

CONFERENCE OF CHIEF MINISTERS AND CHIEF JUSTICES

VIGYAN BHAVAN, NEW DELHI

APRIL 19, 2008

Hon'ble Prime Minister Dr. Manmohan Singh, Hon'ble Union Law Minister Dr. H.R. Bhardwaj, Hon'ble Chief Ministers, my distinguished colleagues, Hon'ble Chief Justices of the various High Courts, distinguished invitees and dear friends:-

We consider the Annual Joint Conference of the Chief Ministers of the States and Chief Justices of the High Courts as an important event and we look forward for a better judicial system in this country with the help of the various Governments which are represented by the Chief Ministers of the States who are present here. I am greatly beholden to the Hon'ble Prime Minister and the Union Law Minister for arranging this interaction so that we would be able to place our problems. We have been getting excellent cooperation and help from the Government and this has helped in bringing about drastic change and improvement of the judicial system in this country.

Indian Judicial system has been receiving appreciation and approbation and is held to be one of the best court systems in the world. We do not have extreme laws with cruel and draconian punishments. We have good procedures completely protected by principles of natural justice. The Indian legal system essentially British origin took a new direction after 1950 and unlike Great Britain, we have Bill of Rights enshrined in Part III of our Constitution - the Fundamental Rights Chapter. Neither the Parliament nor the State Legislature can enact laws which transgress the provisions of the Fundamental Rights chapter. Neither the Executive nor the Legislature passes any order in violation of these Fundamental Rights. The superior courts in the country are invested with the powers under Article 32 of the Constitution as in the case of Supreme Court and Article 226 so far as the High Courts are concerned to enforce the Fundamental Rights. The courts are exercising the powers of judicial review to protect the rights of the people in this country.

The courts in this country play an important role for the economic growth and development. There is empirical evidence to show that

the rule of law does contribute to a nation's wealth and its rate of economic growth. When the law is weak or non-existent, the enforcement of property and contract rights frequently depends on the threat and sometimes the actuality of violence and it may retard the economic growth. A modernizing nation's economic prosperity requires at least a modest legal infrastructure centered on the protection of property and contract rights.

Most of us are painfully aware that the entire legal system, as it now obtains, has several limitations and consequently it has to develop its capabilities and overcome limitations before it could play its rightful role in the transformation of our society in the desired direction. All sensitive people have been feeling an increasing concern about the problem of growing arrears of cases pending in courts. Delay made in the decision of cases at all stages inevitably leads to accumulation of arrears and this problem has reached serious dimensions. The delay in disposal of cases leads to dissatisfaction in the public mind about the effectiveness of court process for ventilating their grievances.

In just concluded two days Chief Justices' Conference of various High Courts we have been making serious efforts to see that how these cases could be disposed of at the earliest. We have about 59 lakhs petty cases which could be disposed of in a short time. Some Special Magistrates could be appointed and if the State is prepared to give some budgetary allocation for starting new courts, all these cases which have been pending for long time could be disposed of. There are large number of cases registered under the Prevention of Corruption Act. These cases are also required to be disposed of at the earliest. The State should start more Special Vigilance Courts so that these cases can be disposed of. Despite the repeated efforts, the allocation of funds for starting of new courts is not very encouraging. The budget allotment is grossly inadequate to meet the requirements of judiciary. After the establishment of Fast Track Courts, we could dispose of large number of such cases. Even then the number of courts are not sufficient to dispose of cases.

The State should make budgetary provision for starting new courts. They should also provide funds for establishment of the Evening Courts and the Courts manned by Special Magistrates. Each High Court would be sending its proposals and I request the State

Governments to consider these proposals and take steps with utmost urgency.

Maintenance of law and order and rule of law is a primary concern of the State. If the Courts are unable to dispose of the case within the reasonable time, the State would not be in a position to maintain law and order. Now, in many States there are large number of under-trial prisoners as the trial of criminal cases are unduly delayed. In some of the States there are not enough number of Forensic Laboratories and investigation is thus delayed. In some other States enough Public Prosecutors are not appointed to conduct trial. The State Governments should look to these problems and find out the permanent solution so that we can reform our judicial system.

Our problems are manifold. The great American Judge Benjamin N. Cardozo, addressing the Association of the Bar of the City of New York way back in 1921, said :-

“The Courts are not helped as they could and ought to be in the adaptation of law to justice.

The reason they are not helped is because

there is no one whose business it is to give warning that help is needed.....We must have a courier who will carry the tidings of distress....Today courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labors bears the tokens of the strain. On the other side, the legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and courts move on in proud and

silent isolation. Some agency must be found to mediate between them.”

We have got an independent judiciary. We receive rebuke from the public for many things for which we are not responsible. Legal institutions play a key role in the distribution of powers and rights. They also underpin the forms and functions of other institutions that deliver public services and regulate market practices. Justice system can provide a vehicle to mediate conflict, resolve disputes, and sustain social order. The existence of an independent and accountable judiciary is not enough to protect citizens’ rights against abuses of State power. Adequate laws, institutional mechanisms and sufficient infrastructure are also needed. People’s legal rights would remain theoretical if the institutions charged with enforcing them are not in a position to translate their dreams into reality. The excessive delays, unfair procedures, and unreasonable costs may leave the judicial machinery as ineffective. Judiciary as a whole depends for its ultimate support upon the goodwill with which it is regarded. This is the most fragile branch of Government. When we are boosting of rapid change and fast economic growth, why not we think seriously about our judicial reforms. I appeal to all State Governments to give

their all possible help to improve the infrastructure and make our judicial system more effective to serve the millions of people of this great nation.
