NEED FOR DELIBERATION*

The timing of the Conference has significance. I have been desirous of convening such a Conference, in the earlier part of my term as Chief Justice of India, so as to pursue and monitor the implementation of the resolutions passed at the Conference, during the remaining part of my term. Fortunately, we have, at present a very congenial ambience for solving the problems, facing the judiciary. His Excellency, the President of India and the Hon'ble Prime Minister, have both shown keen interest in judiciary and expressed their belief that it is one of the prime institutions on which depends, the successful functioning of democracy and working of the Constitution. They are equally keen on translating their belief into action, by doing whatever they can, so as to take care of the problems faced by the Indian Judiciary and strengthen the judicial system for discharging its functions, still better and, to the expectations of the framers of the Constitution and the people of India. The Law Minister, the Finance Minister and the Minister for Science and Technology are all men of law. Stalwarts in legal profession are available as Parliamentarians. They are all desirous of doing as much as they can to respond to the demands of judicial system.

While I was contemplating about holding the Conference, near about the same time, I was informed of the desire, on the part of the Hon'ble Prime Minister of India, for holding a joint Conference of Chief Justices and Chief Ministers, at the earliest and preferably in the month of September itself. The date, in that regard, came to be fixed as 18th September and, as I was very keen on having an exchange of views with the Chief Justices and interactive deliberations, at least two weeks in advance of such a joint conference, I was left with no other option but to fix 4th September as the date for this Conference. The Government of India proposes to take, on the Agenda, four items for consideration, which are (i) modernisation of courts; (ii) reduction/elimination of arrears in courts; (iii) resort to alternative dispute resolution system; and (iv) service conditions of judges including their accountability.

Earlier, joint conferences of Chief Justices and Chief Ministers were held in 1985 and in December, 1993. The present one is being held after more than a decade. Decisions taken in such joint conferences by high level constitutional functionaries, are policy decisions and trend-setters with far-reaching implications. In the deliberations held today and tomorrow, we should be able to identify topics which we would like to be taken up in the joint conference.

I am overwhelmed by responses to my request, which I received from the Chief Justices and my sister and brother Judges, within such a short time. Your responses bear testimony to your concern for achieving excellence in justice dispensation by modernising the justice delivery system of the country. For paucity of time, it has not been possible to study and paraphrase the suggestions and make a compilation presentable to you, well in advance, for reading and cross referencing.

I wish this Conference to be a conference with some difference. My colleagues and I would like to share our views with you and we would be equally keen on listening to you. We have assembled here only with one common purpose and that is, how best and usefully can we contribute to strengthen and to achieve still higher excellence in the justice delivery system of the country, to fulfil the aspiration and hope of the people for Justice – social, economic and political – to borrow the expression from the Preamble to the Constitution of India.

Though we will be taking up the Items in Agenda for discussion, seriatem, I wish to touch a few aspects at the very outset.

(i) Backlog of arrears: positive aspects not highlighted.

(ii) Meagre Plan allocations for Judiciary working out to 0.071% and 0.078% of the total outlay in Ninth & Tenth Plans.

The items which would come up for consideration in this Conference can be divided qualitatively into three groups:—

(1) Subjects relatable to ourselves, that is, referable to areas wherein all that needs to be done can be so done by ourselves, for improving quality of the justice delivery system, and we need not have to depend on any one else;

(2) Subjects for which we have to depend on Central and State Governments, like budget allocations and administrative approvals and amendments in laws such as amendments in law of evidence, procedural laws and so on;

(3) Subjects on which we can only advise; as we can hardly do anything on our own or of our own in the matters such as our expectations from legal profession, institutions imparting instruction in law, handling of litigation by government and semi-government bodies and so on.

To illustrate further, in the first category, we may discuss our own performance, conduct and behaviour as judges. The quality of recommendations for appointment, as judges in High Courts, also falls for consideration therein. So is the exercise of administrative control and supervision over subordinate judiciary, as enshrined in Articles 235 and 227 of the Constitution. These two Articles are impregnated with tremendous potential and if properly exercised by the High Courts, are capable of taking care of many aspects which provoke public criticism. Care and caution exercised at the level of entry, as judges in the High Courts and subordinate courts, will ensure prevention of many an ailment, which is far better than searching for a cure at a later point of time, which is difficult and, at times, may become illusory.

The Indian judicial system and the judges are constantly under public gaze. The criticism of Indian Judicial system – whether it can bear the burden of backlog of arrears and ever-increasing inflow of new cases, is at its highest ebb. It cannot be denied that there have been instances of such conduct and behaviour in the judiciary as is unbecoming of the holders of judicial office. Howsoever, minimal or stray such instances may be, they have been widely publicized in electronic and print media. Such instances have caused dent in the credibility of judiciary, in peoples' esteem. All this calls for a serious introspection.

The subordinate judiciary, at the lowest rung, is more prone to public criticism. Watch and vigilance is needed at that level. We must follow the carrot-and-stick rule; while good

officers must be encouraged and given recognition, the High Courts should not hesitate in suitably chastising deviant judicial officers. A strict action sends signals and deters the fence-sitters from jumping on the wrong side. The High Courts have Vigilance Officers in the Registry but their functioning is not as effective as it ought to be nor has it been able to produce the desired effect. I would suggest that only senior judicial officers, with capacity to act should be appointed as Registrar (Vigilance), and they should directly report to the Chief Justices, who should find time to monitor their working.

Directions and guidelines issued by the Supreme Court of India in *Nadiad case* are meant for protecting the independence of judiciary and insulating it against executive interference. These guidelines should not be misunderstood as affording total immunity to the judicial officers. The Chief Justices should not hesitate in permitting stern action, if the facts of a given case justify such action being taken.

More serious is the problem of the much talked about corruption in the court staff specially the one in subordinate courts. It must stop. At least, in this regard, ordinary criminal law can be allowed to operate; of course, under the overall control of the Chief Justice or the District Judge.

In the *second category* of subjects, fall the budget allocations and administrative set up of the High Courts and subordinate courts. We need sanctions and grants. Experience shows that so far as the judiciary is concerned, the Governments do not loosen their purse strings with ease.

In the *third category* fall the issues of State, as litigant, consuming major part of time of courts; tendency of seeking adjournments very casually; strikes by lawyers; falling standards in legal profession; need for thinking and innovation in legal education so as to design suitable courses tailored to suit the needs of (i) those who wish to take up law as a profession, (ii) those who aspire for judicial services, and (iii) those who are interested only in just learning the law or wish to do research or follow academic pursuits.

Demand for constituting National Judicial Commission to take over appointments, transfers and inquiry into complaints against judges is alive and continues to be pursued with vigour, by the executive. In my opinion, no system is inherently defective and no foolproof system can be devised; every system has its own advantages and shortcomings. The collegium system, as framed and remodeled in the second judges case, is by and large working satisfactorily. So long as the members of the collegium have objectivity and do not allow themselves to be influenced by any consideration except merit and interest of judiciary, the system of collegium will work well. In some cases, I have found, such recommendations having been made by collegiums of High Courts as ought not to have been made and consequently, turned down by the Supreme Court collegium. Many a times, it has been brought to our notice that better options were available for being recommended but possibly the choice of collegium did not fall on them and there was not enough persuasion to accept judgeship by more deserving lawyers.

Increase in sanctioned strength of judges and revising the age of retirement

Proposal for suitably increasing sanctioned strength of judges in High Courts is pending for consideration of the Government. Partly, it has been acceded to. In the Supreme Court, the proposal already mooted is, for additional increase by 10, or at least by 5, so as to achieve the target of deciding every case within not more than two years of its institution. It was in

the year 1986 that the strength was increased from 17 to 25. On 26th November 2003, speaking at the Law Day function, the then Law Minister Shri Arun Jaitley stated that after creating 94 more posts for High Court judges across the country, the Union Government was seriously considering the proposal to increase the number of Supreme Court judges. I propose to pursue this demand vigorously. Similarly, I feel that the age of retirement of the judges of the High Court should be suitably increased to 64 or 65 so as to bring it on par with the age of retirement of the Supreme Court judges. I am hopeful of a positive decision, at the earliest.

IT and Administrative Reforms Cell

I have moved a proposal to the Government of India for according financial and administrative sanction for establishing a Cell, entrusted exclusively with the task of planning and overseeing computerisation and implementation of judicial reforms in the courts. The object is to achieve uniformity and expediting implementation, once the plans are ready. Uniformity would enable interlinking of High Courts with subordinate courts, and also with the Supreme Court, by developing the needed software. This Cell in Supreme Court is not in any manner intended to undermine the independence of the High Courts or interfere with their working but would be available to render its assistance, if requested to do so.

ADR Systems

Lok Adalats are doing wonderful work in the disposal of cases. The statistics of their performance is very encouraging. Matter relating to framing of model rules and their adoption by the High Courts under Section 89 of the CPC is pending on the judicial side before the Supreme Court. Finalisation of the rules would enable introduction of the system of mediation in resolution of disputes. I am in touch with experts who would assist in formulating procedure and practise of court mediation, court annexed mediation and court referred mediation. There would be need for securing additional budget allocation and providing infrastructure catering to the requirement of mediation. The mediators would need to be trained. There is a huge potential for settlement of disputes through mediation, in the field of family disputes, property disputes, commercial litigation, claim cases and labour and industrial disputes and such like matters.

I know I am addressing today, a Conference consisting of the most elite personnel of judicial institutions of the nation. Under the Constitution of India, the High Courts are subordinate to none. They enjoy complete independence, guaranteed by the Constitution. There has to be a High Court for each State and under Article 216 of the Constitution, every High Court shall consist of a Chief Justice and such other Judges as the President may deem it necessary to appoint. A Chief Justice is almost a synonym for the High Court. He is the head of the State judiciary and a leader of his team of Judges. A Chief Justice has to be a 'team leader' with all qualities of re-assuring leadership. Chief Justices in the High Courts are the responsible heads of State justice administration system. Every Chief Justice has to be an epitome of total understanding and overall accountability. On him lies the responsibility of surcharging the institution with innovation and creative spirit.

For the common men, the High Courts are the final courts of Justice. It is not within the means of everyone, howsoever grave the injustice suffered by him might have been, to approach the Supreme Court of India. Under the Constitutional scheme, the High Courts are

supposed to function and dispense justice with such excellence that a matter having been decided by the High Court, one should accept it as a final verdict, leaving the Supreme Court to deal with only such cases as are of national importance and involve issues of constitutional significance, having wide ramifications. The same message is to be read in Section 100 of the Code of Civil Procedure, as amended in 1976, which attaches finality to the decisions of first appellate court on questions of fact – and even on questions of law – confining the scope of hearing, in the High Courts, to substantial questions of law only. Cases of individual injustice are not meant to be resolved by the Supreme Court. Such factors, escaping the attention of the High Courts, result in the Supreme Court being called upon to interfere even in cases of individual injustice. The High Courts have to be extra cautious and consciously alive to their status of being almost a final administrator of justice and ought to restore the peoples' belief in them.

As the head of Indian judiciary, I have legitimate justification to feel proud of. Indian judiciary, as one of the three pillars of democracy, continues to bear its burden and is recognised in the world. In the last Conference of Judges and Lawyers of Commonwealth Countries, Lord Woolf, the Lord Chancellor of U.K. & Wales, twice expressed his appreciation of the performance of Indian judiciary and recently, a learned Canadian judge has recorded that the judgments of the Constitutional Courts of India are entitled to great respect.

Higher judiciary in India, whenever it has come under criticism, it has been on account of some individual judges compromising on punctuality, probity, promptness and patience – which qualities are expected to be just imbibed into the personality of a judge very naturally. Such instances, fortunately for us, are very very few and a little bit of introspection, self-discipline and determination on our part can guard against their recurrence. "Restatement of Judicial Values" adopted in 1999-2000 by Indian Judiciary has been discussed, emphasised and re-emphasised in successive conferences, thereafter. It should continue to be followed.

Some relevant documents

Two additional paper-books have been circulated today. They contain very important documents which you may need to study before we gather for the joint conference on 18th September. These documents contain a treasure of rich information which we need to have. These are (1) Thinking aloud on a few issues concerning Justice Delivery System – by Justice M. Jagannadha Rao, (2) Second Report on 'Demands for Grants (2004-2005) of the Ministry of Law & Justice', (3) Annual Report (2003-2004), Ministry of Law & Justice, Government of India, (4) Judicial Arrears – Thinking outside the Box – by Shri T.K. Viswanathan, (5) Meeting India's Need for Justice – by Shri Surendra Nath, (6) Speeding up trials – by Shri Surendra Nath, and (7) A very brief Activity Report from N.J.A. Supplementary Paper Book-II is a paper, prepared by Justice M. Jagannadha Rao, on Law Clerks which will help you in planning and introducing the system in your respective High Courts. Other than these there are a few documents which we all need to go through. The super-most is Shetty Commission Report which is popularly understood amongst the subordinate judiciary as having dealt with only perks and emoluments of the judges. But that is not so. The report deals with a variety of subjects relating to judicial reforms, legal education, training of judicial officers, conduct and behaviour of judges, inter-relationship of members of judiciary at different levels and so on. Yet another very interesting document is 14th Report of Law Commission of India, dealing with Reform of Judicial Administration, submitted by eminent jurist M.C.

Setalvad, on September 26, 1958 and other members of the commission which, included Shri G.S. Pathak also. Though the report is 46 years old, it deals with issues as alive today as they were then. In fact, a selective reading of this report has enabled me to learn a lesson. Similar problems afflicted the administration of justice about five decades age, as they do us today. The process for reforms is an ongoing process. Let me tell you that the judiciary is faced with similar problems all around the world. However, we are the ones who suffer slow pace in finding out solutions. The purpose of my making a reference to these documents is two-fold. Firstly, these documents would enable us to prepare for the joint conference. Secondly, I appeal to you to share this store of knowledge and information with your brother judges and also with members of subordinate judiciary. That would enlighten them and make them, not only aware of the problems but also, build, in them confidence and positive attitude towards solving the problems.

I am tempted to quote two stanzas from the poem written by Longfellow in the beginning of 18th Century, giving an eternal message, all time true, which I find most appropriate for those who are entrusted with the task of administering justice *i.e.* all of us. In the beginning he says:—

"Tell me not, in mournful numbers,
Life is but an empty dream!–
For the soul is dead that slumbers,
And things are not what they seem."

And he concludes by saying:—

"Let us then be up and doing,
With a heart for any fate;
Still achieving, still pursuing,
Learn to labor and to wait."

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* Inaugural Speech delivered on occasion of Chief Justices' Conference, 2004 on 4th September, 2004 at Supreme Court Premises.