



6th January, 1943 – 10th February, 2020

Full Court Reference in the memory of

Late Shri Prabhat Chandra Agarwal

Senior Advocate

held on Friday, the 17th December 2021

*at 9.45 a.m. in the Auditorium at 3rd Floor, 'C' Block,
Additional Building Complex, Supreme Court of India*

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Letter from the Registrar, Supreme Court of India

Avani Pal Singh
Registrar
Supreme Court of India



F.No.99/Ref/2021/SCA(Genl)
Dated the 21st December, 2021

Smt. Raj Agarwal,
"Parijaat", Ankur Colony,
Near Jain Temple,
Makronia, Sagar,
Madhya Pradesh-470004.

Madam,

There was a Full Court Reference in the Auditorium of the Additional Building Complex, Supreme Court of India on 17th December, 2021 in the memory of late Shri Prabhat Chandra Agarwal, Senior Advocate. Rich tributes were paid to Shri Agarwal by Shri K.K. Venugopal, Learned Attorney General for India, Shri Vikas Singh, President, Supreme Court Bar Association and Hon'ble Shri N.V. Ramana, Chief Justice of India. After the references were read, two minutes' silence was observed. I have the honour of forwarding a booklet containing memorial speeches delivered at the Full Court Reference, as aforesaid.

Kindly permit me to convey the heart-felt condolences of the Officers and members of the staff of the Supreme Court Registry to you and other members of the family.

Yours sincerely,

Registrar (AG)

Encls: As above

**FULL COURT REFERENCE IN THE MEMORY OF LATE
SHRI BHIMRAO N. NAIK, LATE SHRI NAGENDRA RAI AND
LATE SHRI PRABHAT CHANDRA AGARWAL, SENIOR
ADVOCATES.**

Coram of Hon'ble Judges at the Full Court Reference

❖ *Hon'ble Shri N.V. Ramana, Chief Justice of India*

❖ *Hon'ble Mr. Justice Uday Umesh Lalit*

❖ *Hon'ble Mr. Justice A.M. Khanwilkar*

❖ *Hon'ble Dr. Justice D.Y. Chandrachud*

❖ *Hon'ble Mr. Justice L. Nageswara Rao*

❖ *Hon'ble Mr. Justice Sanjay Kishan Kaul*

❖ *Hon'ble Mr. Justice S.Abdul Nazeer*

❖ *Hon'ble Ms. Justice Indira Banerjee*

❖ *Hon'ble Mr. Justice Vineet Saran*

❖ *Hon'ble Mr. Justice K.M. Joseph*

❖ *Hon'ble Mr. Justice Hemant Gupta*

❖ *Hon'ble Mr. Justice R. Subhash Reddy*

❖ *Hon'ble Mr. Justice M.R. Shah*

❖ *Hon'ble Mr. Justice Ajay Rastogi*

❖ *Hon'ble Mr. Justice Dinesh Maheshwari*

❖ *Hon'ble Mr. Justice Sanjiv Khanna*

❖ *Hon'ble Mr. Justice B.R. Gavai*

❖ *Hon'ble Mr. Justice Surya Kant*

❖ *Hon'ble Mr. Justice Aniruddha Bose*

- ❖ *Hon'ble Mr. Justice A.S. Bopanna*
- ❖ *Hon'ble Mr. Justice Krishna Murari*
- ❖ *Hon'ble Mr. Justice S. Ravindra Bhat*
- ❖ *Hon'ble Mr. Justice V. Ramasubramanian*
- ❖ *Hon'ble Mr. Justice Abhay S. Oka*
- ❖ *Hon'ble Mr. Justice Vikram Nath*
- ❖ *Hon'ble Mr. Justice J.K. Maheshwari*
- ❖ *Hon'ble Mrs. Justice B.V. Nagarathna*
- ❖ *Hon'ble Mr. Justice C.T. Ravikumar*
- ❖ *Hon'ble Mr. Justice M.M. Sundresh*
- ❖ *Hon'ble Ms. Justice Bela M. Trivedi*
- ❖ *Hon'ble Mr. Justice Pamidighantam Sri Narasimha*

xxxxx

Reference made on 17th December, 2021

by

Attorney General For India

Shri K. K. Venugopal

in the memory of

Late Shri Bhimrao N. Naik,

Late Shri Nagendra Rai and

Late Shri Prabhat Chandra Agarwal,

Senior Advocates

Hon'ble Chief Justice of India N. V. Ramana, Hon'ble Judges of the Supreme Court of India, the Solicitor General of India, the Additional Solicitors General, Shri Vikas Singh, President, and other Office Bearers of the Supreme Court Bar Association, Shri Shivaji Jadhav, President, and other Office Bearers of the Supreme Court Advocates on Record Bar Association, friends at the Bar, family members of Late Shri Bhimrao N. Naik, Shri Nagendra Rai and Shri Prabhat Chandra Agarwal, ladies and gentlemen:

Shri Bhimrao N. Naik

Shri Bhimrao N. Naik was born on 23rd January, 1940 in Karnataka. He graduated in law from Pune University in April 1964. His time at University portended a great future for him, as, even in those early years, he excelled, and received various awards including the Vithalpant Tulpule Gold Medal for Proficiency in Law, the Shri. L. B. Bhopatkar Award, the Vishwanath Parvati Law Prize, among others. He enrolled with the Bar Council of Maharashtra and Goa in October, 1964, and started his practice from the District and Sessions Court, Solapur in Maharashtra and practiced in the District Court for five years. Shri Naik then shifted his practice to the Bombay High Court in November, 1969, where he practiced on the appellate side in both criminal and civil matters for about 28 years. Shri Naik made a name for himself at the Bombay Bar, and his popularity at the Bar saw him being elected as a Member of the Bar Council of Maharashtra and Goa, and then being unanimously elected as its Chairman in 1986. He also served as a Special Counsel in the Bombay High Court for the Government of Maharashtra and as a

Standing Counsel for Municipal Corporation of Solapur, Barshi and Miraj. Due to his knowledge and deep learning, in 1989, Shri Naik was designated as a Senior Advocate by the Bombay High Court. He was soon thereafter elevated as an Additional Judge of the Bombay High Court on November 9, 1992 and became a permanent judge in 1994. It is rarely that you find a judge of the High Court who has practiced at the trial court, and also in both criminal law and civil law, all qualities which I am sure Shri Naik would have brought with him as a great asset on the bench.

Shri Naik was kind and magnanimous even on the bench and never lost his human touch. In Laxmi v. Kamalesh Chandrasenrao Pansare and Ors. (1993 (95) BomLR 783), Justice Naik, exercised powers under Article 227, to ensure the cause of justice was advanced in favour of a widowed vegetable vendor. He overturned the judgments of the trial court and the appellate court which had upheld the eviction of the widowed vendor. He was clearly moved by the plight of poor woman who, after the death of her husband, had no other stall or source of livelihood.

His tenure on the bench was rather short, however, as he resigned on June 7, 1994, for personal reasons. This by no means meant that his professional life was slowing down. After resigning, Shri Naik started practicing in the Supreme Court of India, and, practiced here regularly for almost 16 years. Shri Naik built a roaring practice, and was a highly sought-after counsel especially for constitutional cases, rent cases, and cases involving co-operative societies. In the year 2010, Shri Naik shifted back to Bombay, and was very much in demand as an arbitrator.

What is noteworthy is that Shri Naik was a person who had expertise in the different branches of law, being a counsel at the District Court and the High Court, a senior counsel at the High Court and the Supreme Court, and as a Judge. What is more, in the initial years of his practice, in Solapur, he was also a Professor at the Dayanand Law College, Solapur between 1964 and 1969. It is to his credit that even when he shifted his practice to the High Court, he continued teaching as a part-time professor in K. C. Law College, Mumbai for seven years from 1969 to 1976.

Shri Naik's tenure as a judge of the Bombay High Court saw him sit on the civil side dealing primarily with rent control and tenancy cases. Despite his short tenure of only about two years, the law reports record a number of judgments passed by him in that time. During his years of practice in the Supreme Court, I find that he appeared for a number of

state governments and local bodies. Notably, in *Maharashtra State Judicial Service Assn. v. High Court of Judicature at Bombay*, (2002) 3 SCC 244, Shri Naik appeared for the senior most District Judge in the State in a question involving the inter se seniority of direct recruit and promotee District Judges. The dispute regarding the inter se seniority of district judges was a traditional battle, and as a result of that landmark judgment, the High Court amended the State Service Rules governing seniority of district judges in Maharashtra.

Shri Naik was also a family man, and in the words of his son, Ameet, his father was his inspiration to pursue law and was also his unwavering mentor. Ameet mentions that he would see his father constantly go out of his way to resolve disputes. This, perhaps, is then his strongest legacy – a family that continues to love and miss him and who would carry forward his ideas and principles into the future.

Shri Bhimrao N. Naik passed away at the age of 79, on 16th September, 2019. He is survived by his wife, Smt. Uma Naik, and his two sons and their families. His elder son, Vineet Naik, is a Senior Advocate at the Bombay High Court and his younger son, Ameet Naik, is the Founder and Managing Partner of a leading Law Firm Naik Naik & Co., Mumbai. We mourn the death of Shri Naik, and express our deepest condolences to his family.

Shri Nagendra Rai

1. Late Shri Nagendra Rai, was born on 31.01.1944, in a village called Pai in Chandauli District, adjoining Varanasi in Uttar Pradesh. He was born into an agricultural family, and did his initial schooling at the village school, after which he completed his Bachelor's and Master's degrees in Geography from Banaras Hindu University. Not many would know that it was his marriage, at a young age, to Mrs. Usha Rai, that brought him to law. His father-in-law, who was in the judicial services in the State of Bihar and eventually superannuated as a District Judge, became Shri Rai's inspiration behind choosing the legal profession. Shri Rai pursued his LL.B. degree from Patna Law College and thereafter enrolled as an advocate on 18.01.1966 with the Bihar State Bar Council, becoming the first lawyer in his family.

2. As a young advocate and hailing from a rural family background, Shri Rai initially found it difficult to establish himself in the High Court. He therefore decided to commence his career at the lower courts, and practiced for about 6 months at the

Chhapra Civil Court under the Late Shri Sadhu Sharan Pandey, an eminent lawyer on the civil side. In July 1966, he returned to the Patna High Court and began his independent practice on the civil and criminal side. He had a roaring practice before the High Court and the Board of Revenue, Bihar and within a short time, became a leading advocate in Patna and earned his designation as a Senior Advocate in 1984. Despite an extremely busy private practice, Shri Rai played an active role in the legal services authority and appeared in a number of legal aid cases. He was known to be an ardent supporter of women's causes and was well known for his strict attitude to cases of dowry.

3. In 1990, he was appointed a permanent Judge of the Patna High Court and continued as such till his retirement on 31.01.2006. In 2004, as the senior most Judge of the High Court, he had administered the oath of office to Shri Rama Jois when he was appointed as Governor of Jharkhand. He had the distinction of functioning as the Acting Chief Justice of the Patna High Court from 24.07.2004 till 17.07.2005. During his term as the Acting Chief Justice, Justice Nagendra Rai, had inaugurated the District Court of Jamui in Bihar.

4. After his retirement in 2006, Shri Nagendra Rai was designated as Senior Advocate of the Supreme Court of India and built up a lucrative practice in all areas of law. He was also often seen appearing in various other High Courts in the country. He had appeared in matters with high stakes for well-known personalities such as the former President of BCCI in regard to the IPL match fixing scandal.

5. In 2016, Shri Rai had appeared in the Bombay High Court, before a Bench consisting of Justice Oka, who is now in the Supreme Court, in a writ petition seeking a direction to the State Government to appoint a permanent Advocate General. It appears that the State had an acting Advocate General who had been in that position for almost eight months, and Shri Rai's submission was to the effect that the inaction by government to appoint an Advocate General affects the cause of justice as well as members of the public. Thanks to his persuasive submissions, a permanent Advocate General was appointed by the State.

6. Shri Rai was also a member of the India-Pakistan Joint Judicial Committee on Prisoners, which was formed in January 2007 by the External Affairs Minister of India and the Foreign Minister of Pakistan to recommend steps for humane treatment and expeditious release of prisoners of the respective countries in each other's jails. The

Committee consisted of four retired judges from India and four retired judges from Pakistan. As the leader of the Indian delegation, Shri Rai along with the other Indian members had visited jails in Karachi, Lahore and Rawalpindi to meet the Indian prisoners and discussed the modalities for their early release. The Committee had also recommended a mechanism for the release of fishermen who inadvertently cross the maritime boundary between India and Pakistan, whereby first time offenders would be freed at sea without any lengthy legal procedures.

7. As a member of the bar, Shri Nagendra Rai was very popular. He was often found in the corridors of the court regaling his peers and his juniors with anecdotes. He had a terrific sense of humour, and could engage with friends and colleagues from all age groups on equal terms. Inside the courtroom, his quick wit, gentle humour and court craft, backed of course by meticulous hard work, mostly ensured relief in his favour. He strongly advocated the importance of brevity in one's arguments so as to not lose the interest of the Court.

8. Shri Nagendra Rai practiced in the Supreme Court for nearly 13 years and last attended the Court on the closing day before the winter vacations in 2019. It is deeply saddening that shortly thereafter, due to his health problems and after a month of hospitalization, Shri Rai passed away on 25.01.2020. His wife, Mrs. Usha Rai, also passed away later on 24.04.2021 leaving behind their daughter –Alka Ranjan, son-in-law – Rajiv Ranjan, who is an IAS officer, and their daughter-in-law – Shefali Rai. I offer my deepest condolences to his family.

Shri P. C. Agarwal

1. Sh. P.C. Agarwal, former judge of the Madhya Pradesh High Court and Senior Advocate of the Supreme Court of India passed away on 10th February 2020 at the age of 77.

2. Sh. Agarwal began his career in the lower judicial service and rose to become a Judge of the Madhya Pradesh High Court, and thereafter a Senior Advocate designated by the Supreme Court of India. His life is a wonderful example of how hard work and dedication can take one to the great professional heights. He was known to be a humble person despite his success, and an assiduous worker, with his favourite quote being “work is worship.”

3. *Sh. Agarwal was born on 6th January 1943. He was a brilliant student and graduated from Agra University in 1963, where he stood second in the University. He enrolled with the Bar Council of Madhya Pradesh in 1963, and in 1975 obtained an LL.M. degree from Gwalior where he stood first. Sh. Agarwal qualified for the Madhya Pradesh Judicial Service in the year 1964 and was promoted to District & Sessions Judge in February 1982. During his tenure he served as District Judge at Raigarh, Morena, Bhind, Raipur, Jabalpur and Sagar. He also presided over several Lok Adalats and served as Special Judge, CBI. He was also President of the District Consumer Fora at Raigarh, Morena and Bhind.*

4. *Sh. Agarwal's competence at handling extremely complicated matters led to his being appointed to head two One-Man Judicial Enquiry Commissions. The first was to inquire into the Bhilai Railroad Firing Incident of 1992 where an agitation by protesting workers led to intervention by law enforcement agencies. The second was to inquire into the Multai Betul firing incident, which involved a clash between farmers and police resulting in the deaths of 19 farmers, who had been agitating for compensation in view of the crop failure in Multai in 1998.*

5. *Owing to his legal acumen, Justice Agarwal was elevated on 22nd October, 2001 as Judge of the High Court of Madhya Pradesh. The judgments that he delivered while on the Bench of the Madhya Pradesh High Court display not only a sound knowledge of the law, but also an academic bent of mind and analytical ability.*

6. *He took a progressive stand in several matters. He was once called upon to decide a case involving a dispute between the partners of a firm and the widow of another partner, who had died recently. He repelled the contention of the male partners of the firm and held that a woman could not be excluded from the partnership merely because she was a female and hence could not be the Karta of a Hindu family. The case is titled as Chandra Bai v. Babulal and is well worth reading.*

7. *His decision in Purshottam Tamrakar v. Shankar Lal highlighted his sensitivity to the plight of labour. He upheld the award of monetary compensation to the family of an industrial worker who had died in a horrific accident at his place of work. In doing so he held that the judgment of the House of Lords in Rylands v. Fletcher would squarely apply and that an employer who undertakes a hazardous activity involving a risk to human life is liable in tort to compensate for an injury suffered. He also brushed aside technical*

objections in regard to the jurisdiction of the civil court to award compensation and held that the provisions of the Workmen's Compensation Act, 1923 would not bar a civil court from awarding compensation under the law of Tort.

8. *His humane and justice oriented approach to the law is again evident in his ruling in the case of Satish Kumar v. Jagdamba Prasad where he observed that it would be unfair to permit a litigant to suffer on account of a mistake by his advocate. On this basis, even though a specific prayer for declaration of title had not been made by the advocate in the plaint, Justice Agarwal took the view that on a holistic reading of the plaint, a declaration of title was in fact what was being sought. He said:*

“Ordinarily cases are decided on pleadings of the parties and only reliefs can be granted as are claimed by the Plaintiff. However, in cases where the real relief is camouflaged in verbiage, the Court can look to the real intention of the parties lifting the veil of jargon.”

9. *He retired at the end of a distinguished tenure on the Bench on 6th January 2005 after which he commenced practice in the Supreme Court of India. Shortly thereafter, on 27th June 2005, he was designated Senior Advocate by the Supreme Court of India. He appeared regularly in the Supreme Court and his grasp of a multitude of legal subjects, no doubt acquired on account of his long service in the judiciary, enabled him to develop a diverse practice. He had appeared in a number of death sentence cases, where he was able to secure commutations of sentence for some of the convicts.*

10. *Sh. Agarwal became a life member of the Indian Council of Arbitration and served as arbitrator in several cases. He was also appointed as mediator by the Supreme Court of India where he used his skills as a judge to bring swift and fair resolutions to disputes.*

11. *I offer my deepest condolences to his wife, Smt. Raj Agarwal, Son Sh. Amitabh Agarwal and daughter Smt. Anuranjita Gupta. May God give them strength to tide over this difficult time.*

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Reference made on 17th December, 2021

by

Shri Vikas Singh (Sr.)

President, SCBA

in the memory of

Late Shri Bhimrao N. Naik,

Late Shri Nagendra Rai and

Late Shri Prabhat Chandra Agarwal,

Senior Advocates

Hon'ble the Chief Justice of India, Hon'ble Judges of this Court, Ld. Attorney General of India, Law Officers, Members of the family of Late Mr. Bhimrao N. Naik, Members of the family of Late Mr. Nagendra Rai, Members of the family of Late Mr. Prabhat Chandra Agarwal, Members of Executive Committee of SCBA, Mr. Shivaji Jadhav, President SCAORA, Members of Executive Committee of SCAORA and Members of the Bar.

Mr. Bhimrao N. Naik

(23.01.1940 - 16.09.2019)

(Judge, Bombay High Court :- 09.11.1992 - 07.06.1994)

Mr. Bhimrao N. Naik was born on the 23rd January, 1940 in Karnataka. He was the eldest brother to six siblings. He hailed from a family whose history was replete with great achievements. His father Late Justice N. B. Naik was in the judicial services starting as a Civil Judge and eventually elevated to the bench of Bombay High Court.

Mr. Naik completed his Masters from the University of Pune and did law from ILS Law College, Pune in 1964 where he won multitude of awards and medals for proficiency in Law including Gold Medal which he received from Smt. Vijaylakshmi Pandit, the then Chancellor of Pune University and the Governor of Maharashtra.

Mr. Naik had a great desire to join the Army and with that intent in mind had

participated in the Republic Day parade in the late 1950s. However, fate had it otherwise and he was destined to do much more in life by joining the legal profession. In 1964 he began his practice in Solapur under Mr. Prakash Shah, who later became Judge of the Bombay High Court.

Mr. Naik shifted his practice to Mumbai and soon acquired a position amongst the most illustrious advocates. He had a strong command over the Appellate side of the High Court. It is said that his photographic memory of matters and his persuasive and forceful style of arguing was legendary. He had a large chamber and had as many as 20 juniors at any given point of time some of whom would come to occupy the highest positions in the judiciary viz. Justice Nitin Jamdar, Justice Atul Chandurkar and Justice Vibha Kankanwadi. His another favourite junior Mr. ANS Nadkarni, Senior Advocate, became the Advocate General of Goa and then Additional Solicitor General of India in this Court.

Mr. Naik also chose to teach law part-time at the Dayanand Law College in Solapur and later at the KC Law College Mumbai from 1969 – 1976 where he mentored a generation of legal professionals who are still making waves both on the Bench as well as at the Bar.

Mr. Naik practiced across all disciplines, but it was his command over Co-operative law that saw him declared within legal circles as the 'King of Co-operative Law'. He was elected as a Member of the Bar Council of Maharashtra and Goa from 1986-1991 and was also unanimously elected as Chairman of the Bar Council of Maharashtra and Goa in 1986.

Mr. Naik was designated as a Senior Advocate in 1989 and was elevated as Judge of the High Court of Bombay in 1992. His innings on the Bench was cut short however, when he resigned from the High Court in 1994. He had the choice of resigning prior to confirmation so as to remain eligible to practice in Mumbai, but in maintaining high traditions of the bar, he felt that he should not practice in the Court where he has served as a Judge and accordingly waited for the confirmation and then resigned. Although his time as a judge was short he quickly developed a reputation as an efficient judge who always lent a patient ear to junior members of the bar.

It was the profession's great fortune that despite resigning from the Bench, Mr. Naik chose not to hang up his spurs and began a practice at the Supreme Court of India. He

may have been new to the city and the highest court of the land but it didn't take him too much time to carve a niche for himself here. His sociable and gregarious nature also meant that he had a wide circle of friends in the legal fraternity. Many sitting judges of this Hon'ble Court have also worked with him extensively such as Justice Dr. D.Y. Chandrachud, Justice B. R. Gavai and Justice Abhay Oka in the Bombay High Court and Justice A. M. Khanwilkar and Justice Uday Lalit in the Supreme Court.

At the Supreme Court Mr. Naik contributed tremendously to the development of our jurisprudence and had to his credit a series of landmark judgments.

In 2011, Mr. Naik shifted his base back to Mumbai and began a flourishing career in the field of Arbitration. He was flooded with Arbitrations and was a sought-after Arbitrator. He often was heard saying that he is thoroughly enjoying his stint as an Arbitrator as he feels reconnected with all his friends and colleagues and the new faces of the Bombay Bar.

Mr. Naik was known for his green thumb and took an active interest in agriculture tending to his farms at Solapur. In spite of his busy schedule in Bombay, he would travel every weekend to look after the farms. Mr. Naik was an excellent cook and he thoroughly enjoyed preparing delicacies and serving his close friends his wonderful recipes.

Mr. Naik from college days had a keen interest in Theatre and scripted many dramas. He also had a passion for Hindi films. Mr. Naik had great love for the game of cricket. In fact, he would take his entire chambers to watch a game at the Brabourne and Wankhede Stadium in Bombay at every opportunity. His command over cricket statistics, could rival that of any professional commentator or analyst.

Mr. Naik had a pleasant personality, an epitome of learning, integrity and firmness with decency. I had also developed a very intimate rapport with him and we used to always exchange pleasantries in the Court Corridor.

Mr. Naik left for his heavenly abode on 16th September, 2019 and is survived by his wife Smt. Uma Naik, sons Vineet Naik, Senior Advocate, Bombay High Court and Ameet Naik, founding partner of a leading media and entertainment law firm in Mumbai, daughters in law – Rajul Naik and Mamata Naik and grandchildren – Vishwa, Vidisha, Agastya and Amartya.

Mr. Nagendra Rai

(31st January 1944 – 25th January 2020)

(Judge, Patna High Court :- 10.07.1990 - 30.01.2006)

To pay my homage to Mr. Nagendra Rai is an emotional moment for me as it is also a great personal loss to me.

Mr. Rai was born in an agriculturist family in Village Pai, situated in Varanasi district on the 31st January 1944. His father, Late Mr. Ramagya Rai was a very well respected personality in the region. After his schooling from the Jamania College, he completed his Bachelors and Masters in Geography (honours) from the prestigious Banaras Hindu University. He did his Law from Patna Law College and joined the Bihar State Bar Council on 18th January 1966 and thereafter began a journey in law that would last for almost half a century and include contributions to virtually every avenue of the profession in multifarious capacities. As a young lawyer he chose not to limit himself to a single area of the law and excelled in the criminal as also the civil side with a generous dash of constitutional law thrown into the mix. He quickly rose to become one of the most sought after lawyers at the Patna High Court.

On 10.07.1990 he was appointed as a Permanent Judge of the Patna High Court and also served as the acting Chief Justice of the Patna High Court from 24.07.2004 to 17.07.2005. He retired on 30th January 2006. Around 2001-2002, Mr. Rai was offered to be Chief Justice of J&K High Court, however, he declined the same due to illness of his only son, Ashutosh, who was battling cancer and later passed away in 2002.

I have known Mr. Rai since I was working as Senior Executive (Marketing) in the Steel Authority of India and it was Mr. Rai who encouraged me to resign and join the legal profession which was my childhood dream. However, our association could not continue for long as lawyers as immediately upon my enrolment, he adorned the Bench of the Patna High Court.

While on the Bench he quickly gained a reputation as a brilliant jurist amongst the members of the Bar who were awed by the speed with which he would grasp complex legal propositions. While lawyers are used to being on their feet in court Mr. Rai also kept them on their toes with his perceptive queries and demanding standards. He always used to handle the members of Bar with great comfort and keep the mood of the court

jovial by cracking jokes with lawyers because of which the lawyers left his courtroom with a smile even in case the order was against them. He is said to have become the go-to judge for taxation matters despite the fact that in his previous avatar as a lawyer he hardly dabbled in that side of the law. As the Acting Chief Justice of Patna High Court, on Administrative side as well, he could keep the judiciary completely in check by ensuring that the lower judiciary also performs well.

It was perhaps this uncommon versatility that led the government of the day to ask him to lend his considerable jurisprudential wisdom for an India - Pakistan Joint Judicial Committee on Prisoners. The issue of prisoners held by both countries who were nationals of the other, many of them destitute and hapless was one which was at once pressing and intractable. His work on the Committee led to a number of steps being taken to release prisoners.

In the aftermath of his retirement from the Bench he was in two minds about whether he should develop a practice at the Supreme Court. Mr. Rai felt that he was perhaps not well versant with spoken English and he had an apprehension that he will not be able to compete with the Senior Advocates practicing in the Supreme Court because of not having flair in spoken English. I persuaded him that while practicing in Supreme Court, spoken English does not matter because the Judges come from different backgrounds from different States and they are only interested in the substance of what a person argues and not the form. Due to my continuous persuasion he decided to come to Delhi and started practicing in the Supreme Court. When he joined the Bar at the Supreme Court, I was an Additional Solicitor General and accordingly I did not require my chamber regularly and I therefore gave my Chamber to him alongwith the services of my Clerk who was with me for almost 13 years then to help him understand the working of Supreme Court. And the rest as they say, is history. It took him no longer than a couple of months to firmly establish himself and soon he became the most briefed Senior Advocate in the Supreme Court from the State of Bihar. His practice grew to become one of the most prolific by any standard. In fact, by the end it extended beyond litigation and included the nascent and challenging field of arbitration and he also came on the Panel of Arbitrators on the prestigious India Council of Arbitration.

Mr. Rai always supported and encouraged the young members of the Bar. To give an example, I am reminded of one instance that took place before the Bench of Justice

Kurian Joseph where a criminal appeal was listed for final hearing. The matter was called and the briefing AoR stood with the file and looked at Mr. Rai sitting in the second row to get up. He just nodded and told him to continue. The nervous and young AoR was probably arguing a technical criminal appeal for the first time. The Bench not only appreciated that seniors like Mr. Rai actively looked for opportunities to encourage the junior members of the bar but also saw the merit of the case and gave relief which became a cause for much jubilation later in the corridors outside.

Mr. Rai's health started deteriorating much before his death, but his passion and commitment towards the profession made him continue to work inspite of his ill-health. Mr. Rai did not disclose about his deteriorating health even to his close friends. I happened to know this fact because his treating doctor was a dear friend of mine and he had confided to me that his condition was not good. I also tried to reason with him to go slow and take more rest, but Mr. Rai used to just laugh it away and say “no no there is nothing wrong with my health and I am perfectly alright”, and he kept on working.

Mr. Rai passed away on 25th January 2020 after a long ailment. Mr. Rai's wife died of Covid in April 2021. He is survived by his daughter Alka, Son-in-law Rajeev Ranjan (IAS - 1989), Daughter-in-law Shefali and four grandchildren and two great grandchildren.

Mr. Prabhat Chandra Agarwal

(6th January 1943 – 10th February 2020)

(Judge, Madhya Pradesh High Court :- 22.10.2001- 06.01.2005)

Mr. Prabhat Chandra Agarwal was born on the 6th of January 1943 in Agra. He was a meritorious student all throughout. His early education was in the field of geography, a subject in which he did his post-graduation from the St. John's College, Agra. He did LLB in 1963 from Agra College and obtained second position in the University. He did LLM in 1975 from Gwalior and obtained first position. No sooner had he joined the bar that he left it in order to join the MP Judicial Service (1964) and thus, began a career suffused with the spirit of public service to a point of selflessness.

Mr. Agarwal's tenure in the courts of MP saw him serve as Additional District Judge at Chhatarpur and Jabalpur and also as a Special Judge for CBI cases. He was promoted as District & Sessions Judge in 1982 after which he served as the District

Judge in Rajgarh, Morena, Bhind, Raipur, Jabalpur, and Sagar. It's a testament to his commitment to the well being of the general public that despite his packed roster he found the time to remain actively involved in providing legal aid, preside over Lok Adalats in each of the many districts where he was posted.

When he was elevated as a Judge of the High Court of Madhya Pradesh on 22.10.2001, he brought along with him the wealth of knowledge and understanding that he had accumulated over his many years of service in the judiciary. His judgements reflected a keen sense of empathy for the common man and a profound understanding of the circumstances that they were subject to. His tenure at the MP High Court was replete with judgements that contributed immensely to the development of jurisprudence in India. This was especially true of the criminal matters that came up for hearing before his court. Some of the cases he decided especially in criminal law exhibited the grasp he had over criminal jurisprudence.

While serving as a Judge, Mr. Agarwal used to spend the majority of his summer holidays every year in Sagar, Madhya Pradesh. Once asked by a journalist, "So how and where does the legal fraternity in India spend its holidays?" Justifying the annual break of the Court, he said: "A judge in a high court works from 10:30 am to 4 pm every day and it is necessary to take a break from this tiresome schedule. He not only sits in court all day, he even takes home a lot of homework. These long hours may hamper efficiency and a respite from work is needed."

It was only after his retirement from the MP High Court on 06.01.2005 that he finally donned the robes of a lawyer, 41 years after his foray into the legal profession. But unlike many, he embraced his new role with great ease. He began his practice before the Supreme Court and in due course was a much sought after lawyer and an Arbitrator. He became a Life Member and Fellow of the Indian Council of Arbitration, was on the panel of Arbitrators of the National Stock Exchange and the NSDL.

A devout Hindu, he lived his life in accordance to the highest traditions of the religion. He excelled in both his Karma and his Dharma. His tolerance, empathy, sagacity, and commitment to his work were all perhaps informed by the faith he held so dear to himself. His legacy and example are both etched in our collective memory and will certainly inspire us going forward.

He breathed his last on 10th February 2020 leaving behind his wife Mrs. Raj Agarwal, Son Mr. Amitabh Agarwal, Daughter-in-law Mrs. Akanksha Agarwal, two Granddaughters Shaifali and Samriddhi, Daughter Mrs. Anuranjita Gupta, Son-in-law Mr. Rajesh Kumar Gupta and Grandson Divij.

“The life of the dead is etched in the memory of the living.” The demise of Mr. Naik, Mr. Rai and Mr. Agarwal has created a void in the legal fraternity. I, on behalf of the Supreme Court Bar Association offer my heartfelt condolences to the members of the family of Late Mr. Bhimrao N. Naik, Late Mr. Nagendra Rai and Late Mr. Prabhat Chandra Agarwal. May their souls rest in divine peace.

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Reference made on 17th December, 2021

by

Hon'ble The Chief Justice of India

Shri N. V. Ramana

in the memory of

Late Shri Bhimrao N. Naik,

Late Shri Nagendra Rai and

Late Shri Prabhat Chandra Agarwal,

Senior Advocates

My Brother and Sister Judges, learned Attorney General Shri K.K. Venugopal, learned Solicitor General Shri Tushar Mehta, learned law officers, Shri Vikas Singh, President, Supreme Court Bar Association, Shri Shivaji M. Jadhav, President, Supreme Court Advocates-on-Record Association, Members of Bar, Family members of late Shri Bhimrao N. Naik, late Shri Nagendra Rai and late Shri Prabhat Chandra Agarwal who are present here and who have joined online, ladies and gentlemen.

We have gathered here this morning to remember and pay homage to Shri Bhimrao N. Naik, Shri Nagendra Rai and Shri Prabhat Chandra Agarwal, all three, who were Senior Advocates of this Court and have made rich contribution to the legal profession. Their demise has caused a great loss for the entire legal community, the junior advocates and this Court.

Shri Bhimrao N. Naik

Shri Bhimrao N. Naik was born on 23rd January 1940. He graduated in Law from Pune University in April 1964 and enrolled with the Bar Council of Maharashtra and Goa on 16th October 1964.

He started his practice at Solapur before the District and Sessions Court, before shifting to Bombay in the year 1969. He was a junior to Shri Prakash Shah, who went on to become a Judge of the High Court of Bombay.

Shri Naik was known for his intellectual arguments and his calm demeanor. Shri Naik was also someone with an academic bent of mind. He was a Professor of Law at the Dayanand Law College, Solapur from 1964 and at K.C. Law College, Mumbai from 1969.

He was the Chairman of the Bar Council of Maharashtra and Goa in 1986. He was appointed as the Special Counsel for Government of Maharashtra and was also the Standing Counsel for Municipal Corporation of Solapur, Barshi and Miraj.

He was designated as a Senior Advocate by the High Court of Bombay in January 1989. As a lawyer, Shri Naik was involved in multiple landmark cases. He held up the standards of the legal profession, and always tried to work for the common people. His knowledge and passion for the law were well known and he was respected by Bar and Bench alike.

Shri Naik was elevated to the High Court of Bombay on 9th November 1992. Unfortunately, due to certain personal reasons, he chose to resign from the Bench on 7th June 1994. This was a great loss to the judicial fraternity.

After resigning, Shri Naik practiced as an Advocate in the Supreme Court of India for 16 years. He appeared in some important cases such as Gupta Steel Industries v. Jolly Steel Industries, Abdul Razzak v. State of Maharashtra and Girnar Traders case. He also appeared in the famous Property Owners' Association case, a Constitution Bench of the Supreme Court of India which dealt with the interpretation of the Articles 31C and 39 of the Constitution.

For his contributions to the law, he was awarded various notable honors such as the 'Vithalpant Tulpule Gold Medal for Proficiency in Law', 'Shri L.B. Bhopatkar Prize', 'Vishwanath Parvati Gokhale Law Prize' to name a few.

He left for his heavenly abode on 16th September 2019 and is survived by his wife, Smt. Uma Naik, two sons and their families, Shri Vineet Naik is a Senior Advocate of the High Court of Bombay and Shri Ameet Naik is the founding partner of one of the leading media and entertainment law firms in Mumbai.

Shri Nagendra Rai

Shri Nagendra Rai was born on 31st January 1944. He graduated from Banaras Hindu University and did his LL.B. from Patna Law College. He enrolled as an Advocate with the Bihar State Bar Council, Patna on 18th January 1966.

He was elevated as a permanent Judge of the High Court of Patna on 10th July 1990. He was the first Chairman of the Bihar Judicial Academy in the year 2002. He was the Acting Chief Justice of the High Court of Patna from July 2004 to July, 2005.

He retired as a Judge on 30th January 2006 and started practicing as an Advocate in the Supreme Court of India.

Shri Nagendra Rai had expertise in diverse areas of law and his practice was extremely varied. He appeared before the Court in several landmark cases relating to different subjects. For instance, he appeared before the five Judge Bench in Jindal Stainless Limited v. State of Haryana, which related to the constitutionality of entry tax and was referred ultimately to a nine Judge Bench in which I was a part.

He was very well known for his expertise in criminal law. He had a great concern for the criminal justice system in the country and the plight of accused. He appeared for the accused in the often-cited Abuzar Hossain judgment relating to when the claim of juvenility can be raised in criminal proceedings.

It was for these reasons that he was selected to be one of the members of the eight-member India-Pakistan Joint Judicial Committee (JJC) constituted in January 2007. Among other things, one of the Committee's main objects was to recommend steps for the humane treatment and expeditious release of prisoners languishing in the jails of the two countries.

He worked hard to reform the criminal justice system of the country. He used to appear on behalf of many juniors to encourage them.

He left for his heavenly abode on 25th January 2020. He is survived by his daughter, Smt. Alka Ranjan, son-in-law Shri Rajiv Ranjan and daughter-in-law Smt. Shefali Kumari and their families.

Shri Prabhat Chandra Agarwal

Shri Prabhat Chandra Agarwal was born on 6th January 1943. He graduated from St. John's College, Agra and obtained his LL.B. from Agra College in 1963.

He joined the Judicial Service in 1964. From 1964 onwards, he worked in the judiciary from the entry level till he was ultimately appointed as an Additional Judge of the High Court of Madhya Pradesh on 22nd October 2001. He was appointed as a Permanent Judge on 1st April 2002. He retired from the High Court on 5th January 2005.

With 41 years in the judiciary, Shri Prabhat Chandra Agarwal had a rich experience and immense knowledge of laws on almost all subjects.

It bears mentioning that he held such respect and trust that he was appointed to preside over two important commissions of inquiry, namely Bhilai Firing Commission and Multai (Betul) Firing Commission and submitted reports.

After retirement, he practiced as an Advocate in the Supreme Court of India. Shri Prabhat Chandra Agarwal was also well known in the criminal law field. He had immense knowledge of criminal procedure and had a very good practice in the Supreme Court.

He breathed his last on 10th February 2020 leaving behind his wife, Smt. Raj Agarwal, son Shri Amitabh Agarwal, daughter Smt. Anuranjita Gupta and their families.

My Brother and Sister Judges join me in conveying our heartfelt condolences to the bereaved families of Shri Bhimrao Naik, Nagendra Rai and P.C. Agarwal. We pray to the Almighty to give them the strength to bear this irreparable loss with fortitude.

May the departed souls rest in peace.

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List of Attendees at the Full Court Reference

- ❖ *Shri K.K. Venugopal,
Ld. Attorney General for India.*
- ❖ *Shri Tushar Mehta,
Solicitor General of India.*
- ❖ *Shri Vikas Singh, (Sr.)
President,
Supreme Court Bar Association.*
- ❖ *Shri Pradeep Kumar Rai, (Sr.)
Vice President,
Supreme Court Bar Association.*
- ❖ *Shri Ardhendumauli Kumar Prasad,
Hony. Secretary,
Supreme Court Bar Association.*
- ❖ *Shri Shivaji M. Jadhav,
President,
Supreme Court Advocates-on-Record Association.*
- ❖ *Shri Manoj K. Mishra,
Vice President,
Supreme Court Advocates-on-Record Association.*
- ❖ *Shri Joseph Aristotle S.,
Hony. Secretary,
Supreme Court Advocates-on-Record Association.*

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***Family Members of
Late Shri Prabhat Chandra Agarwal
Senior Advocate
at the Full Court Reference***

- ❖ *Smt. Raj Agarwal, Wife*
- ❖ *Shri Amitabh Agarwal, Son*
- ❖ *Smt. Akanksha Agarwal, Daughter-in-law*
- ❖ *Sh. Rajesh Kumar Gupta, Son-in-law*
- ❖ *Smt. Anuranjita Gupta, Daughter*
- ❖ *Mr. Divij Garg, Grandson*
- ❖ *Ms. Shefali Agarwal, Granddaughter*
- ❖ *Ms. Samradhi Agarwal, Granddaughter*

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THE SUPREME COURT OF INDIA

New Delhi - 110001

India