17th KK Luthra Memorial Moot Court, 2021
: 17 January, 2021

I am delighted to address you all at the valedictory function of the 17th K.K. Luthra Memorial Moot.

1. I must begin with congratulating the Faculty of Law at the University of Delhi and the Luthra family for seamlessly organising this moot in the middle of a raging pandemic. Not only is the KK Luthra Moot renowned, as being one of India's foremost global legal competitions, but, in keeping up with the times, this year's proposition also reflects contemporary issues. The competition has been flawlessly organised and judged, in the middle of zoom calls, online hearings and social distancing. I have had an opportunity of going through the moot problem, and it aptly deals with the criminal effects of violating travel and distancing restrictions, which have been imposed throughout the world owing to the novel coronavirus.

2. It seems to me extremely important that before moving on to issues of criminal jurisprudence, we should first acknowledge as to why this Moot is being organised and why we are all present here today? As the name suggests, the 17th KK Luthra Memorial Moot, is in the memory of the distinguished Senior Advocate Sh. KK Luthra, who practiced before the Supreme Court of India and various High Courts across our country.

3. Educated at the Forman Christian College and the Government Law College, Lahore, now in Pakistan, the early adult life of Shri Luthra witnessed the horrors of partition, and like millions who were forced to leave their birth or work places, Shri Luthra also had to move to Shimla and complete his law degree at the Government Law College, Punjab. He was enrolled as a Pleader in the year 1949, and later as an Advocate at the Punjab High Court. In the face of challenging financial circumstances and social disintegration, as was the case with every victim of partition whose entire life had been uprooted overnight, Shri

Luthra decided to fight against the odds and to join the legal practice. Notwithstanding his family's desire to pursue safer career alternatives, especially when Sh. Luthra had cleared the most prestigious Civil Services Exams, he remained committed to his love for the legal profession and shifted his base to Delhi where he continued litigating till his untimely demise in 1997.

4. Over his almost 50 years long career at the bar, Sh. Luthra – a designated Senior Advocate, built a formidable reputation in the field of Indian criminal law. During his heydays, he was lead defence counsel in many landmark criminal cases: from the Baroda Dynamite case, to the LN Mishra murder case, Classik Computers case and even the post-Emergency Shah Commission enquiry. A lover of Urdu poetry, English literature, and legal philosophy; Shri KK Luthra appeared for many prominent figures who had been detained under the infamous Maintenance of Internal Security Act during the Emergency of 1975.

5. It is this flame of criminal justice, liberty and legal philosophy which is sought to be sustained for the seventeenth consecutive year through this moot. I must compliment late Shrimati KK Luthra, who left for her heavenly abode last year, who decided to start this international moot competition in the fond memory of her great jurist-husband. Indeed, today, this annual event kindles interest for criminal law in batch after batch of law students, and is a great contribution to the world of legal education. I am very delighted to know that this year more than a hundred teams comprising of the brightest minds from across India, the UK, Australia, Singapore, Bangladesh, Africa and Nepal have participated in this role-playing exercise.

6. Although special congratulations are in order for the winning teams and the best speakers, but I believe that all participants should look back at their journeys and be proud at what they have learnt over the past few days. Mooting, in my opinion, is not an ordinary competition which should be valued by win or loss. It is distinct from a game of skill or an activity like quizzing or debating.

7. Mooting is an academic exercise for future members of the bar, which infuses an element of practicality to the theory, learnt in a legal classroom. In addition to improving analytical skills and igniting interest in a specific area of law, Mooting helps enhance confidence, teaches teamwork and is an unparalleled opportunity to network and socialise with fellow law students from across the globe. Therefore, in my considered opinion, irrespective of whether or not you made it to the finals, all of you have gained important skills which would prepare you well for a life beyond the law school.

8. Importantly, unlike textbook knowledge, Mooting also shares the flaws of real-life advocacy. Often-times you may find a judge or a boss who might not have read your submissions or even the problem beforehand. But then there are also judges who know the case even better than the counsels appearing before them. Similarly, there are judges known as active or passive judges, discouraging ones and those who are supportive. The value of competitions like this Moot is that they prepare you for all these scenarios. In fact, it is not just the people administering the law who are full of imperfections; even the law itself is more often than not imprecise, complicated and seemingly contradictory. As you might have seen over the course of the moot, there are many compelling arguments to grant bail to Ms Quantisa, as well as strong objections against realising her from the side of the Union of Ozala.

9. Each of the reasons put forth by both sides have some merit. It would be wrong to believe that only one of the two sides is objectively right, or that the case of either the petitioner or the respondent deserves to be dismissed outright. I say so because each side is playing its own unique role in the justice delivery system, just like cogs in a complex machine. The prosecutor represents the view-point of the society, and the defence counsel brings forth the interests of the accused. Both sides propound a particular perspective, each of which promotes a particular social objective. And the judge is tasked with reconciling these individual aims within the larger framework of criminal law.

10. But, the framework and purpose of criminal law is never singular or simple. The societal issues, which laws aims to solve, are both numerous in number and perspective. To take an example, we cannot say that refusal or grant of bail must be seen only with the aim of preventing COVID. The need to avoid conviction of the innocent and to prevent sentencing without trial, are also important objectives which cannot be overlooked. Similarly, many consider that crimes can never be prevented and therefore believe that focus should be on reform and rehabilitation of offenders, and not merely on deterrence or punishment. Indeed, what is obvious is that there are always many legitimate objectives and interests. Although one purpose might be dominant, but others can't be forgotten. The crux of legal adjudication lies in prioritising and balancing these objectives. And therefore, justice is always a work in progress and forever a contested ideal.

11. The jurisprudence on bail in India, in consonance with its counterparts across common law systems like Australia, Canada, and the United Kingdom; is primarily premised on one such ideal that no person should be deprived of his liberty except for breach of a law. These principles emanate not just from the provisions of the Code of Criminal Procedure, but from Part III of the Indian Constitution which bestows every citizen with liberty and freedom of movement. We presume that these rights are priceless to every citizen, and therefore use the fear of their confiscation as a means of achieving social order.

12. This ideal propounds that no person should be kept in jail without first receiving a fair trial and conviction. But, given how dangerous it is for the society to allow criminals to roam unchecked pending trial, undertrial incarceration is often necessary. The best solution to resolve this conflict between individual liberty and societal safety lies in quick trials; but in reality, the legal process demands adherence to rules of natural justice, production of evidence and opportunities to defend oneself; all of which take substantial time.

13. Therefore, history suggests that bail emerged as a compromise in the 10th century. Considering how trials took years and how there was a dearth of physical space to incarcerate all accused, Sheriffs in

medieval England would release the suspect upon surety of a sum of money, or upon the guarantee of locally-resident friends and family. This practice was codified through the First Statute of Westminster, which created a list of bailable and non-bailable offences, and was later reformed by the Habeas Corpus Act of 1679 and the Bill of Rights of 1688.

14. India, and other common-law countries like the UK, Australia, Canada, New Zealand and the USA have largely adopted this jurisprudence of using bail as a means to ensuring the presence of the accused during the trial and maintaining personal liberty. Given how the moot problem deals with the challenge to the Constitutionality of Section 439A of the Ozala Code of Criminal Procedure which introduced special restrictions on grant of bail for people accused under the Epidemics Act, I am sure that all of you would have become better experts on the law of bail than me, and I, therefore, would refrain from offering my take on the problem.

15. But, as I mentioned earlier, change in societal norms and priorities has led to the evolution of criminal jurisprudence across jurisdictions; particularly the tightening of bail requirements in cases involving economic offences and terrorist activities. This is both because of past experiences where we have seen people accused of such offences go untraceable or fly abroad; and because of threat-assessments by law enforcement authorities. As regard to the context of the moot's hypothetical scenario, we need to recognize the realities of the pandemic. We must acknowledge the need for swift and stern criminalisation of COVID-offenders to check the spread of the highly contagious disease, and at the same time preserve the safeguards of individual liberty inherent under our judicial system.

16. Lastly, I would remind my young friends that with everything said and done, a Moot is only a simulation of the real world. Although it has significant upsides, but it also over-emphasises formality at the expense of reality. As a legal counsel, it is necessary to be able to read the bench and be flexible with one's arguments. Just like the moot problem here, in real life also - it is essential to separate irrelevant

details presented by the client, from the facts relevant for legal determination. One should not be afraid to deal with contrary precedents or adverse facts. Rather, the best criminal counsels, like Mr Siddharth Luthra, confront these challenges head on and deal with them with composure.

17. At the end of the day, counsels need to understand and solve the client's problems and not merely produce academically-superior arguments. Indeed, as a Counsel for the Petitioner, it was necessary to get your client back to her home country of Yada, be it at a heavy financial cost. Similarly, the focus for the respondent Counsel was not just to punish Ms Quantisa for her actions, but to set a healthy precedent which would encourage other citizens and visitors to act responsibly and control the spread of the pandemic within the territories of Ozala.

18. Before concluding, I would reiterate that in the larger scheme of things, it is not important whether you won or lost this moot, but whether or not you learnt the right lessons from this experience. I would once again thank the Organisers, the faculty and Mr Siddharth Luthra for inviting me to be a part of this tremendous effort. Thank you. Jai Hind!