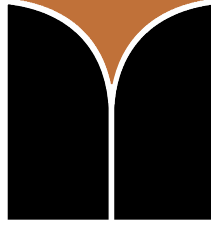


Maadhyam



**International Council for
Conflict Resolution**



THE VISIONARY JUDGE

Hon'ble Mr. Justice Sanjay Kishan Kaul

Former Judge, Supreme Court of India

20th Jan 2024

A Note of Felicity and Admiration

Maadhyam



**International Council for
Conflict Resolution**

Justice Sanjay Kishan Kaul is a man of principles, who took to heart the rules, both written and unwritten, of justice and fairplay, and discharged his duties with nobility and virtue.

A native of Srinagar, Justice Sanjay Kishan Kaul was born on 26th December 1958, in a distinguished Kashmiri Pandit family. His father, K.K. Kaul, was an eminent lawyer practicing at the Delhi High Court and the Supreme Court of India. His grandfather, Raja Upinder Kishan Kaul, also contributed significantly to public service. His great-grandfather, Sir Daya Kishan Kaul, was a renowned statesman and a diplomat who held the position of Finance Minister in the Jammu & Kashmir State. His great-great-grandfather, Suraj Kishan Kaul, served as the Revenue Minister in the Regency Council of the princely State of Jammu and Kashmir.



With friends at School



Modern School, New Delhi

He completed his schooling from Delhi's Modern School. He thereafter graduated with an Honors degree in Economics from St. Stephen's College, University of Delhi and in Law from the Campus Law Centre, University of Delhi. He enrolled himself with the Bar Council of Delhi, immediately thereafter, in 1982. As his seniors and contemporaries from St. Stephens and Campus Law Centre made their mark, he too followed suit. Illustrious graduates often come from great schools!

Justice Kaul started his practice in the Delhi High Court and simultaneously in the Supreme Court. He also appeared before several Tribunals. Five years later he became an Advocate-on-Record of the Supreme Court. After seventeen years of practice, he was bestowed the designation of a Senior by the High Court of Delhi, in 1999.

At that time he was counsel for the Delhi High Court besides representing the University of Delhi, his *alma mater*, the Delhi Development Authority, and the Union Government. He continued his practice for two more years till his elevation to the Bench of Delhi High Court on May 3, 2001.



High Court of Delhi



With family at the Swearing-in at Delhi High Court

Justice Sanjay Kishan Kaul fondly refers to the Delhi High Court as his “Janambhoomi,” meaning his place of birth in the legal profession. He joined the Bench when presented with the opportunity at the young age of 43, as his solemn responsibility to reciprocate the knowledge and experiences he had garnered from the legal profession.

Justice Kaul started his judicial career in 2001, but the lawyer in him continued to surface when cases relating to education of members of the Bar or provision of facilities for judicial establishments were needed. Justice Kaul played a prominent role for development of the infrastructure at Delhi High Court including lawyers’ chamber blocks. He has all along been the darling of the legal fraternity. His tenure as Joint Secretary of the Delhi High Court Bar Association endeared him to every member of the Bar which continues even today.

One is reminded of an annual regional meeting of various mediation centres of the High Courts at the India Habitat Centre, New Delhi, where Hon’ble Judges from various parts of the country had assembled. There were some skeptical comments regarding the functioning of the Delhi High Court Mediation Centre, which is run by the Bar. Before any one from the Bar leaders could respond to the same, Justice Kaul at that time a judge of the Delhi High Court, took it upon himself to dispel all queries and doubts and defend the Bar. Justice Kaul firmly believed that in every conflict/dispute especially the commercial ones, there lies an opportunity for mediation and it must be resorted to as the first choice. He wholeheartedly appreciated and supported the changes that mediation is bringing about in lawyers and disputants.

Justice Kaul believed that relationship between the Bench and the Bar is a cornerstone for the seamless functioning of the legal system. He believed that this collaboration

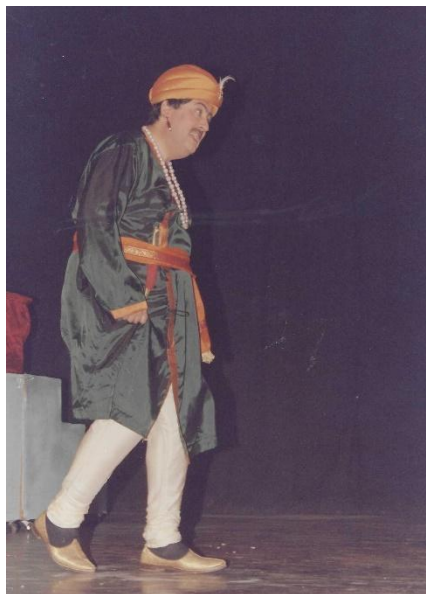
between the two plays a pivotal role in maintaining the efficiency and effectiveness of the legal framework.

As a Delhi High Court judge in 2008, Justice Kaul quashed charges of obscenity against artist MF Hussain. He began that judgment with a quote from Pablo Picasso:

“Art is never chaste when it is chaste, it is not art.”

Beyond the realms of law, Justice Kaul has a diverse range of interests, including theatre, music, golf, and reading. His passion for the arts and literature extends beyond legal studies, showcasing his multi-faceted personality.

Justice Kaul actively engaged in theatre, a pursuit that played a pivotal role in honing his public speaking skills. This early exposure to the world of dramatics not only provided an outlet for self-expression but also contributed to the development of valuable communication abilities, which later proved to be an asset in his legal career. He participated in theatre with his old friends even after adorning the Bench.



Justice Kaul performing at the Theatre

He is fond of reading fiction, listening to music from old Hindi films and playing Golf. He now reflects on all his hobbies as a notable aspect of his past. With a bucket list ready of his aspirations for post-retirement, he aims to travel, rejuvenate his golfing pursuits, spend quality time in Kashmir and prioritize his health over a hectic schedule. Additionally, he yearns to spend more time to his grandchildren and cherish every moment with them.

Justice Kaul was elevated as the Chief Justice of Punjab & Haryana High Court in the year 2013. During his tenure as the Chief Justice, inter alia, he inaugurated an ADR Centre at Amritsar. He also went to the Golden Temple and offered his prayers.



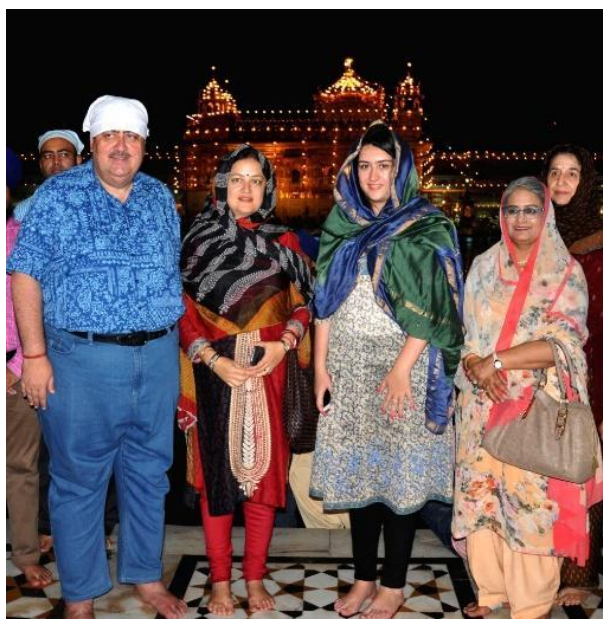
Punjab & Haryana High Court



Swearing in at Punjab & Haryana High Court



Inaugural of Alternative Disputes Resolution Centre, Amritsar



At the Golden Temple with family

Speaking at the farewell function as Chief Justice, he urged the members of the Bar that they must give back what they gained from the profession and requested the senior members to see that their juniors get enough opportunities to grow and this is the only way for the Bar to grow. He observed:

“My endeavour has always been to see that junior members of the Bar got an opportunity in Court because that is the only way the Bar grows. But then this requires ground work to be done by the younger member of the bar to avail of these opportunities and assist the Court to the best of their abilities. I would, thus, urge them to rise to the occasion when they get such opportunities.”

Justice Kaul took over as the Chief Justice of the Madras High Court on July 26, 2014, where he continued till February 15, 2017.



Madras High Court, Chennai



Swearing in at Chennai High Court



Saluting the National Flag on Republic Day at Madras High Court

In a 2016 Chennai High Court judgment on right to speak, refusing to ban a book by Perumal Murugan, he said:

“The choice to read is always with the reader. If you do not like a book, throw it away. There is no compulsion to read a book. Literary tastes may vary – what is right and acceptable to one may not be so to others. Yet, the right to write is unhindered.”

This time, Justice Kaul quoted Voltaire: “I may not agree with what you say, but will defend to the death, your right to say it.”

He often said “After all it is the common man for whom the judicial system exists”.



Justice Sanjay Kishan Kaul inaugurates administrative block in Bar Council of Tamil Nadu and Puducherry building while he was Chief Justice of Madras High Court



Madras HC Bench & Bar bid farewell to Justice Sanjay Kishan Kaul

Even before the Insolvency and Bankruptcy Code came into existence, Justice Kaul was of the firm belief that every commercial entity that failed to perform should be examined to see whether it has the potential to turn around, before letting it slip into liquidation. At the same time, he was in favour of just protection of the creditors as well. He remained President of INSOL India, an independent leadership body representing practitioners and other associated professionals specialising in the fields of restructuring, insolvency, and turnaround, till 2017.



"I have always been an ardent believer in the potential of alternative dispute resolution procedures. As a confidential and voluntary process, mediation in insolvency proceedings offers a distressed business relative protection from public scrutiny at a fraction of the cost of formal insolvency resolution processes."

In September 2019, while inaugurating a Symposium on ‘Recovery and Resolution – Emerging Challenges before Recovery Tribunal and NCLTs’ organised by Law 85 Trust with Federation of Indian Hire Purchase Association, Justice Kaul observed that Legislations like Insolvency and Bankruptcy Code have helped businesses coming out of red and once again becoming part of the mainstream; thus adding to the economy of the country.



Supreme Court Judge Sanjay Kishan Kaul and Madras High Court Judge MM Sundresh at the Symposium

From Madras High Court as its Chief Justice, Justice Kaul was elevated to the Apex Court on February 16, 2017.

During his tenure in the Supreme Court, Justice Kaul was Chairman of the Legal Services Committee and the President nominated him as the Executive Chairman of NALSA.



Supreme Court of India



During a Conference organized by NALSA, together with the International Legal Foundation, UN Development Programme and UNICEF

His ardent belief in resolution of disputes as quickly as possible made him an advocated of ADR, and from ADR to mediation as the best choice. He had been a guide post for Maadhyam, International Council for Conflict Resolution, which is a pioneer in Mediation with various collaborations from overseas for education and training.

Underlining the importance of alternative dispute resolution mechanisms, Justice Sanjay Kishan Kaul said the process of mediation is a workable solution to the problems faced by litigants as the number of cases have gone up in the country.

At the 20th annual convocation of NALSAR University of Law in Hyderabad, Justice Kaul said as litigations have increased, various methods have been found through the alternative dispute resolution mechanisms to take the pressure off court. He said:

"It is my belief and I must say so that the mediation process is one of the better solutions to the problem"

In his message for the souvenir brought out by Maadhyam, on the occasion of a Mediation Training Programme held at Pepperdine University, School of Law, USA, he stated:

“In today’s day and age, when timely resolution of disputes is need of the hour, mediation and such other practices will go a long way in Conflict Resolution, being innately quick, flexible, simple and cost effective. In creating a scenario that opens dialogue, repairs relationship and builds trust between the conflicting parties, mediation offers a form of justice that may be difficult to obtain from a courtroom.”

Mediation took a new statutory lease by the amendment to the Code of Civil Procedure in 2002. Justice Kaul was a propounder of mediation in almost every field of law. He led the mediation movement in the country from the forefront. He pioneered great initiatives across the country as Chairman of the Supreme Court’s Mediation and Conciliation Project Committee (MCPC). He played a major role in the evolution of ‘Samadhan,’ the Delhi High Court Mediation and Conciliation and Centre.

About mediation, he observed:

“India has taken deliberate steps to promote mediation. It was one of the first countries to sign the Singapore Convention on Mediation, which aims to settle cross-border conflicts.”

Acknowledging the burgeoning caseloads in the courts, he pointed out that the legal landscape has evolved to encompass alternative dispute resolution mechanisms as a means to alleviate this burden. Justice Kaul asserted that mediation stands out as a particularly effective and superior avenue for addressing these issues. At the concluding session of the four-day long ‘Delhi Arbitration Weekend’ organized by the Delhi International Arbitration Centre (DIAC), Justice Kaul spoke on ‘Arbitration Vision 2030: What the Future Beholds?’. He said that when the COVID-19 pandemic hit the world, the international arbitration community shifted to the virtual system and gradually virtual or hybrid hearings will become a norm, and physical hearings will become an exception.

He said the virtual system has done away with the need of unnecessarily spending money on travelling to different parts of the world for conferences or hearings and it has also become easier for arbitrators and practitioners to find a suitable date of hearing. Justice Kaul added that some arbitration institutions have explicitly come out with virtual arbitration rules and arbitrators and practitioners will be required to know the basics of technology with an attention to cyber security and other issues.

At a stakeholders meeting in 2020 for advancing Online Dispute Resolution in India, Justice Sanjay Kishan Kaul stressed on the need of ODR during the ongoing Covid-19 pandemic.



He added that, *"To keep the wheels of justice moving as much as possible, we introduced virtual hearing in courts and India being a developing country, faced infrastructural and connectivity issues but it did not take long for the stakeholders to find a way of operating efficiently"*.

"He then added that, I would say the virtual system has actually increased the efficiency level and hence even today, I operate on a hybrid level where I permit lawyers to appear through video conferencing."

He further added that virtual system has reduced cost of travelling and allows lawyers to prepare their matters in a short time.

"This is something the Chief Justice of India also on recent occasions emphasized that having created this vast infrastructure, it is necessary to utilize it to the best possible way considering that the government has also sanctioned a large amount for further use of technology to strengthen the judicial system".

While talking to Maadhyam recently, Justice Kaul expressed his view that post retirement, he would like to be a mediator as compared to other roles one would normally have the option to do.



NALSAR University of Law Hyderabad at the 20th annual graduation ceremony of the National Academy of Legal Studies

During his discourse at the twentieth annual convocation hosted by Nalsar University of Law in Shamirpet, Justice Kaul stressed the need to uphold the morality of the Constitution, which recognizes plurality and diversity in the society.

He counselled law students to carefully choose mentors or senior advocates who embody unwavering commitment to ethical values. Justice Kaul remarked that the contemporary era represents a zenith in legal education, marked by the introduction of innovative teaching methodologies. He encouraged young law professionals to consider taking up judicial service over a lucrative private practice. He also stressed on the need to show empathy. “After all this is what legal forums and courts are for. It’s just to find solutions to human differences,” He also asked graduates to prioritise their mental health.

When justice Kaul demitted office from the Supreme Court, he had to his credit an experience of more than twenty-two years as a Judge in various Courts – the High Courts of Delhi, Punjab & Haryana, and Madras, and the Apex Court, i.e., about three years more than that at the Bar!

Justice Kaul authored 159 judgments and was part of over 564 Benches during his tenure. A well-balance cycle at the Bar and the Bench! The rough and tumble of practice matured him to be one amongst the finest judges.

India signed the Singapore Convention on August 8, 2019 to facilitate cross-border commercial disputes. Post the convention, Justice Kaul observed:

“Mediation is a party- driven process. The parties understand that the dispute is theirs’ and so is the autonomy to decide. In mediation the parties find themselves more comfortable sans the legal jargons and technicalities. Parties’ decision to mediate shows their willingness to amicably resolve their disputes and each other’s concerns. This leaves the scope of mending their relationships to a point prior to the dispute.”

According to him, *“the mediator is like a taxi driver that facilitates the parties to reach their destination.”*

In the year 2020, Maadhyam launched SAMAS, a global initiative and coming together of 3 Nations, One Vision - Maadhyam (India), Straus (U.S.A) and Sage (Singapore). SAMAS is a unique cross-cultural collaboration of conflict resolution professionals in three diverse jurisdictions. The collaborating parties signed a Memorandum of Understanding in the august presence of Justice Sanjay Kishan Kaul on 8th November, 2020.

SAMAS - THREE NATIONS ONE VISION !



In the year 2023, a year that witnessed the adjudication of 18 judgments by Constitution Benches, Justice Kaul stood as a towering figure, contributing his sagacity to a remarkable 7 of those cases. This is not merely a statistic; it is a testament to the sheer magnitude of his impact within the judicial ecosystem.

In 2023, a calendar year brimming with complex constitutional matters, Justice Kaul's involvement in more than one-third of the judgments delivered by Constitution Benches is nothing short of exceptional. His unyielding dedication to the pursuit of justice is evident in the breadth and depth of his engagement with a diverse array of legal issues.

In a legal landscape where each judgment holds the weight of constitutional precedent, Justice Kaul's prolific presence becomes a symbol of unwavering commitment and intellectual prowess. The significance of this contribution goes beyond numbers; it reflects a jurist's profound dedication to the constitutional ethos and an unrelenting pursuit of justice in its purest form.

As we acknowledge this remarkable feat, we also recognize the impact of Justice Kaul's wisdom on shaping the legal narrative of our time. His participation in such a substantial number of constitutional cases in a single year signifies not just legal acumen, but a resolute commitment to the principles that underpin our democracy.

In the annals of legal history, the name Justice Sanjay Kishan Kaul especially in the year 2023 will be etched as a beacon, illuminating the path of justice and influencing the course of constitutional jurisprudence.



Justice Kaul's exceptional empathy is vividly apparent in his handling of legal matters, particularly in the context of Article 370. His deep understanding of the historical and intergenerational trauma faced by the affected population reflects a profound sense of empathy. His concern for the social fabric of the region and his impassioned advocacy for healing showcase a genuine acknowledgment of the human impact of legal decisions.

The bedrock of Justice Kaul's judicial philosophy lies in his consistent devotion to justice. His emphasis on preventing the recurrence of injustice and his call for the restoration of the region's social fabric based on coexistence, tolerance, and mutual respect underscores a steadfast dedication to upholding the principles of justice and fairness in his judicial role.

Justice Kaul, who penned a separate but concurrent opinion in *In Re: Article 370 of the Constitution, 2023 INSC 1058*, poured his heart out and observed that in order to move forward, the wounds need healing.

“What is at stake is not simply preventing the recurrence of injustice, but the burden of restoring the region’s social fabric to what it has historically been based on — coexistence, tolerance and mutual respect.”

Justice Kaul, who hails from the distinguished Dattareya Kauls of Srinagar, whose ancestry can reliably be traced back to over 500 years, wrote an epilogue saying that:

“During my travels home over the years, I have observed the social fabric waning, and the consequences of intergenerational trauma on an already fractured society. I cannot help but feel anguish for what peoples of the region have experienced and am constrained to write this Epilogue.”

In his verdict on Article 370, Justice Kaul recommended setting up of an “impartial truth and reconciliation commission” to probe and report on human rights violations by both state and non-state actors in Jammu and Kashmir since the 1980s, saying the “wounds need healing.” This recommendation of his has been marked as *"Constitutional jurisprudence in more than one sense"*.

In matters pertaining to historical injustices, particularly in the case of same-sex relationships, the injustices faced by the non-heterosexual community and his belief in the collective duty to rectify discrimination illustrate a deep commitment to addressing societal inequities through legal recognition and the assurance of equal rights. Justice Kaul's judicial outlook is characterized by progressiveness and inclusivity, notably in his stance on same-sex marriage. His advocacy for a regulatory framework that recognizes the capacity of non-heterosexual couples for love and commitment demonstrates a commitment to individual choices, autonomy, and the broader principles of equality.



At Lecture on Climate Change and Global Justice- The Future of our Planet.



During the inauguration of the office of National Legal Service Authority at Jaisalmer House

Justice Kaul who dealt with the aspect of non-heterosexual couples entering into a union in *Supriyo v. Union of India*, 2023 INSC 920, wrote that:

“Non-heterosexual unions and heterosexual unions/marriages ought to be considered as two sides of the same coin, both in terms of recognition and consequential benefits. The only deficiency at present is the absence of a suitable regulatory framework for such unions. This Court in Navtej noted that: “history owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries.” I believe that this moment presents an opportunity of reckoning with this historical injustice and casts a collective duty upon all constitutional institutions to take affirmative steps to remedy the discrimination.

Thus, the next step in due course, would be to create an edifice of governance that would give meaningful realization to the right to enter into a union, whether termed as marriage or a union.”

Quoting the song of Bon Jovi, Kaul, J said:

“Legal recognition of non-heterosexual unions represents a step forward towards marriage equality. At the same time, marriage is not an end in itself. Our Constitution contemplates a holistic understanding of equality, which applies to all spheres of life. The practice of equality necessitates acceptance and protection of individual choices. The capacity of non-heterosexual couples for love, commitment and responsibility is no less worthy of regard than heterosexual couples. Let us preserve this autonomy, so long as it does not infringe on the rights of others. After all, “it's my life.””

Navigating the intricacies of legal declarations, Justice Kaul's legal pragmatism becomes apparent. In the case related to the Delhi Special Police Establishment Act, his involvement in considering the retrospective applicability of specific declarations reflects a practical and meticulous approach to constitutional issues.

Further, Justice Kaul's approach to arbitration cases especially in the renowned 7-Judge Constitution Bench case of *Re. Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*, 2023 SCC Online SC 1666 champions the protection of the jurisdictional competence of arbitral tribunals. His commitment to the competence- competence doctrine, the limited role of the referral court, the independence of arbitral tribunals, and the harmonious construction of laws collectively illuminate a judicial philosophy that upholds the principles of justice and fairness. His stance is not just a legal

manoeuvre; it is a powerful assertion that underscores the indispensable role of arbitral tribunals in the complex tapestry of dispute resolution.

Consistency is a hallmark of Justice Kaul's judicial journey. His involvement in multiple Constitution Benches, spanning diverse legal matters from Article 370 to Same-Sex Marriage to grant of divorce under Article 142 of Constitution as well as dismissal of plea for enhanced compensation from Union Carbide Corporation among others, underscore a versatile and consistent approach to constitutional and legal complexities. This showcases his broad engagement and steady commitment to the judicial process.



Justice Sanjay Kishan Kaul speaking at the Delhi High Court recently

Justice Sanjay Kishan Kaul emerges as a beacon of justice with a compassionate, empathetic, and progressive judicial demeanour. His commitment to justice, sensitivity to historical injustices, legal pragmatism, and consistent involvement in varied legal matters collectively portray a holistic and versatile approach to his judicial responsibilities.



Interacting with CJI Dr D.Y. Chandrachud at the lawns of Supreme Court

As part of a five-judge constitution bench which refused to accord legal recognition to same-sex marriage, he observed that there was “no unqualified right” to marriage with the exception of those that are recognised by law.

Justice Kaul took up the issue of non-grant of bail or remission to undertrials or convicts in protracted criminal cases with missionary zeal and passed a slew of directions to decongest prisons and grant of relief to such litigants.

A Bench headed by Justice Kaul had ordered that anti-CAA protesters agitating in Shaheen Bagh in the national capital cannot block the public road and create inconvenience for others. People are entitled to protest but it has to be done in an area identified for agitations and not on a public road or park, he had said.

He also headed a five-judge constitution bench which held the apex court has the discretion of exercising the plenary power it commands under Article 142 of the Constitution to dissolve a marriage on the ground of “irretrievable breakdown” and the authority to dispense with the 6-month waiting period mandated under the Hindu Marriage Act, 1955 while granting divorce with mutual consent.

A five-judge constitution bench headed by Justice Kaul had affirmed the Bar Council of India’s power to hold the All India Bar Examination (AIBE), a test that a lawyer has to qualify to practise law in the courts of the country.

He also advised the magistrates to scrutinise each matter in order to prevent “*vexatious and frivolous cases*” and harassment of artists. Whether this constitutional court recommendation has been adhered to by subordinate courts in the years that followed, is a different matter.

The Judgements of Justice Kaul can be tested on the touch tone of precedents and settled principles of Common Law in adversarial litigation yet he had and has unlimited passion and commitment to settle all conflicts by utilising alternative dispute mechanisms with special emphasis on mediation.

Justice Sanjay Kishan Kaul has been an ardent proponent of advancing mediation, a staunch defender of freedom of speech and expression and a distinguished contributor to numerous constitutional bench judgments. He has exemplified unwavering commitment to safeguarding the pillars of democracy. His judicious rulings and principled stance have fortified essential rights, leaving an enduring legacy that underscore the importance of protecting the fundamental liberties which form the bedrock of a democratic society.

In his farewell speech, Justice Kaul expressed :

“I go with the full sense of satisfaction. I have tried to do my best whatever I could. Sometimes it may be the best, sometimes it may not be. But I tried.”



Justice Kaul with his family before he went for his last working day at the Supreme Court

Justice never retires. That is why even after retirement, one who has been a Judge continues to be known as ‘Justice.’ We believe that the best from the visionary Justice Kaul is yet to come !

While Justice Kaul embarks on the next part of his journey, we wish him the very best – peace, happiness, good health and everlasting joy. Most of all we express our love and gratitude to him for the future through the poet John Masefield’s words “laugh and be merry!”

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