Joshi, the President of the Western India Advocates Association.

On behalf of the Bombay Incorporated Law Society, I express condolences on the said demise of Mr. Justice P. D. Desai.

With respect, I concur with what the Learned Advocate General, President of the Bombay Bar Association and the President of the Western India Advocates Association have submitted at your Lordships' Bar today.

Mr. Justice Desai had a long tenure on the Bench - he was elevated as an Additional Judge of the Gujarat High Court at the young age of 39 years. His long experience on the Bench enabled him to innovate schemes to reduce the burden on the judicial system as well as provide speedier justice to the litigants. In Himachal Pradesh, Justice Desai successfully implemented an innovative Scheme of Pre-Trial, In-Trial and Post-Trial conciliation.

In early 1970s, I had the occasion to appear before him with a Senior Counsel in the Gujarat High Court in a heavily contested company matter. I recall that it was his initiative that brought the matter to an equitable settlement, which avoided a lengthy trial, heavy costs to the parties and above all, saved valuable time of the Court. This probably was the precursor to his ultimate achievements particularly as the Chief Justice of Himachal Pradesh, High Court.

In this day when the Courts are so over-burdened - any step taken to reduce its burden and to dispense justice speedily and effectively must be lauded.

In the passing away of Justice Desai, the legal fraternity has lost a proponent and a pioneer of the Alternative Dispute Resolution system. We must resolve that the efforts of Justice Desai are not lost with the passage of time but are taken from strength to strength.

On behalf of the Bombay Incorporated Law Society, we wish to convey to the members of his family our heartfelt condolences.

May his soul rest in peace.
