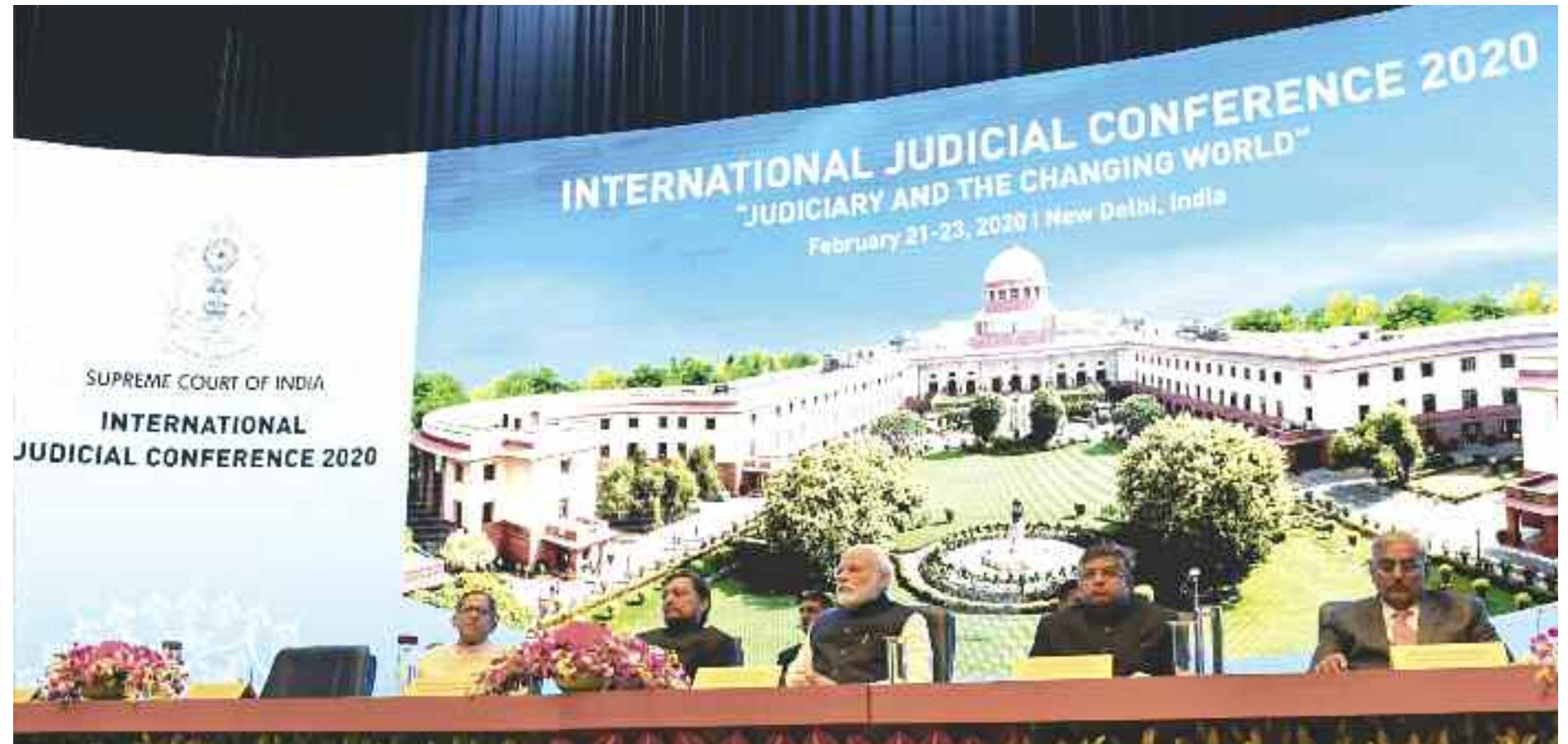


JUDICIARY'S ROLE IN A CHANGING WORLD

The International Judicial Conference 2020 held recently was the first of its kind organised by the Supreme Court of India in which judges from 23 countries and jurisdictions spoke on contemporary challenges before the judiciary. The range of speakers, including the president, prime minister, law minister, the chief justice of India and other senior judges, added gravitas and provided an idea of the pressing concerns and the future focus of the courts

By India Legal Bureau



It was a unique occasion and quite historic in many ways. The conference, based on the theme, “Judiciary and the Changing World”, ended with some fascinating observations and insights. While five specific topics were listed for discussion, the conference covered a wide spectrum of legal opinion and views.

Chief Justice of India SA Bobde laid down the parameters when he said: “Conferences such as these in a sense celebrate universality and seek a better expression through the challenges that the judiciaries of the world face.” He

added: “This commitment underlies the creation of a transnational judicial network which thrives on the constant exchange of ideas and dialogue on common challenges that require our immediate attention.”

Among the notable observations made by the chief justice of India in his address was how fundamental duties are not accorded the significance they deserve. He said: “A feature often neglected is a chapter on fundamental duties imposing on every citizen the duties to abide by the constitution, the whole of it and respect its ideals and institution. Mahatma Gandhi once said: ‘the exercise of right depends on one’s sense of duty’. This follows from what he had written in *Hind Swaraj*, where he argued that ‘real rights are a result of performance of duty’.

Justice Bobde went on to speak on the Indian Supreme Court, which, he noted, had charted its own course in the face of a geographically, linguistically, culturally diverse reality. In this backdrop, he commented: “India serves as a beacon of hope to independent and developing countries. The Indian Supreme Court is responsible for upholding the rights of over 1.3 billion people.” Notably, he also opined that there is a need to introduce a single law for environmental issues across the world, given the global nature of human impact on the environment. He acknowledged that there remained lingering challenges to make sure that the “courts of today are ready for the future of tomorrow”.

In his address at the conference, Prime Minister Narendra Modi spoke extensively on how the rule of law was ingrained in Indian tradition. He said:

“The Rule of Law has been a core civilisational value of Indian society since ages... Law is the King of Kings, Law is supreme. In recent times, there have been some critical judicial judgments and decisions which have been the subject of global discussion. Before these judgments were delivered, several apprehensions were being expressed about the consequences. But look what happened! 1.3 billion Indians wholeheartedly accepted the judicial verdicts.”

President Ram Nath Kovind, while speaking at the conference, focused on the topics of the conference—Gender Justice, Contemporary Perspectives on Protection of Constitutional Values, Dynamic Interpretations of the Constitution in a Changing World, Harmonisation of

Environmental Protection vis-a-vis Sustainable Development, and Protection of the Right to Privacy in the Internet Age—and said: “These five topics cover the matrix of the challenges faced by judiciaries across the world”, and noted that the judiciary in India has been alive to these themes.

The president also praised the role of the Supreme Court of India. He said: “The Supreme Court deserves admiration for carrying out many radical reforms that made justice more accessible to the common man. From issuing guidelines for preventing sexual harassment at the workplace two decades ago to providing directives for granting equal status to women in the Army this month, the Supreme Court of India has led a progressive social transformation.”

Union Law Minister Ravi Shankar

CHALLENGES AHEAD

(L-R) SC judge NV Ramana, CJI SA Bobde, PM Modi, Law Minister Ravi Shankar Prasad and SC judge Arun Mishra at the conference

Prasad made some waves when he commented on the “sinister trend” of campaigning for judgments. He said: “[there is a] sinister trend of late, developing globally, and also in our country, that some people start campaigning as to what kind of judgments they expect. [When] the judgment is not in accordance with that, then [they] unleash all the forces of criticism.” He, however, emphasised that it is not as if dissent is not allowed. He further observed: “...I’m a great supporter of social media, of freedom. I know it is empowering, but this is a dangerous trend. Judges must be left completely independent →



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—CJI SA Bobde

“Merely having lofty declarations in law would not satisfy the requirement to uplift women who face discrimination day in and day out. There is sufficient scope for the judiciary to ensure a gender-just world.”

—Supreme Court judge
NV Ramana

“To strengthen the judicial system is the call of the day as it is the backbone of democracy, whereas the legislature is the heart, and the executive is the brain. These three organs have to work independently but in tandem.”

—SC judge Arun Mishra

“Exciting developments have reshaped the universe of judging in recent times. We are enriched by precedent from across the world. We learn from the wisdom of the other and grow together... comparative law turns from...abstraction to reality.”

—SC judge DY Chandrachud

to give judgment as to what they think is correct...”

While speaking on the topic concerning gender equality, Justice NV Ramana of the Supreme Court emphasised: “Merely having lofty declarations in law would not satisfy the requirement to uplift women who face discrimination day in and day out. There is sufficient scope for the judiciary to ensure a gender-just world. There cannot be any compromise in gender equality.”

Justice Arun Mishra of the Supreme Court observed that today, India is the “biggest successful democracy in the world” and how dignified human existence remains India’s prime concern. He said: “To strengthen the judicial system is the call of the day as it is the backbone

of democracy, whereas the legislature is the heart, and the executive is the brain. All these three organs of the State have to work independently but in tandem to make democracy successful.” He added: “The judiciary has a significant role in the ever-changing world. Myriad problems are being faced today... Your presence indicates that we are united in our steely resolve against the invasion of human rights and terrorism. Our togetherness will pave the way for global developments by evolving common standards... In the changing global scenario, the noblest profession can ill afford to be complacent and be oblivious of the various issues.”

Another Supreme Court judge, Justice DY Chandrachud, was his typical articulate self when he said: “Exciting developments have reshaped the universe

of judging in recent times”, quoting judgments by the constitutional courts in the United Kingdom, Malawi, South Africa, Colombia, the High Courts of Zimbabwe, Kenya and the Supreme Courts of Jamaica and Bangladesh to show how the judiciary is moving with the times. He further added: “We are enriched by precedent from across the world. We learn from the wisdom of the other and grow together. In the judges’ craft, comparative law turns from an abstraction to reality.”

Supreme Court judge Justice Deepak Gupta pointed out that one of the topics which could not find place in this conference was “The Resolution of Cross Border Disputes by Arbitration or by Mediation”. “Domestic disputes such as matrimonial disputes and disputes with regard to custody of children where the

parties live in different jurisdictions also needed to be addressed,” he said, adding: “There is a need for the courts to reflect the populace and the diversity present in the country. For citizens of our countries to have faith in our decisions, it is important that the benches of our Constitutional Courts are a true reflection of our population, and this, as rightly pointed out by Lord Reed cannot be done if one gender occupies the majority of seats in our highest courts.”

While raising this issue, Justice Gupta

invoked the need for representation of transgenders, people from different religions, etc. “In our endeavour to create a ‘gender-just’ world, it is important that we remember that a gender-just world is not only for men and women, but for transgenders too.”

Supreme Court justice Sanjay Kishan Kaul cautioned: “Just as the world is changing, the judiciary has to use its synergy and imagination in keeping pace with the changing expectations.... The judiciary cannot be oblivious to changes in the soci-

ety and to the needs of the most vulnerable.” He went on to highlight the importance of a gender-just world, saying: “The need is to weed out entrenched prejudices by way of progressive pronouncements, the recent one in India being the permanent commissioning of women in the Armed Forces.”

On the role of the judiciary in serving as a guard against populism, Justice Kaul said: “The judiciary plays a balancing act. The role of the judiciary thus may often become anti-majoritarian.”

Extracts from Chief Justice of India SA Bobde’s speech at the conference

“The Zeitgeist of our times has been incredible technological advancement. The entire world today is interconnected like the world wide web itself, and a small change in one corner of the world can result in changes in different parts of the world. Judiciaries all over the world are dealing with this kind of change—what might be called a rights revolution, a technological revolution and a demographic revolution. Our decisions no longer impact only those who live in our jurisdiction but also those who live in other jurisdictions— some far away. A conference like this offers opportunities for dialogue between the judges from various jurisdictions in the world to exchange ideas and gain knowledge from each other on many aspects of gender justice, right to privacy, populism, environment and sustainable development.

“That India is a melting pot of myriad cultures and traditions is well known. This is equally true of its judicial system

and institutions. We have assimilated legal cultures of all the civilisations who have come to our shores—the Mughals, the Portuguese, the French, the Dutch and finally the English. Right from conventional court systems to customary methods of adjudication and rules of evidence our systems of adjudication have been a diverse mixture of traditions of the past infused with the present, looking towards the changing times...

“A well-structured judicial system is more than two thousand years old in this country and has always been the bedrock of India’s legal history. Our Constitution is magnificent not just for its detail but also for the international

inspiration that it drew and it continues to draw. The Constitution-makers embraced a famous saying in the *Rig Veda*—“Let noble thoughts come to me from all directions.”

“The founding fathers of this post-colonial country studied various models of Constitutions from all directions... The Constitution of India therefore, syn-



thesised the perfect blend of all that came before it and tailored it to fit this country's diversity and thought. At the heart of the Constitution was the individual and the rights of the individual were recognised as 'fundamental'. These rights have been beautifully balanced with the demands of public order, morality and health.

"Amongst the dominant thoughts when the Constitution was being drafted was what Swami Vivekananda aptly said, 'Liberty of thought and action is the only condition of life, of growth and well-being. Where it does not exist, the man, the race, the nation, or institution which bars the power of free thought and action of an individual—even so long as that power does not injure others—it is devilish and must go down.'

"A feature often neglected is a chapter on fundamental duties imposing on every citizen the duty to abide by the Constitution, the whole of it and respect its ideals and institution. (I believe there are more than 50

countries in the world having specific provisions in regard to fundamental duties in their Constitutions.) In this regard Mahatma Gandhi once said 'The exercise of right depends on one's sense of duty'. This follows from what he had written in *Hind Swaraj*, where he argued that 'real rights are a result of performance of duty'.

"...The Constitution also created a strong and independent judiciary, which was separated from the executive and the legislature. We have strived at every turn, not just as a judicial institution but also as a citizenry, to keep these basic ideals intact. Probably the most fundamental feature of most modern Constitutions is the idea of the rule of law. That is certainly the motto of the Indian Supreme Court which says that where there is adherence to law there is victory: '*Ya toh dharmastatoh jaya*'.

"...The Judiciary, right from 1950, looked for inspiration from across the globe to find creative solutions to constitutional problems. In the first important case on fundamental rights, (*AK Gopalan vs State of Madras*), the Supreme Court quoted law from the American, Japanese, Irish, Canadian, Australian and English courts. Ever since, we have not shied away from looking for inspiration, wherever possible...

"My travels to South America, Africa and Europe have given me the pleasure of interacting with great judicial minds from various jurisdictions. These interactions with sister and brother judges across the world instilled in me the firm belief in the value of learning from the experiences of judges from other jurisdictions and sharing my own experi-

"Judiciaries all over the world are dealing with this kind of change—what might be called a rights revolution, a technological revolution and a demographic revolution. A conference like this offers opportunities for dialogue between the judges from various jurisdictions in the world to exchange ideas and gain knowledge from each other on many aspects of gender justice, right to privacy, populism, environment and sustainable development."

ences. I learnt the truth of the words of James Russell Lowell: 'As one lamp lights another, nor grows less, So nobleness enkindleth nobleness.'

"The common thread that binds judges across the world is a commitment to the dispensation of justice. This commitment underlies the creation of a transnational judicial network which thrives on the constant exchange of ideas and dialogue on common challenges that require our immediate attention — first and foremost, increasing diversity in the judiciary as well as the role of the judiciary in ensuring a gender-just world.

"The judiciary is the guardian of constitutional values and serves to counter-balance populist forces in a commitment to the rule of law. Inherent in this role are active measures to bring women within the judicial fold. We have learnt from the illuminating session on the judiciary and

gender justice that incremental measures are only the first step towards championing the cause of gender equality.

"As judges, in the discharge of our duties we are exposed to arguments, strategies and solutions from various jurisdictions. The delivery of justice has not been untouched by the forces of globalisation. Not long ago, legal education in a foreign jurisdiction was a rare oddity. Today, the vast majority of lawyers and judges are educated in more than one country.

"This globalisation of the Bar has been accompanied by the globalisation of the Bench. Increasingly confronted with transnational challenges, judges regularly reach beyond their borders to inspect the jurisprudence of other countries to discern valuable principles...

"The Indian judiciary, though not in the present form, has an ancient origin. It is uniquely situated, connected by the yarn of history to the grand old traditions of common law, yet also charting its own course in the face of a geographically, linguistically and culturally diverse

realities. India serves as a beacon of hope to independent and developing countries.

"The Indian Supreme Court is responsible for upholding the rights of over 1.3 billion people. We have more than approximately 17,500 courts. In a country where over 22 languages and several thousand dialects are spoken, the Supreme Court has mandated the translation of its judgments into nine languages. A commitment to access to justice furthers the commitment that Constitutions are not meant only to check people in power but also empower those who have been deprived of it. The provision of judgments in vernacular languages makes them accessible to people from diverse linguistic backgrounds.

"As we look to the future, a significant consideration in the delivery of justice is the protection and preservation of the

environment in the dispensation of justice. In one of the cases before us, we have held that 'The present generation has no right to impede the safety and wellbeing of the next generation or the generation to come thereafter.'

"...It is said that human beings are seeds as well as parasites on Earth. We take much more than we give back to the Earth. As Richard Rogers said, 'the only way forward to improve the quality of environment is to get everybody involved.'

"In India, we are utilising technology in innovative ways to facilitate and assist the delivery of justice. Indian courts are located across the length and breadth of our vast country. As part of the e-courts project in India, we have ensured that no matter where a judicial officer is located, from the remote mountaintops of the Himalayas to the sandy beaches of Kerala, they are electronically connected to the national judicial data grid. We have harnessed the rise of smartphone technology and telecommunications connectivity to streamline the delivery of service and summons, empowering our bailiffs and reach litigants accurately and efficiently

across the country.

"As we head into the future, we are exploring the use of artificial intelligence to automate simple tasks associated with the administration of justice. With the speed of reading 1 million characters per second, the volume of any data for any purpose, whether research or analysis, becomes easy to deal with. But it must be treated as a tool and its introduction into the judicial system must be done with hesitation and caution. Lest it grows in directions which affect human discretion. It probably never will and the human mind will retain its supremacy. A small question and answer allays apprehensions. Would any of us have travelled to this auditorium to hear a computer speak?

"The conference has also presented us with an opportunity to discuss the myriad of ways in which a foundational document can be interpreted. Drawing on the maturing traditions of comparative constitutional analysis has afforded us an opportunity to learn from the unique historical experiences of each other. Finally, across the world, significant strides are being made in the employment of tech-

nology in the dispensation of justice.

"As I stand here today, I am conscious that there is much work to be done—both in India and across the world. The two facets of globalisation that have posed the greatest challenges to judiciaries across the world are the rise of global supply chains and the proliferation of information technology.

"Technology has placed the world in the palms of our hands, making it possible to communicate with great ease across the world. But the widespread use of technology has also brought with it concerns over mass data collection and an individual's right to privacy.

"Beginning in the 16th century, the goddess Iustitia, or as we more commonly know her today, 'Lady Justice' has been depicted blindfolded. The blindfold personifies the principle of impartiality and that justice is blind to the power, wealth or status of the parties before her. While impartiality remains at the heart of a judge's duty—judges are called on to look beyond the parties and into the future—to anticipate future developments in the world and ensure the courts of today are ready for the world of tomorrow."



Extracts from Justice NV Ramana's speech at the conference

"...Presently our globalised world is closer than it seems. Issues are common and solutions need to be unanimous. Major issues which are plaguing the world, including the Indian subcontinent, are terrorism, cyber crime, environmental degradation and health. For example, terrorism is one of the main issues which has affected every part of the world and has no end in sight. The judiciary needs to appropriately respond to this problem by evolving innovative principles and jurisprudence so that ter-

rorism is kept at bay, while at the same time upholding the rule of law. More importantly, 'globalisation' demands rule of law. With the increase in cross-border dealings, movement of citizens, goods and investment, there is a requirement of stronger trust between nations. This trust can be built by creating institutions with strong emphasis on the rule of law which creates a secure environment.

"India has contributed to the evolution of jurisprudence in many areas and our judgments have been cited with

acceptance overwhelmingly by other jurisdictions such as the United Kingdom, Australia, Singapore, Bangladesh and other countries in the Asian continent. A special mention needs to be made of Justice Michael Kirby, who had studied Indian jurisprudence and has cited our judgments in umpteen number of Australian High Court judgments. Indian legal system is based on the separation of powers, independence of the judiciary and constitutional courts with wide jurisdiction. We have a Constitution which enumerates fundamental rights and duties. This Constitution has been expounded by the Supreme Court in terms of constitutional morality to make it relevant from time to time. The decisions rendered by the courts in India certainly reflect the strong democratic culture prevalent in India.

“In our country, there is a free statutory legal aid program, which covers almost 75 percent of the Indian population. This year we are celebrating 25 years of successfully providing legal aid to the poor. Another important feature is that there are nearly 64,000 panel lawyers and around 69,000 para-legal volunteers who are regularly rendering legal aid and conducting legal awareness programmes.

“The first topic is ‘The Role of the Judiciary in Maintaining a Gender Just World’. The gravity of this topic stems from the fact that women constitute half the world’s population, perform nearly two-thirds of work five hours, receive one-tenth of the world’s income and own less than 0.01 percent of the world’s property. Most nations have recognised equality and dignity of women, whether under their Constitution or otherwise. We have all realised that merely having lofty declarations in law would not satisfy the requirement to uplift women who are discriminated against day in and day out. There is sufficient scope for the judiciary

to proactively ensure a genderjust world. In this context we should realise that there cannot be any compromise in gender equality.

“The second session concerns the topic ‘Role of the Judiciary Against Populism’. Rule of law is the strongest tool which protects plurality. This urges judicial readiness to intervene, but only when necessary to correct or prevent a problem that will likely not be resolved. This topic assumes fundamental importance because populist decisions affect the constitutional rights, and more often than not, rights of one group are pitted against the rights or interest of other group(s). Hence, courts will have to rise to the occasion and guard constitutional values, at the same time balancing all constitutional considerations.

“Major issues which are plaguing the world, including the Indian sub-continent, are terrorism, cyber crime, environmental degradation and health. For example, terrorism is one of the main issues which has affected every part of the world and has no end in sight. The judiciary needs to appropriately respond to this problem by evolving innovative principles and jurisprudence so that terrorism is kept at bay, while at the same time upholding the rule of law. More importantly, ‘globalisation’ demands rule of law.”

“The third session pertains to ‘The Constitution and its Interpretation’, which is a subject which has never had any unanimity in its approach. Internationally, a facet of constitutional interpretation has been brought to the forefront by judges like Lord Denning, Justices Marshall, Breyer, Gajendra-gadkar, Hidayatullah, Vivian Bose, Subba Rao, etc. India’s most prominent contribution to this debate is the evolution of the doctrine of basic structure in the celebrated case of *Keshavananda Bharati vs. State of Kerala*. This doctrine evolved from the fact that a Constitution is not merely a document laying down the ground norm. Rather, it is a process which binds generation after generation to certain promises we made ourselves, while normatively imagining what our country would be. In this context, this

subject requires deeper consideration based on the differing experience of the judicial minds from across continents as to how they have dealt with the question.

“The fourth session concerns the topic: ‘Role of Judiciary in Environmental Protection and Sustainable Development’. This topic reminds me of Mahatma Gandhi, who observed that ‘the future depends on what we do in the present’. This issue has been a point of discussion since the beginning of this century and continues to be a main focus within global politics. The threat of environmental degradation is not mere hypocrisy or hysteria, it is real and we are suffering the consequences of the same every day. Recently, we have witnessed earth-shattering environmental crises such as forest fires, depletion of the

ozone layer, climate change, increasing sea level, etc. We must all realise these efforts are not only for the present generation, but also are a noble task to create a safe and sound environment for future generations.

“The fifth and final session of the conference, titled the “Role of Judiciary in Protecting Privacy of Citizens in the Internet Age” is a fitting finale to this international conference, as it directly confronts an issue that concerns the global citizenry, pertaining to the changing technological landscape. As individuals are provided services over the internet by international entities, there is a need to create a jurisprudence that moulds together both international and national concerns...

“Before I end, I am reminded of Martin Luther King who observed that ‘If we are to have peace on earth, our loyalties must transcend our race, our tribe, our class, and our nation; and this means we must develop a world perspective.’” ■

MARCH 9, 2020
