

‘Law Day’ function

Organised by the Supreme Court Bar Association (SCBA)

New Delhi (November 26, 2008)

Address by Justice K.G. Balakrishnan, Chief Justice of India

Dr. H.R. Bhardwaj, Hon. Union Minister for Law & Justice,
Esteemed Brother Judges, Mr. Milon K. Banerjee, Attorney General
for India, Shri P.H. Parekh, President, Supreme Court Bar
Association and his colleague, Shri K. Venkatapathy, Minister of
State for Law & Justice, Respected members of the Bar,
Members of Media,
Members of the Supreme Court staff
and all those present here –

The annual ‘Law Day’ function gives us an opportunity to collectively reflect on the state of the legal system in our country. At a symbolic level, it commemorates the adoption of our Constitution 59 years ago – and in doing so it reminds us of the values and ideals enshrined in the same. While some sceptics may dismiss discussions about these constitutional values as a largely theoretical exercise, we only have to look back on the last six decades to understand the role of our courts as agents of social change.

This project of social transformation is still unfolding and in the long run it will succeed only if we acknowledge and fulfil our responsibilities as participants in the justice-delivery system and more importantly as concerned citizens. The strength of our judicial institutions is a pre-condition for a meaningful engagement with the

constitutional values. Hence, aspects such as the intertwined questions of improvements in judicial infrastructure and access to justice, the quality of justice-delivery and judicial accountability are foremost concerns for all of us.

Today, I would like to draw your attention to the progress made in recent months with regard to each of these aspects. While the emphasis may be on the roles and responsibilities of judges at different levels, I must also state that advocates and administrative staff are core stakeholders in the legal system and they too have distinct obligations to the litigating public. In this regard, it is indeed quite appropriate that the Supreme Court Bar Association (SCBA) will be observing 2008-2009 as the 'Year of the litigant'.

From the viewpoint of the ordinary litigant, the most prominent problem is that of undue delay in the disposal of cases and the mounting of arrears before courts at all levels. Pendency of Admission and Regular matters in the Supreme Court as on 1st November, 2008 was Twenty Nine Thousand Seven Hundred Six and Nineteen Thousand Five Hundred Fifty Seven respectively. Thus, the total pendency of cases in the Supreme Court as on 1st November, 2008 was Forty Nine Thousand Two Hundred Sixty Three cases.

Total pendency of civil cases in the High Courts as on 30th September, 2008 was Thirty Lakh Eighty One Thousand Fifty Three and that of criminal cases was Seven Lakh Fifty Four Thousand Six

Hundred Fifty Four. Thus, a total of Thirty Eight Lakh Thirty Five Thousand Seven Hundred Seven cases were pending in the High Courts on 30th September, 2008. The largest pendency of cases was in the High Court of Allahabad where Eight Lakh Eighty Seven Thousand Four Hundred Two cases were pending whereas Four Lakh Forty Six Thousand Nine Hundred Seventy Five Cases were pending in the Madras High Court as on 30th September, 2008.

So far as subordinate courts are concerned, Seventy Four Lakh Ninety Two Thousand Five Hundred Sixty One civil cases and One Crore Eighty Eight Lakh Ninety Seven Thousand Two Hundred Seventy Nine criminal cases were pending as on 30th September, 2008. Thus, a total of Two Crore Sixty Three Lakh Eighty Nine Thousand Eight Hundred Forty cases were pending in the subordinate courts as on 30th September, 2008.

As against the pendency noted above, the disposal of the cases by various courts was to the following order.

Fifty Seven Thousand Four Hundred Eighty Nine 'Admission' and 'Regular' matters were disposed of by the Supreme Court between 1st January, 2008 and 31st October, 2008 as against a total of Fifty Six Thousand Five Hundred Forty cases in the year 2006 and Sixty One Thousand Nine Hundred Fifty Seven cases in the year 2007.

Eleven Lakh Ninety Eight Thousand Five Hundred Ten cases were disposed of in the High Courts and One Crore Fourteen Lakh Twenty Two Thousand Four Hundred Eighty Six cases were disposed of in the subordinate courts during the first three quarters of the current year.

Sanctioned strength of High Court Judges was increased from 725 to 886 in November, 2007. Recommendations were made between January, 2007 to 15th November, 2008 for appointment of 149 High Court Judges out of which 123 have already been appointed. 28 Chief Justices and Judges of the High Courts were transferred from one High Court to another High Court. 12 Chief Justices of High Courts were appointed between January, 2007 and October, 2008. Recommendation has already been made for appointment of 2 more Chief Justices. 6 Supreme Court Judges were appointed between January, 2007 and August, 2008. Recommendation was made to Government of India to increase the strength of Judges in Supreme Court from 26 to 31.

It is pertinent to point out that the rate of disposal per judge in terms of absolute number of cases has been consistently increasing over the last few years. However, the perception of an immense backlog is strengthened by the fact that the rate of institution of proceedings has been growing far more than the rate of disposal. In this scenario, the solution seems obvious, which is that of appointing more judges. However, the process of creating more courts and appointing more judges at the subordinate level is one which needs

backing from the executive. For its part, the judiciary has significantly increased the sanctioned number of high court judges in November 2007. However, a substantial change will come only with the expansion of the judiciary at the subordinate level, which is largely dependent on State governments when it comes to infrastructural concerns.

The much required expansion of the judiciary must also be done in a strategic way so as to tackle the backlog in categories of litigation which have been empirically identified with the mounting arrears. For instance pursuant to the Chief Justices' conference held in April 2008, I had written to the Prime Minister about the urgent need to establish Family Courts in all districts of the country, since these Courts had been set-up only in 138 districts by that time. We also chose to highlight the need to establish 69 additional Courts for the trial of corruption cases being investigated by the Central Bureau of Investigation (CBI). Another area with a heavy backlog is that of cases pertaining to the dishonour of cheques, filed under Section 138 of the Negotiable Instruments Act. One proposal in this regard is the establishment of additional magistrate's courts to decide these cases. Measures have also been taken to ensure the timely appointment of subordinate court judges. Another set of suggestions that came up during the Chief Justices' Conferences was that of setting up morning / evening Courts at the subordinate level and the extension of working hours at High Courts in order to further improve the rate of disposal.

While such strategies for expanding and streamlining the judicial institutions are of the utmost importance, but we must also promote the culture of resorting to Alternative Dispute Resolution (ADR) methods such as mediation, negotiation and conciliation. While private business players have been quick to rely on methods such as commercial arbitration, the ordinary litigant is often unaware of the advantages of arriving at 'out-of-court' settlements. In this regard, we have begun the implementation of the *National Plan for Mediation* which envisages capacity-building as well as increased awareness about mediation at the grassroots level. With the introduction of the amended Section 89 in the Code of Civil Procedure, the onus is on judges and lawyers to strengthen the functioning of Court-annexed ADR mechanisms. We have already made strides in this direction with the evolution of the *Lok Adalat* system. After all, in many social settings where litigating parties have long-standing relations, resorting to civil litigation is seen as a means of confrontation and harassment rather than problem-solving. On the criminal side, the introduction of provisions for 'plea bargaining' is another tool that can be used to tackle the caseload relating to petty offences.

At this juncture, it is pertinent to mention the role of the National Legal Services Authority (NALSA) and the various state and district-level authorities under it. These authorities have been discharging the mandate of organising Lok Adalats at different levels and have also been conducting legal literacy camps all over the country. It is heartening to note that with the passing of each year, more and more

members of the bar are volunteering for 'Legal Aid' programmes and also acting as amicus curiae in pending cases. In recent months, NALSA has also undertaken some useful projects such as the workshops on reporting of court proceedings for media personnel and the initiative for strengthening the implementation of the National Rural Employment Guarantee Scheme (NREGS). Some of these initiatives point to the wider social role that practicing lawyers can play outside the formal courtroom setting.

Coming to issues pertaining to the quality of justice-delivery, it is important to refer to two long-term responses that are unfolding as we speak. The first of these started with the launch of the E-Courts project in July 2007. This project envisages a five year span for wholesome computerisation in the Indian judiciary. While at present the judgments of the Supreme Court, all the High Courts and some district courts are available in a user-friendly manner through the Judgment Information System (JUDIS), the agenda is to ensure that judgments/orders of all courts and tribunals will be made freely available online. While e-filing has already been introduced in the Supreme Court in October 2006, the ultimate objective is to enable advocates, litigants and staff to track proceedings at all stages through a website. The E-Courts project also envisages the installation of computer rooms at all judicial complexes as well as the equipment needed for video-conferencing. I must also mention that the Supreme Court Registry has contracted a private company for the task of creating an online archive of all records stored in its' record room. On the completion of this exercise, all documents and minute

details pertaining to judicial as well as non-judicial functions of the Supreme Court will be readily available. On a general level, the integration of information technology into the judicial system will enable easier access to legal materials for all parties as well as more efficient allocation of matters and case-management. Such structural changes will definitely have a positive impact on the quality of submissions made by counsels as well as decision-making by judges.

The second long-term measure in respect of improving the quality of justice-delivery is that of 'judicial education'. While legal education at the undergraduate level has undergone a significant transformation on account of the establishment of several autonomous National Law Universities, it is the cause of 'Continuing Legal Education' for sitting judges which holds more immediate importance. The establishment of the National Judicial Academy (NJA) at Bhopal in 2003 was a step in this direction and the said institution has developed a robust programme for training judges in relatively newer areas of litigation and 'case-management' techniques. Following this example, several states have also established judicial academies to provide periodic training to judicial officers. The role of these academies is of immense importance since judges at all levels are confronting litigation dealing with new areas that they are not familiar with, such as intellectual property and international finance among others. Even though this problem will eventually cease to be one as the next generation moves into mainstream roles in the legal profession, it is still of utmost

importance to equip sitting judges with the knowledge necessary to decide such cases.

Concerns with the quality of justice-delivery are necessarily linked to those of judicial accountability. In recent months, the media has widely reported on matters relating to corruption in the higher judiciary. Instead of offering a knee-jerk response, we have been attempting to tackle corruption at a systemic level. It would not be appropriate to speak of proceedings against specific individuals at this forum, but I would like to refer to some of the measures taken in recent times:

- I have requested the Chief Justices of the various High Courts to adopt resolutions similar to the one passed by the Supreme Court (on 7th May, 1997) which pertains to the declaration of assets by judges and periodic updating of the same.
- The 'Restatement of values of judicial life', which was the subject-matter of another resolution passed by the Supreme Court in May 1997, has been circulated to the various High Courts. This resolution seeks to guide conduct by members of the higher judiciary in their professional and personal lives.
- By way of a letter written on 5th July, 2008 I have also requested all High Courts to adopt a 'Model Code of Conduct' which contains specific directions for the conduct of subordinate judicial officers, especially in the context of visits by superior judges.

- In addition to these normative measures, I must also refer to the need for strengthening the 'Vigilance Cells' at High Courts, which function as a forum for complaints against subordinate judges. In respect of the higher judiciary, you are all well aware of the 'In house procedure' that has been used for inquiring into allegations of corruption.
- At present there is a practice of reviewing the performance of a judge when the said person completes the age of 58 years, as per the decision in the *All India Judges Association* case. However, it is widely felt that such a performance review should also happen on the completion of the age of 50 years and 55 years respectively. Such periodic performance reviews will not only serve as a reliable basis for deciding on appointments, transfers and removal – but will also act as a strong disincentive for individuals to engage in corrupt practices.
- Measures have also been taken to tighten the selection procedure for the higher judiciary. A model questionnaire has been circulated to the various High Courts, which seeks more detailed information about advocates and judicial officers who are to be considered for elevation to the position of High Court judges. In addition to personal antecedents, the questionnaire also asks whether a person under consideration for elevation has a spouse/blood relation practicing at the same High Court.

I must on this occasion record my profound gratitude to my brother Judges in the Supreme Court, High Courts and Subordinate Courts and members of the Bar and all who are connected with our proud

judicial system, for the valuable efforts they are making to render timely justice to all litigants. Their sacrifices and commitment to the cause of justice have made the 'rule of law' an abiding principle of Constitutional democracy in our Republic. Let us all take a pledge on this Law Day that we will do everything possible to uphold the values of the Constitution and render justice to the people without fear, favour or ill-will.

Jai Hind!