

Supreme Court Bar Association

“Law Day Celebrations”

on 26th November, 2007

at the Supreme Court Lawns, New Delhi

Inaugural Address

**Justice K.G. Balakrishnan
Chief Justice of India**

Law Day is significant because it reminds us of our commitment to the values incorporated in the Constitution and provides us an occasion to take stock of the performance of Constitutional institutions towards promotion and realization of Constitutional goals. Judiciary is entrusted by the Constitution with the task of not only ensuring the working of the government according to the provisions of the Constitution but also protecting the fundamental rights of citizens by upholding rule of law and access to justice for everyone. It is a matter of justifiable pride for

all Indians that despite several problems and challenges both from within the country and outside, India remained united in upholding democracy, human rights, rule of law and Constitutional governance for over sixty years, contributing to a legal order accommodating diversity, humanism and all round development. At the same time, we realize that the Constitutional promises are not yet fully realized particularly for a large section of our people who, for different reasons have not been able to access the benefits of freedom to the extent some other sections could achieve. Admittedly, there are gaps and deficiencies in the implementation of the Constitutional vision.

I consider it my duty as head of the judiciary to inform the people on the occasion of Law Day, of the state of administration of justice in our country reflecting on its performance in the past and efforts being made for better implementation of the tasks assigned to it under the Constitution.

There is a lot of misinformation in the media about the state of the judiciary and the status of administration of justice. The question of delay and arrears is often highlighted without analyzing its causes, thus putting the entire blame on the country's less than 14,000 judges. There is no way that judiciary can bring the facts before the public who have a right to know the state of affairs and the accountability of the system in that regard. I would therefore like to use the occasion of Law Day to place before THE PEOPLE OF INDIA a performance report on the judiciary with a view to inform and solicit their continued support in the cause of equal justice under law. I hope this initiative will be continued in subsequent years so that informed opinion can guide future public discourse and direct development of administration of justice in the spirit of the constitutional goals and ideals.

Traditionally, judiciary is not supposed to speak excepting through its judgements. That is a sound policy and will continue to be followed. Yet, in a democracy, information is the key for good governance and it is applicable to judicial administration as well.

The annual administration reports of courts do not reach the public nor does it convey all dimensions of administration of justice. Hence the importance of a status report from citizen's perspective which at least can explain facts to redeem the faith of people in the Judicial System. It is in this spirit I am presenting this report to the public, and not intending to avoid accountability or apportion blame.

It appears that the common people do not have a clear idea of the structure, role and management of the Judicial System in the country. Let me reflect very briefly on the same.

The Indian judiciary consists of one Supreme Court with 26 Judges, 21 High Courts with sanctioned strength of 725 Justices (working strength 597 as on 1st March, 2007) and 14,477 subordinate Courts/Judges (working strength only 11767 as on 31st December, 2006). An immediate question one might raise from the above statistics is why such large number of vacancies are allowed

to remain particularly at the trial court level where the arrears is constantly on the increase. That takes us to the selection and appointment process where the Government has a greater role than the judiciary. A way has to be found by the Government (which includes all State and Union Territory Government) and the Judiciary to address this problem in order to maintain a zero vacancy situation all the time. The Supreme Court through the Chief Justice's Annual Conference has taken steps to move the High Courts in this regard and I hope the State Governments will co-operate to achieve the goal in the interest of timely justice. This will certainly help to substantially increase the available judicial hours to attend pending work and reduce delay in the process. The State Governments are addressed in the matter which I hope will receive the attention it deserves.

What are the minimum numbers of Courts/Judges required to deliver timely justice and to avoid pendency of cases for long periods. The judiciary has been conducting scientific studies

through expert committees and otherwise to reach an objective and acceptable figure in this regard. One standard recommended was to fix the maximum capacity a judge can possibly take in a given year and decide the requirement of judge-strength based on average filing and accumulated arrears. Another is to look around the prolixity of legislations which generate litigation and the ratio of judges to a million people around the world to keep pendency under manageable limits.

In whatever way one approaches the problem, there is unanimity of opinion that the judge strength in India has to be considerably increased to cope with the needs and demands. In fact, the Supreme Court as early as 2002 in *All India Judges' Association* (2002) 4 SCC 247, case has directed the State and Central Governments to increase the strength five times over a period of five years. Governments have not yet acted on it keeping the number of judges by and large the same for too long despite mounting arrears and consequent delay. Judiciary has no power to

increase the strength of courts or appoint additional judges without Government sanction and budgetary support. The matter is being taken up at the highest levels and we hope some positive results to emerge soon. Meanwhile in another judgment *Salem Advocates Bar Association v. Union of India*, (2005) 6 SCC 344, the Court desired that a judicial impact assessment should accompany every fresh legislation so that the judiciary will be prepared to assist the enforcement of new laws properly and efficiently while dispensing justice under it. It is understood that the Government of India has appointed a Committee to advise it on measuring impact of laws on workload of Courts and there will be appropriate action to measure up judicial administration accordingly.

In this regard, I would like to bring to the knowledge of the people the amount of work Indian Judges do year after year which is considerably higher than most judges do elsewhere. People should know that there is considerable increase in litigation, almost an explosion in numbers without any proportionate increase either

in judges or infrastructure. The twenty-one High Courts have increased their annual disposal from 9.80 lakh cases per year during 1999 to 14.50 lakh cases in the year 2006 without commensurate increase in number of judges. This is almost 50 per cent higher productivity. The problem of increase in arrears during the period arose because of institution of fresh cases which increased from 11 lakh cases in 1999 to 16 lakh cases in 2006. This has resulted in increased pendency of 36.5 lakh cases in 2006 as against 27.5 lakh cases in 1999 despite 50 per cent higher disposal by the same number of judges. If only this fact is appreciated, no one can blame the judiciary for pendency and arrears. Of course, there is still scope for still higher productivity with some marginal support from Governments. The Fast Trak Courts introduced by Government of India is one such initiative. The Information Technology support system now underway may also help in expediting disposals.

The story is the same in trial courts as well, higher disposal rate accompanied by higher pendency of cases! It may sound paradoxical but is the truth of the situation. Subordinate Courts increased their productivity (disposal of cases) by 28 per cent between 1999 and 2006. However, the increase in the institution of fresh cases during the period (from 1.27 crore cases in 1999 to 1.56 crore cases in 2006) resulted in an increased pendency or arrears of 2.48 crore cases in 2006 as compared to 2 crore cases in 1999. As a result of hard and sustained work, the average judge in the trial court in our country is managing disposal of over 1350 cases every year which is far above the average of his counter parts in many other countries. This he does despite poor infra structural support which is a matter deserving appreciation of the litigant public and the government. If the government is able to provide increase of considerable number of High Court judges and 10,000 more subordinate judges, the judiciary will be able not only to clear the arrears but also render timely justice to the increasing number of people seeking its intervention. It is a matter to be remembered that

substantial part of litigation is generated by governmental agencies only and the government is the largest litigant taking judicial time and attention. And it is also a fact that every state except perhaps Delhi, is providing less than one per cent of its annual budget for judiciary. During the entire 10th Plan, the Centre has allocated only Rs. 700 crore to the judiciary which is 0.078 per cent of the plan outlay! Is not administration of justice an essential part of planned development deserving priority attention of the state governments and the Planning Commission? Is the Society extending the minimum facilities to the victims and witnesses who assist judicial proceedings and who deserve to be better rewarded for their services?

I may also point out that in the Supreme Court of India we have been making valiant efforts to improve the justice delivery mechanism. I express my gratitude to the members of the Supreme Court Advocates-on-Record Association as well as the Supreme Court Bar Association for extending their co-operation for making

improvements in the speedy delivery of justice. I may also point out a few important steps taken in our institution.

The Supreme Court Reports was not up-to-date for a long period. This journal is being published in 10 volumes, and with the co-operation of the members of the staff of the Registry, the Supreme Court Reports could be made up-to-date and its annual subscription is fair and reasonable. The Court Masters have been permitted to digitally sign the judgments and orders. Therefore, judgments and orders could be down-loaded from the internet with authenticity. We have large volume of records running into about 2,50,00,000 pages. We have been taking steps to scan the old records from 1950 onwards. The Supreme Court Registry has explored the possibility of electronic communications with the advocates and the litigants for the purpose of serving notices and letters and, even office reports are sent through *e-mail* to eliminate the possibility of default or delay. Advocates may give their *e-mail* ID so that they can avail this facility. As all of you know,

e-filing is available in the Registry, and now even additional documents can be filed through internet. We have been trying to put all the judgments and orders on the website and the Registry is making use of techniques of information technology to a great extent. The defects found out by the Registry are now put in the website. Counters in the Copying Branch of the Registry remain open from 10 a.m. to 5 p.m. Money deposited in the Supreme Court Registry pursuant to the orders of the Court is deposited with a nationalized bank which offers the highest interest and we call quotations for this purpose from the nationalized banks. We have also been taking steps to extend the facility of viewing the Display Boards in the Delhi High Court showing the matters being heard in the Supreme Court, so that the advocates have a better opportunity to arrange their work. On the request of the Bar Association and the Advocates-on-Record Association, more filing counters have been set up and further improvements have been made in the Registry. The Registry has also taken steps to extend the facilities to the members of the Bar both at the Court premises and also in

the premises of the Lawyers' Chambers. As all of you know, the threat perception is increasing and the Supreme Court being a place where a large number of lawyers and litigants coming everyday, it has become highly necessary that the Supreme Court and its premises be completely insulated from any amount of threat or terrorist activities. The recent incidents happened at the courts premises in Lucknow, Varanasi and Faizabad are an eye opener, and we shall leave no stone unturned to ensure security of large number of people coming to the premises of the Supreme Court. We have been actively taking steps to see that the advocates as well as the litigants and others who come to the Supreme Court are protected and there should be complete sense of security to the persons who visit these premises. There may be some inconvenience caused to the members of the Bar and the litigant public in following the security procedure that may be installed at the premises of the Supreme Court. As we are all law abiding citizens and are very happy to follow the procedure laid down under the law, I hope, all of you will extend your full support and

co-operation to see that the security system of the Supreme Court premises is user friendly.

Access to justice for everyone is not only a constitutional right, but also the primary obligation of every civilized State. The Constitution guarantees equal justice to all and directs the State to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The legal aid scheme now organized under the Legal Services Authority Act, 1986 is designed to make access to justice possible to one and all, particularly the weaker sections of the community, but unfortunately a large sections of our people are not aware of these rights. The Legal Services Authority has now launched the National Legal Literacy Mission 2005-2010 to carry the message of the availability of legal aid to every nook and corner of the country. The Supreme Court Legal Aid Committee supervises the legal aid activities and the National Legal Services Authority is so doing its best to provide legal aid to all. Now, under the able guidance of the National Legal Services Authority,

various State Legal Services Authorities are functioning well. In this year, a large number of cases have been settled in various Lok Adalats held in the States. With the amendment of the Civil Procedure Code it is expected that there would be settlement of litigations and, we propose to have mediation and settlement programmes in every High Court. Different courts in different parts of the country have set up Court Annexed Mediation Centres where regularly cases are being sent for negotiated settlements. Retired Judges and lawyers are happily co-operating with these mediation efforts. We have also taken steps to train the mediators and ensure that this would give additional confidence to the litigants. They may find that settlement of cases through mediation is cheaper, expeditious and flexible. I hope, the recent amendment of the Criminal Procedure Code giving an additional right to an accused for “plea bargaining” would be availed by so many persons and a large number of under-trial prisoners would avail this opportunity without waiting for the regular trial of their cases which may get delayed due to heavy congestion of cases in

the criminal courts.

We have taken steps to improve the quality of justice through continuing legal education of Judges at all levels. Eighteen State Judicial Academies and one National Judicial Academy are now functioning with a variety of programmes intended to give at least two weeks of intensive education to every judge throughout India each year. The object is not only to upgrade the skills in the art and science of judging but also to help them manage the mounting load of work with the help of ADR and Information and Computer Technology. Globalisation requires judicial competence and capacities which the Academies will provide to the judges and court staff. The litigant public deserves a highly competent and sensitive judiciary and it shall be our endeavour to provide judges the opportunities for self-improvement towards a greater professionalism through continuing education.

Relationship between the Bench and the Bar has been extremely well for the past few years and wherever minor disputes

occurred, we have been trying to solve them so that such incidents may not go out of proportion thereby causing serious damage to the administration of justice. Unless the Bar Councils and the Bar Associations take positive steps to see that we do not waste a single day of judicial work, then only we can think of providing justice within a reasonable time.

In some of the places evening courts are now functioning and in some places, the time of sitting of the courts has been extended and, even on holidays the courts are working. The members of the Bar have been co-operating in these efforts and now this experiment can be tried in almost all the States. In the States of Punjab and Haryana, mobile courts have been started functioning at two places - Punhana in the State of Haryana and Dassuya in the State of Punjab - and both the mobile courts are working extremely well and are disposing of a large number of cases.

To improve the quality of lawyering, legal education has to be reformed. The National Law School initiative has done some good in this direction, but a lot still remains to be done. Professional development activities should engage Bar Council's attention on priority basis. Globalization demands it and people deserve a highly independent and professionally competent Bar at all levels of the system.

Finally, I say with much confidence that our judiciary is doing a commendable job despite several difficulties, many of which are not its own making nor within its competence to resolve. However, we are aware of our shortcomings and we want to assure the people that we are trying our best to overcome them by education, training, self-correction and close monitoring and supervision. We are beholden to the public for the unqualified trust and faith bestowed on the judiciary which is what makes the judiciary act independently and in public interest. This is what the Constitution expects us and the people rightly demand of us. On

behalf of the entire Indian judicial fraternity, I reiterate our continued endeavour to uphold the rule of law, maintain constitutional values and impart timely, impartial justice to one and all who approach us with their grievances. And I hope to report to you on the next Law Day - how we are making progress in this regard.
