

ADDRESS BY HON'BLE ACTING CHIEF JUSTICE SMT. V.K.TAHILRAMANI,
HIGH COURT OF JUDICATURE AT BOMBAY,
AT THE FULL COURT REFERENCE
TO LATE SHRI JUSTICE SAROSH HOMI KAPADIA,
FORMER CHIEF JUSTICE OF INDIA
HELD ON MONDAY 8 FEBRUARY 2016 AT 11 AM
IN THE CENTRAL COURT.

....

My esteemed colleagues

Mr.Shreehari Aney, Advocate General &
on behalf of Bar Council of Maharashtra & Goa.

Mr. Anil Singh
Additional Solicitor General of India

Dr.Milind Sathe, President of Bombay Bar Association

Mr.Rajiv Chavan, President,
Advocates' Association of Western India.

Mr.Kaiwan Kalyaniwalla, President,
Incorporated Law Society

Senior Advocates

Advocates

Members of the family of Justice S.H. Kapadia

Ladies and Gentlemen

We have assembled here this morning to mourn the sad and untimely demise of late Mr. Sarosh Homi Kapadia, former Chief Justice of India, who was a former Judge of this Court and former Chief Justice of Uttarakhand High Court. Justice Kapadia left for his heavenly abode in the early hours of 5th January 2016 in Mumbai at the age of 68 years.

The destiny of Sarosh Homi Kapadia was uncertain when he was born on September 29, 1947 in a nation that came into existence barely six weeks before him. The odds were stacked against Justice Kapadia at birth because unlike the illustrious Parsis of Mumbai, his father, Mr. Homi Kapadia, had grown up in a Surat orphanage and had worked as a Clerk in a defence establishment. His mother Mrs. Katy Kapadia was a homemaker. The family could barely make ends meet but that did not weaken their robust values.

Justice Kapadia rose from humble beginnings to the highest judicial office of this country by his uncompromising integrity and hard work.

Justice Kapadia completed his school education from St. Mary's High School, Mazgaon. His Lordship had taken college education from Jai Hind College and did his LL.B. Degree from Government Law College, Mumbai.

Justice Kapadia enrolled as an Advocate on 10 September 1974 with the Bar Council of Maharashtra & Goa. As a junior lawyer, he quickly gained a reputation for his preparation and ability to cite authority while arguing. Kapadia then joined Mr. Feroze Damania, a highly respected lawyer in labour matters known to be partial to poor and marginalised people.

In 1982, Justice Kapadia argued a case for people living in Ghatkopar, a suburb in Mumbai. The area was formerly salt pan land and fell under the control of the Salt Commissioner. The Commissioner had ordered summary eviction of about 3,000 tenements. Justice Kapadia fought the case which resulted in a landmark judgment laying down the principle that the Government cannot invoke summary eviction laws to throw out people when there is a genuine dispute on the title. This shows that it was not about money, he was genuinely interested in the welfare of marginalised people.

It was said that at that time Justice Kapadia became interested in Buddhist and Hindu philosophies. Later he became a frequent visitor to Belur Math on the banks of the Hoogly in Kolkata. I was told that Justice Kapadia learnt meditation techniques there. He had read everything about Ramakrishna and also what Swami Vivekananda wrote. Justice Kapadia's world view is highly influenced by Indian thinkers but is also tempered by the observed realities of the modern world. It has also shaped his thinking as a Judge who believed in continuous learning.

Justice Kapadia practised for 17 years from 1974 till elevation to the Bench on 8th October 1991 as an Additional Judge of this Court.

Justice Kapadia was appointed as a Permanent Judge of this Court on 23rd March 1993. He was appointed as a Judge of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 on 15th October 1999. During his tenure as a Judge of the Special Court, he played an important role in the proceedings of the Joint Parliamentary Committee constituted to investigate the 1999 Stock scam.

Justice Kapadia was appointed as the Chief Justice of the Uttarakhand High Court on 5th August 2003. I was told that the short span of four months was enough for His Lordship to leave a mark on the functioning of Uttarakhand High Court. Justice Kapadia was elevated to the Supreme Court on 18th December, 2003. Justice Kapadia was appointed as the Chief Justice of India on 12 May 2010 and retired on 28th September 2012.

On the first day in office as the Chief Justice of India, he cleared 39 matters in half an hour. Justice Kapadia has practically dedicated his life to the profession, rarely taking holidays even.

During the first summer holidays after he became Chief Justice, Justice Kapadia is said to have come to office everyday to streamline the Supreme Court registry.

Justice Kapadia was one of the finest Judges and administrators who had redefined judgeship. In a widely quoted letter that he wrote to former Justice V.R.Krishna Iyer, Justice Kapadia said: "I come from a poor family. I started my career as a class IV employee and the only asset I possess is integrity....." Justice Kapadia set the highest standards for the judiciary and assiduously strived to achieve it. "He is someone who had the ability to be above any influence and pressure" said former Justice V.R. Krishna Iyer. Justice Kapadia himself had said about the qualities required of a Judge. Though His Lordship might have been aloof, he was reassured, honest and fiercely individualistic and was a self-made man. His Lordship has made every effort to see that the judiciary is manned by the correct type of people. Justice Kapadia endeavoured to project the judiciary as a very transparent institution, an institution with great integrity.

At a Bombay Parsi Panchayat felicitation when he became Chief Justice of India, he spoke:- “My father taught me not to accept obligations from anyone, and my mother taught me the ethical morality of life.” Young Sarosh, however, had decided that he would make his own destiny. He wanted to become a Judge and nothing else. At the felicitation, Panchayat trustee Khojeste Mistree talked about his student days. Justice Kapadia would walk down Narayan Dhabolkar Road in Mumbai, past the Rocky Hill flats, where a number of Judges lived, and dreamt that one day he would progress from being an Advocate to becoming a Judge and had the honour of living in those very same salubrious surroundings, Parsi Khabar, an on-line community web site, reported Mistree as so saying. Many years later, when Justice Kapadia became a Judge of this Court, he always sat in Court room number three on the ground floor, which perplexed many because as Judges rose in seniority they also moved to the upper floors of the courthouse building. Justice Kapadia revealed the reason why he was fond of the room when he was invited to tea at the Bar just before taking over as the Chief Justice of the Uttarakhand High Court in 2003. Early in his career as a low-grade employee, he used to end up at the Fountain area near the Court for work. He didn't have anywhere to go to spend his lunch break. For three years lunch often used to be a small cone of roasted chana (gram) and courtroom number three was the place to relax because it let in good breeze. A lawyer in Mumbai who was present says that Justice Kapadia recalled how his interest in law was fuelled by the sessions in that court room.

Delivering the J.K. Mathur memorial lecture in Lucknow, Justice Kapadia went on to define the context of modern day justice and the legal profession. In that speech he said how important it was for judges to understand the various concepts in different fields, including economics and accountancy. Kapadia himself is a qualified accountant and had vast knowledge of economics. That came in handy in a case where Orissa's tribals were pitted against a miner.

There were no jobs, hospitals or schools in the area the company wanted to mine. Justice Kapadia analysed the accounts of the company to find out whether it could set aside a portion of profits for tribals' welfare. He dissected the accounts segment-wise to discover a profit of about Rs.500 crores when without the standard of accounting the profit would be only Rs.15 crore.

Justice Kapadia said: "A judge sitting in tax matters knows the accounting standards. It helps us to decide matters in the context of socio-economic justice enshrined in the Constitution. This is where I emphasise the knowledge of the basic concepts."

A Mumbai lawyer who knows him from the time Justice Kapadia was a lawyer and later judge, says that he has evolved into a complete jurist. Yet, the Chief Justice has not stopped learning. So strong was his willingness to learn and deliver decisions that while hearing a case involving limestone mining in Meghalaya's East Khasi Hills by Franco-Spanish cement company Lafarge Umiam Mining, on realising that he did not know enough background, Justice Kapadia had urged Senior Lawyer Mr.Harish Salve to brief the Court on the history of environmental jurisprudence.

“His humble beginnings are reflected in his outlook and judgments,” says senior lawyer Mr.Soli Sorabjee. “A litigant may feel disappointed if he loses the case but no litigant goes back from Kapadia’s Court feeling he was not fairly or fully heard.”

In his pursuit of flawless integrity, Justice Kapadia has hermetically sealed himself. He even said in a speech that Judges and lawyers should work like a horse and live like a hermit. I was told that Justice Kapadia did not accept even official invitations if they fell on a working day. I was told that he once rejected an invitation to represent India at a conference of the Commonwealth Law Association in Hyderabad because it fell on a working day.

Since taking over as the Chief Justice on 12 May 2010, Justice Kapadia has worked tirelessly to uphold dignity and credibility of the Supreme Court as the final forum for justice seekers. With a single stroke of the pen, he stopped reckless mining in Bellary.

In March 2011, in a landmark verdict, a Bench of the Supreme Court headed by Justice Kapadia declared that the recommendation of the High Powered Committee recommending the name of Mr. P.J. Thomas as Central Vigilance commissioner is *non est* in law and, consequently, the impugned appointment of Mr.Thomas as Central Vigilance Commissioner was quashed. The ruling said that the Government had not considered previous allegations of corruption against the candidate, before making the appointment. Quashing the appointment of Mr.Thomas, Justice Kapadia said:-

“Thus, the institutional integrity is the primary consideration which the HPC is required to consider while making recommendation under Section 4 for appointment of Central Vigilance Commissioner. In the present case, this vital aspect has not been taken into account by the HPC while recommending the name of Shri P.J. Thomas for appointment as Central Vigilance Commissioner.”

In the **Vodafone** case, Justice Kapadia held that Indian tax authorities did not have territorial jurisdiction to tax offshore transactions. The judgment instilled the confidence of the international community in the independence of the country's judiciary. Justice Kapadia will certainly be remembered for the landmark Vodafone decision.

In **Taj Corridor** case, Justice Kapadia remarked that “In the matters after matters, we find that the efficacy and ethics of the Governmental authorities are progressively coming under challenge before this Court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to “a rope of sand”.

In **M. Nagaraj v. Union of India**, Justice Kapadia was a part of the Constitution Bench which held that each State will have to show the existence of compelling reasons, viz., backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. It was also held that the State is not bound to make reservations in promotions.

In **Confederation of Ex-Servicemen Associates & Ors. v. Union of India**, Justice Kapadia ensured ex-servicemen and their dependants of their right to receive full and free lifelong medical care, provided a one-time contribution is made to ECHS.

In **B.P. Singhal v. Union of India**, Justice Kapadia interpreted Article 156 of the Constitution to hold that even though the Governor holds office at the pleasure of the President, he cannot be dismissed arbitrarily as if his ideologies do not match those of the Government in power.

For almost 21 years, Justice Kapadia dealt with each case with absolute receptivity, objectivity and sensitivity which every citizen expects from a Judge. He has to his credit a large number of important cases as reported in various law journals. The cases decided by him pertain to almost all branches of law i.e. civil, constitutional, taxation, local laws, labour laws, service laws, etc. Justice Kapadia's learning, legal acumen and pragmatism were reflected in his judgments. His knowledge of various branches of law was also evident in his judgments. The judgments written in simple language reflect deep insight into various branches of law, rich experience and outstanding discharge of his judicial work.

Justice Kapadia defended the judicial system in his Law Day speech in November 2011:-

“I am an optimist. I do not share the impression that judicial system has collapsed or is fast collapsing. I strongly believe and maintain that with all the drawbacks and limitations with shortage of resources and capacity, we still have a time-tested system,” he said. He also said that the backlog of cases is not as huge as is made out to be. “Seventy-four per cent of the cases are less than five years old,” he said and added that the focus is on quickly disposing of the rest of the cases.

Justice Kapadia had certainly restored the confidence and pride in the Supreme Court of India and left an indelible mark on India's judicial history.

After retirement, Justice Kapadia kept himself busy in legal work relating to arbitration and conciliation and in providing legal opinion and eschewed the limelight.

We wish Justice Kapadia had remained in the service of the society for longer, but God has willed otherwise. However, his memory will always remain with us. Justice Kapadia is survived by wife Shernaaz, son Hoshnar, a Chartered Accountant and daughter Tenaaz.

In passing away of Justice Kapadia, we have lost a friend, an eminent Judge, an elder brotherly guide and above all, a good human being. In this hour of grief, on behalf of all of us, I convey my heartfelt condolences to the members of the bereaved family. May the Almighty give them strength to bear the great loss and overcome the grief.

May the departed soul rest in eternal peace!

**ADDRESS BY SHRI S.G. ANEY,
ADVOCATE GENERAL OF MAHARASHTRA & ON BEHALF OF THE
BAR COUNCIL OF MAHARASHTRA & GOA,
AT THE FULL COURT REFERENCE
TO LATE HON'BLE SHRI JUSTICE SAROSH HOMI KAPADIA,
FORMER CHIEF JUSTICE OF INDIA,
HELD ON MONDAY, 8TH FEBRUARY, 2016 AT 11.00 AM
IN THE CENTRAL COURT.**

My Lords,

Justice Sarosh Homi Kapadia. B.A., LL.B.

Born: September 29, 1947. Enrolled as Advocate: September 10, 1974. Appointed Judge Bombay High Court: October 8, 1991. Appointed Chief Justice Uttarakhand: August 5, 2003. Appointed Judge, Supreme Court of India: December 18, 2003. Appointed Chief Justice of India: May 12, 2010. Retired: September 29, 2012. Died: January 5, 2016.

It is easy to reduce the life of a man to a short list of Dates and Events. But surely, there must be more to the story of the man. There is more to the story of the man called Sarosh Homi Kapadia.

In a nation such as ours, where for most men equal opportunity has remained a mere constitutional promise, where for most men each day of their life is consumed struggle just to make two ends meet, where life itself is nothing more than a span of time between birth and death, there is no redemption in sight. For most such men, the possibility of achieving greatness is the stuff of dreams. In this our land, remarkable careers are usually scripted by preordained circumstances like the accident of birth, lineage, economic affluence, social position or family connections. To a person who is outside the magic circle of these considerations, the rise to high public office is not a realistic possibility.

The story of one such Outsider is the story of Sarosh Homi Kapadia. To those of us who are born in the comfort of economic security and social acceptance, it is not really possible to understand what it means to rise from poverty. We can only try and imagine what it would be like to be a Class IV employee, to study law and then to work as one of the many clerks in a great law firm like Gagrut and Company. We can only try and imagine what it must be like for a humble lawyer to approach a famous labour lawyer like Feroze Damania and ask to be accepted as a junior. Could such a man even harbour the hope of holding the highest judicial office of the land?

The days spent on this journey must have taught him lessons not otherwise available for one who came from humble origins. For that Class IV peon, the corridors of power must have been books. For that clerk, the rarefied atmosphere of a leading law office must have been a library. For that junior the Labour Court where the common workman went to seek justice must have been a school.

It is no wonder that this man brought to his judgeship a sense of purpose, fearlessness and honesty. This was to become his unique identity as a Judge. He was acutely aware of the uniqueness of his station, for he had said, and I quote, "I come from a poor family. I started my career as a Class IV employee and the only asset I possess is integrity".

It could only be a fiercely honest person like him who could be critical of the direction that the Supreme Court had begun to take in Public Interest Litigation. In a lecture on 'The Jurisprudence of Constitutional Structure' he said: "Right to life, we have said, includes environmental protection, right to live with dignity. Now we have included right to sleep. Where are we going? It is not a criticism. Is it capable of being enforced? When you expand the right, the judge must

explore the enforceability". Reacting to the volume of Public Interest Litigation being filed in the Supreme Court against corruption and the failure of governmental authorities to perform their duties, he said: "A day might come when the Rule of Law will stand reduced to a rope of sand".

The story of this great judge is indeed unique because it is the story of hope. It tells the last marginalised man that in our country it is possible for the outsider to achieve greatness. For where else, but in this, our land, could the son of a fisherman become the President? For where else, but in this our land, could a tea seller on a railway platform become the Prime Minister? And where else, but in this our land, could a Class IV peon become Sarosh Homi Kapadia, Chief Justice, Supreme Court of India?

On behalf of the State of Maharashtra, the office of the Advocate General and the Bar Council of Maharashtra & Goa, I pay homage to Chief Justice Sarosh Homi Kapadia, and pray to the Almighty that his soul may rest in eternal peace.

**ADDRESS BY SHRI ANIL C. SINGH,
ADDITIONAL SOLICITOR GENERAL OF INDIA,
AT THE FULL COURT REFERENCE
TO LATE HON'BLE SHRI JUSTICE SAROSH HOMI KAPADIA,
FORMER CHIEF JUSTICE OF INDIA, HELD ON MONDAY, 8TH
FEBRUARY, 2016 AT 11.00 AM IN THE CENTRAL COURT.**

The Hon'ble Acting Chief Justice Smt. Vijaya Tahilramani,
Hon'ble Judges of this Court,
Advocate General of Maharashtra Shri Shrihari Aney,
President of Bombay Bar Association Dr. Milind Sathe,
President of Advocates' Association of Western India Shri Rajiv Chavan,
The President of Incorporated Law Society Shri Kalyaniwalla,
Family members of late Justice Kapadia,
Members of the Bar,
Ladies & Gentlemen,

Today we have assembled to pay tribute to late Justice Sarosh Homi Kapadia, former Chief Justice of the Supreme Court of India, who breathed last in the early hours of 5th January, 2016.

Justice Kapadia was born on 29th September, 1947 i.e. just six weeks after our great nation became an independent entity. Justice Kapadia began his career as a Grade IV employee with Byramjee Jeejeebhoy, where his main job was to deliver case briefs to lawyers. While working, Justice Kapadia studied law and was enrolled at the Bar on 10th September 1974. He appeared before every court right from Small Causes Court to the Bombay High Court. He also appeared in several cases of workmen and other poor people. He was Standing Counsel for several public undertakings, private, nationalized and foreign banks and also for the Department of Income-tax.

He practised efficiently with competence as a lawyer for 17 years, for 12 years he performed as a judge of the High Court with impeccable integrity, for 4 months he was the Chief Justice of Uttarakhand High Court and for more than 8 years he was a Judge of the Hon'ble Supreme Court of India, which included his 2 and a half years tenure as the Chief Justice of India.

In one of the addresses to Advocates of the Supreme Court, Justice Kapadia expressed his faith towards our Judicial System by saying and I quote "I am proud to be an Indian. India is the only country where a member of the minority Parsi community with a population of 1,67,000, like myself, can aspire to attain the post of the Chief Justice of India. These things do not happen in our neighbouring countries."

Justice Kapadia was author of many landmark judgments. To name a few, the Chief Vigilance Commissioner, P.J. Thomas case. On March 3, 2011, a three-member Bench headed by Justice Kapadia, propounded the principle of "institutional integrity", by quashing the appointment of P.J. Thomas, as Chief Vigilance Commissioner, made by the High Power Committee comprising of former Prime Minister Shri Manmohan Singh, the then Home Minister Shri P. Chidambaram and the then Leader of Opposition Smt. Sushma Swaraj (dissenting). Justice Kapadia was part of the three-member Supreme Court Bench that decided a PIL filed by two NDA leaders seeking the cancellation of bail of RJD Chief Shri Lalu Prasad Yadav and his wife, the former Bihar Chief Minister Smt. Rabri Devi for their interference in the judicial process and for disproportionate assets.

Some other high profile and landmark judgments delivered by Justice Kapadia include, the Vodafone Judgment; the judgment upholding the constitutional validity of Right of Children to Free and Compulsory Education Act, 2009; the M. Nagraj judgment holding that creamy layer among the scheduled castes and scheduled tribes must be excluded from the purview of reservation in public employment and promotion; the judgment directing interlinking of rivers be taken by the Center on the war footing; and judgment holding that right to life includes pollution free environment.

Justice Kapadia was known for his simplicity and honesty. Justice Kapadia conducted Court proceedings in exemplary fashion. Soon after he assumed office as the CJI, he put an end to the practice of lawyers directly mentioning a case before any Bench for urgent relief. He reflected the modern face of the office through his expertise in corporate law. During the tenure of Justice Kapadia as the Chief Justice of India, the Supreme Court took the Government to task for the excesses of the bureaucracy and for corruption in high places. In particular, the 2G judgment which quashed 122 telecom licences and instituted Court monitoring of the C.B.I. probe which caused major embarrassment to the ruling dispensation.

Justice Kapadia maintained the highest standards in his professional as well as personal life. He was very articulate, simple, modest and straight forward person. He owned a rare combination of unquestionable integrity, exceptional character and high moral values, which he inherited from his father.

Justice Kapadia, who succeeded Justice K.G. Balakrishnan as the CJI in 2010, when Judiciary was under severe attack for failing to check corruption and pendency, did commendable work on the judicial and administrative sides to improve the image of the judiciary and streamline work in the Court Registry.

He went for work even on the last day of his life, he along with Justice A.K. Patnaik, went for hearing an arbitration matter at Mumbai.

Justice Kapadia showed keen interest in Buddhist and Hindu philosophies, especially in the teachings of Ramana Maharshi, Swami Vivekananda and Ramakrishna Paramahansa.

Justice Krishna Iyer in an interview described him in most laudable words, the same I quote, "While I have seen during last 97 years of my life among the good judges with great credential, there was hardly anyone to compare with Kapadia, the like of which no eye had seen, no heart conceived and no human tongue can adequately tell".

We mourn the death of late Shri Justice Kapadia. May his soul rest in peace. I express my deepest condolences to the members of the family.

**ADDRESS BY DR. MILIND SATHE,
PRESIDENT, BOMBAY BAR ASSOCIATION,
AT THE FULL COURT REFERENCE
TO LATE HON'BLE JUSTICE SAROSH HOMI KAPADIA,
FORMER CHIEF JUSTICE OF INDIA,
HELD ON MONDAY 8TH FEBRUARY, 2016 AT 11.00 AM
IN THE CENTRAL COURT.**

Hon'ble Smt. Justice Vijaya Tahilramani, Acting Chief Justice of Bombay High Court, other Hon'ble Judges of this Court, Shri Shreehari Aney, Advocate General of Maharashtra, Shri Anil Singh, Additional Solicitor General of India, Shri Rajiv Chavan, President, Advocates' Association of Western India, Shri Kaiwan Kalyaniwalla, President, Bombay Incorporated Law Society, members of Justice S.H. Kapadia's family, Ladies and Gentlemen,

We assemble this morning to mourn the sad demise of Justice Sarosh H. Kapadia, former Chief Justice of India in the early hours of 5th January 2016. I fully associate myself with the sentiments expressed by the learned Chief Justice and my fellow speakers.

The life of Justice Sarosh H. Kapadia is a legend, inspiration and a beacon for all youngsters and upcoming lawyers. Hard work, perseverance, honesty and integrity were his hallmark. With no legal background, you can in this country reach the highest office in the judiciary, one of the important wings of the State, is not only a testimony of Justice Kapadia's intellect and hard work, but it is equally an acknowledgment of robustness of the judiciary.

Justice Sarosh H. Kapadia died at the age of 68 when he had just begun his third inning in the legal profession.

Justice Kapadia was born on 29th September 1947. He was enrolled as an Advocate on 10th September 1974. He practised in the Bombay High Court, both on the Original Side and Appellate Side in Suits, Letters Patent Appeals, Writs matters under the Negotiable Instruments Act, Detention Matters, matters under the Bombay Rent Act, matters under the Bombay Municipal Corporation Act, including trials concerning fixation of rateable value, matters under the Maharashtra Land Revenue Code, including trials concerning valuation of properties for the purposes of fixation of NA assessments, challenge to the validity of notifications fixing Standard Rent, appeared in AOs, First Appeals under the BMC Act, Second Appeals as also in Land Acquisition References under the Land Acquisition Act as also in matters under the Bombay Land Requisition and Acquisition Act. This is apart from the practice in Industrial Law and Services Matters. Appeared as a counsel for the Department in Income-tax matters. Justice Kapadia appeared as a counsel for BMC in matters concerning rateable value and octroi. He appeared as a counsel for Bharat Petroleum Corporation and Hindustan Petroleum Corporation in the High Court and the Supreme Court in connection with service matters including disputes concerning framing of Pension Rules. He also appeared for the Management and Unions in matters under the Industrial Disputes Act, 1947 and the MRTU & PULP Act, 1971.

Justice Kapadia was appointed as an Additional Judge of the Bombay High Court on 8th October 1991. He was appointed as a Permanent Judge of the Bombay High Court on 23rd March 1993. He was appointed as a Judge of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 on 15th October 1999. During the above period, he decided important matters under PIL

pertaining to CRZ, financial matters under RBI and Banking Regulation Act; matters concerning the Constitutional validity of the 74th Amendment Act of 1992 dealing with Municipalities; matters under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976; matters concerning Mergers and Acquisitions; matters under Payment of Bonus Act; matters under Industrial Disputes Act. In addition to the above, he dealt with matters under the Income-tax Act concerning Valuation of closing stocks, accounting treatment to be given to Modvat Credit Convergence of Tax Accounting with Commercial Accounting, etc.

As a Judge presiding over the Special Court, Justice Kapadia dealt with Civil and Criminal matters including matters concerning corroborative value to be given to the Report submitted by RBI and JPC vis-a-vis the Evidence Act. As a Judge of the Special Court, he had also dealt with Accounts and Finances of Banks and Financial Institutions as also accounts of the Share and Stock Brokers as also matters under the Contempt of Courts Act where the Notified Parties had diverted their assets. As a Judge of the Special Court, he framed Investment Schemes, Schemes dealing with Valuation and Disposal of Shares of Notified Parties as also Distributions of assets of the Notified Parties under the Act and declaring dividends to the Creditors of the Notified Parties.

He was elevated to the Uttarkhand High Court on 5th August, 2003 as Chief Justice and within 4 months he was elevated as a Judge of the Supreme Court on 18th December, 2003. He became the Chief Justice of India on 12th May, 2010 and demitted that office on 29th September, 2012.

He had keen interest in Economics, Public Finance, Theoretical Physics and Hindu and Buddhist Philosophies.

He had special love for taxation and accounts matters. At a function to commemorate 150 years of the Government Law College of which he was an alumni, he proudly proclaimed that the Chief Justice and other Judges called him technical member of tax Bench.

Some of his judgments which would count as landmark judgments would include :

- (i) CIT vs. Enron Oil – (2008) 15 SCC 33 where dealing with production sharing contracts he evolved the concept of Public Law Contracts.
- (ii) Vodafone International vs. UOI – (2012) 6 SCC 613 where he reiterated his philosophy to have clarity and certainty of law particularly relating to taxation to have robust economic growth and to provide independent judiciary for dispute resolutions. He said in the judgment:
 “FSI flows, towards location with a strong governance infrastructure which includes enactment of laws and how well the legal system works. Certainty is integral to Rule of Law. Certainty and stability form the basic foundation of any fiscal system. Tax policy certainty is crucial for tax payers (including foreign investors) to make rational economic choices in the most efficient manner.....”
- (iii) Nagraj vs. UOI – (2006) 8 SCC 212 in which while considering validity of 77th, 81st, 82nd and 85th Constitution Amendment Acts he elaborated on width and

amplitude of right to equal opportunity in public employment and he applied the 'width' test to judge the validity of a constitutional amendment to find out whether it damages the Basic Structure.

I have fond memories of Justice Kapadia with a personal note. On several occasions, we travelled together from platform no.1 of Churchgate Station on a train called "8.22 Andheri Local". We used to share a packet of peanuts bought from the vendors on the platform while discussing law, lawyers and judges and waiting for the train.

I had argued my first matter before a Full Bench of Chief Justice K. M. Reddy, Gadgil and Pratap, JJ. The issue involved was whether licensees of statutory tenants are entitled for protection under Section 15A of the Bombay Rent Act. I was appearing for the landlord who used to receive rent of Rs.1/- per month and could not afford any other lawyer. Mr. Kapadia, as he then was, appeared for the tenant and succeeded. He profoundly congratulated me after the decision was reversed in less than 2 months by the Supreme Court.

In this hour of grief our thoughts turn to member of Justice S. H. Kapadia's family.

On behalf of myself, Bombay Bar Association Standing Committee and all the members, I convey my heart-felt condolences and we share their sorrow.

May his soul rest in eternal peace.

**ADDRESS BY SHRI RAJIV CHAVAN,
SENIOR ADVOCATE & PRESIDENT, ADVOCATES' ASSOCIATION OF
WESTERN INIDA, AT THE FULL COURT REFERENCE
TO LATE HON'BLE JUSTICE SAROSH HOMI KAPADIA,
FORMER CHIEF JUSTICE OF INDIA,
HELD ON MONDAY 8TH FEBRUARY, 2016 AT 11.00 AM
IN THE CENTRAL COURT.**

My Ladyship the Hon'ble Acting Chief Justice Mrs. Justice Vijaya Tahilramani, other Hon'ble Judges of the High Court, learned Advocate General Mr. Shreehari Aney, learned Additional Solicitor General Mr. Anil Singh, President of Bombay Bar Association Dr. Milind Sathe, Mr. Kaiwan Kalyaniwala, President of Incorporated Law Society, Members of Justice Kapadia's family, Members of the Bar, Ladies & Gentlemen,

Mr. Justice Sarosh Homi Kapadia, the thirty-eighth Chief Justice of India, passed away on 5th January 2016 in Mumbai. This was a man who started his career as Class IV employee but rose to the highest judicial office in the country. We have gathered here today to pay tribute to this great judge.

Justice Sarosh Homi Kapadia belonged to a lower-middle class Parsi family from Khetwadi-Girgaon area of Mumbai. His father who grew up in a Surat orphanage, was an electrician in a defence establishment and mother a homemaker. They had enough to eat but higher education was a luxury for him. But that did not weaken their robust values. After completing his Bachelor of Arts and LLB, he immediately began his career as a Grade IV employee with Byramjee Jeejeebhoy where his main job was to deliver case briefs to lawyers. Byramjee Jeejeebhoy was the owner of seven villages in Bombay and

had a number of land-related disputes to settle as well. Those cases were handled by Gagrat and Company. After working with Jeejeebhoy for a while, Justice Kapadia moved on to work under the firebrand labour lawyer Mr. Feroze Damania. His family moved to Andheri. There in the neighbouring building lived a young girl, Shernaaz, whom he grew fond of and she went on to become Mrs. Kapadia. In his own words: "She agreed to marry me at a time when I had just Rs.2,000/- in my bank account."

This young lawyer possessed tremendous determination. He became a counsel for the Income-tax Department in 1974 at the age of 27 and simultaneously he also appeared for Mumbai Municipal Corporation in matters concerning rateable value and octroi. In 1982, he argued a case for people living in Ghatkopar, a suburb in Mumbai. This area had vast salt pans and was under the jurisdiction of the Salt Commissioner. The Commissioner had ordered the summary eviction of about 3,000 tenements there. He took up the cause of those evicted as their Advocate. And it resulted in a landmark judgment being delivered that Governments cannot invoke summary eviction laws to throw out people when there is a genuine dispute on the title. Among the myriad cases he took up, there were also those where he represented the Maharashtra Government and several PSUs until he was appointed as a Judge of the High Court on 8th October 1991.

I read an interesting story about Justice Kapadia in the "Business Standard" magazine issue dated 14th May 2010. It was reported that one of the interests of Justice Kapadia during his young days was going for walks. As a young man, he would drag his younger brother for walks that almost invariably ended at Narayan Dabholkar Road, the breezy avenue of Napean Sea Road where High Court Judges

have their official apartments. The two brothers would look at the buildings and the young Sarosh Kapadia would say: "one day, the name on that name plate will be mine". He entered the legal profession with only asset that he possessed was integrity.

During his tenure as a Judge of the High Court, Justice Kapadia worked on several cases related to finance and taxation. He was appointed Judge of the Special Court established to try offences relating to transactions relating to securities scam. He played an important role in the proceedings of the Joint Parliamentary Committee constituted to investigate the stock scam. On August 5, 2003, he was appointed as the Chief Justice of Uttarakhand High Court and in December 2003 he was elevated to the Supreme Court.

In the Supreme Court, Justice Kapadia delivered some landmark judgments which included a decision relating to succession of property in April 30, 2005 in which he ruled out the possibility of conducting the DNA test. Justice Kapadia was part of the three member Supreme Court Bench that decided a PIL filed seeking the cancellation of bail of RJD leader Shri Lalu Prasad and his wife & former Bihar Chief Minister Smt. Rabri Devi for their interference in the judicial process in the disproportionate assets and income tax cases against them. The verdict by majority went in favour of Shri Prasad but Justice Kapadia gave a dissenting judgment. On 21st August, 2006, Justice Kapadia, the junior-most among the three judges on the bench which heard a PIL questioning the alleged appointment of a favourable C.B.I. Judge for hearing the fodder scam case against RJD Chief Shri Lalu Prasad, read aloud his dissent while lifting his head every now then making eye contact with those present in Court No.2.

In an order dated 27th November, 2006 in the Taj Corridor case he recorded his views on importance of integrity when he scripted another order in a corruption case. He wrote: "In the matters after matters, we find that the efficacy and ethics of the governmental authorities are progressively coming under challenge before this Court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to a rope of sand."

On March 3, 2011 a three member Bench headed by Justice Kapadia, quashed the appointment of Chief Vigilance Commissioner Shri P.J. Thomas, made by the High Power Committee comprising Prime Minister, Home Minister and Leader of Opposition. By quashing the appointment of Shri P.J. Thomas as Central Vigilance Commissioner, the Supreme Court brought to a dignified end a shameful episode that highlighted Government's lack of respect for institutional integrity. The verdict was a serious indictment of the Government at the highest level. By declaring the appointment as non-est in law, the highest court served a reminder to the executive that it is not enough to have an institutional mechanism for high appointments but that it should be allowed to function in a credible manner.

The Vodafone Judgment was among the most high-profile judgments of Justice Kapadia. The three-judge Bench headed by Justice Kapadia ended a year-long legal battle over the taxation of a deal between Vodafone group and mobile operator Hutchison Essar that gave Vodafone its assets in India. The Bench ruled against India's tax authorities and said Vodafone isn't liable for taxes on the deal. Justice Kapadia's judgment in the Vodafone case might have cost the Government dear, but it did not stop him from enforcing the rights of a

foreign investor. He noted in the Vodafone judgment: “Even if the foreign investor has no fundamental right, let them know, that the rule of law prevails in this country”.

Under the leadership of Chief Justice Sarosh Homi Kapadia, the Supreme Court had shown in no uncertain terms that it means business. Justice Kapadia believed in going by the rule book. Though he was not an activist of the ilk of Justice V.R. Krishna Iyer, he never thought twice when he was called upon to intervene in matters relating to corruption, environmental degradation or non-performance of duties by a Government authority. The old school judge did not give interviews to the media and consciously avoided social interactions. He gave priority to work, set goals for himself, did not mind dismantling systems which could breed corruption, detested indiscipline and frowned upon unnecessary expenditure and corruption in any Government department. He did not take leave even for a day in his about 22-year long career as a Judge. He recalled having once suffered a fracture as a Bombay High Court Judge but he was in court next day with a plaster. “Some lawyers probably thought I was mad”, he said. Justice Kapadia in his farewell speech on 28th September, 2012 said that he could work relentlessly without fail because of support from his brother and wife. “My father is 92 and mother 88 but it is because of my brother (who takes care of their parents) that I was able to work without any leave. Many of my relatives died during the past 22 years but I worked while my wife went for funerals”, he said.

Justice Kapadia, who succeeded Justice K.G. Balakrishnan as CJI in 2010 when our judiciary was under severe attack for failing to check corruption and pendency, did commendable work on the judicial and administrative side to improve the image of the judiciary and streamline work in the Court Registry. With the issue of corruption in

the judiciary becoming the subject-matter of debates even in Parliament, CJI Kapadia, while delivering his Law Day speech in 2011, took umbrage to people painting the entire judiciary as corrupt instead of throwing light on specific cases. He said: "We do not mind a studied fair criticism. If you know a judge is corrupt, take a position and tell the CJI. Do not bring the entire judiciary into disrepute. Please don't dismantle an institution without telling how to build a better one."

Justice Kapadia did not believe in promising more than he could deliver. This may explain the many success stories that have brought the country's highest Court nearer to the people. The Supreme Court's success under Justice Kapadia is evident from the effect its decisions have had not only in the country, but also across the border. Facing resistance over its decision to monitor the Haj Scam case involving a Federal Minister, the Pakistan Supreme Court turned to its Indian counterpart for strength. Justifying its intervention, a Bench presided over by Chief Justice of Pakistan's Supreme Court Justice Iftikhar Muhammad Chaudhary in an order pointed to the proactive role of the Indian Supreme Court in a number of cases, from the sensational 2G scam case to the Radhey Shyam case, where it defined the parameters under which the State can acquire land from farmers.

He used to say how important it was for judges to understand the various concepts in different fields, including economics and accountancy. He was a qualified Accountant and had vast knowledge of economics. His proficiency in these subjects came in handy in a case where Orissa's tribals were pitted against a miner. There were no jobs, hospitals or schools in the area the company wanted to mine. He analysed the accounts of the company to find out whether it could set aside a portion of profits for tribals' welfare. He

dissected the accounts segment-wise to discover a profit of about Rs.500 crores when without the standard of accounting the profit would be only Rs 15 crores.

As the Chief Justice of India, he was vocal about ensuring that the independence of judiciary is not allowed to trample upon. When the 'Judicial Standards & Accountability Bill' was cleared by Lok Sabha and the same was pending in the Upper House, Justice Kapadia observed that judiciary was not afraid of a new legislation to make it accountable. He said: "The government may make a law for making judges accountable. We are not afraid of that. But it should not tinker with the very constitutional principle of judicial independence. Judicial accountability should be balanced with judicial independence". Justice Kapadia was of the firm opinion that opinion of eminent jurists must be taken into consideration by the Government as well as judiciary in matters relating to judiciary such as collegium system, accountability bill, or whatever law the Government wants to bring in. Justice Kapadia has said this more than once that wide-ranging studies and consultations are required before tinkering was done with the Constitution. He has observed that judiciary was the oxygen of democracy and any disturbance in the balance between legislative, executive and judiciary would damage the Constitution for all time to come.

While delivering a lecture on 'Jurisprudence of Constitutional Structure', the then Chief Justice of India had said that judges should not govern the country or evolve policies and apply the enforceability test on some verdicts like making 'right to sleep' a fundamental right. In an apparent reference to Supreme Court judgment in the Ramlila Maidan police action against Baba Ramdev's supporters in which 'Right to Sleep' was declared a fundamental right.

Justice Kapadia had observed: "Right to life, we have said, includes environmental protection, right to live with dignity. Now we included right to sleep. Where are we going? It is not a criticism. Is it capable of being enforced? When you expand the right, the Judge must explore the enforceability. Judges should not govern this country. We need to go by strict principle. Whenever you lay down a law, it should not interfere with governance. We are not accountable to people. Objectivity, certainty enshrined in the basic principle of the Constitution has to be given weightage".

While speaking at the Independence Day celebrations in the Supreme Court on 15th August 2012, he said: "I am proud to be an Indian. India is the only country where a member of the minority Parsi community with a population of 1,67,000, like myself, can aspire to attain the post of the Chief Justice of India. These things don't happen in our neighbouring countries".

Former Supreme Court Judge - Justice VR Krishna Iyer said this about Justice Sarosh Homi Kapadia: "While I have seen during the last 97 years of my life among good judges with great credentials, there was hardly anyone to compare with Kapadia the like of which no eye had seen, no heart conceived and no human tongue can adequately tell."

My Ladyship, today we condole the death of this upright, hard-working, sincere, courageous, compassionate and independent judge. My Ladyship, on behalf of the Advocates' Association of Western India, I fully associate with the sentiments that have been expressed here by Your Ladyship as well as my colleagues at the Bar and I pay my humble respects on behalf of the Association to the departed soul and offer our deepest condolences to the bereaved family.

ADDRESS BY SHRI KAIWAN KALYANIWALLA,
PRESIDENT, THE BOMBAY INCORPORATED LAW SOCIETY,
AT THE FULL COURT REFERENCE TO LATE HON'BLE SHRI JUSTICE
SAROSH HOMI KAPADIA, FORMER CHIEF JUSTICE OF INDIA,
HELD ON MONDAY, 8TH FEBRUARY, 2016 AT 11.00 AM
IN THE CENTRAL COURT.

My Ladyship the Hon'ble Acting Chief Justice, the Hon'ble Judges of the Bombay High Court, Mr. Advocate General, Mr. Additional Solicitor General, Presidents of Bombay Bar Association and the Western India Advocates Association.

I have the honour, albeit sadly, to address this Reference as President of the Bombay Incorporated Law Society on whose behalf, I express condolences on the sad demise of Chief Justice Kapadia.

Much has already been spoken in praise of the man Chief Justice Kapadia was. Even so, that would not be enough. For the Solicitors' fraternity, Sarosh Kapadia was a much-loved and respected Counsel. As a Judge of this High Court and of the Supreme Court, our members revered him.

On a personal note, Justice Kapadia was one of the first Counsel I had the pleasure of briefing. Even after his retirement, Chief Justice Kapadia was much sought after for his chamber practice.

In the passing away of Chief Justice Kapadia, we have lost not only a good Counsel and Judge, but also an honest and distinguished gentleman.

Our heartfelt condolences to Mrs.Kapadia and the members of his family.

May his soul rest in peace.