ENVISIONING JUSTICE IN THE 21st CENTURY*

At the very outset, I express my thanks to the Hon'ble Prime Minister of India – a man of learning and great vision, for convening this joint Conference of Chief Justices of the High Courts and Chief Ministers of the States in the country and innovating the theme – "Envisioning Justice in the 21st Century" for joint deliberations. This Conference is the outcome of the Hon'ble Prime Minister's concern for strengthening the justice delivery system of the country to enable it to face the challenges of the 21st century. The Heads of the State Judiciary and the Heads of the Executive of the States have all assembled here, at his invitation, with a common purpose. The ultimate goal of all of us is to serve the people of India, upholding the letter and spirit of the Constitution. The Constitution of India has defined and declared the common goal for all of us as – "to secure to all the citizens of India Justice – social, economic and political; Liberty; Equality and Fraternity". We are all bound to uphold the constitutional values and principles of democracy. The message, that if we do not save democracy, democracy will not save us is loud of clear. The hopes of teeming millions are focused on us for protecting their life, liberty, property and all the rights, which the Constitution of India and laws of the land grant and guarantee. The eternal value of constitutionalism is the rule of law which has three facets, *i.e.,* rule by law, rule under law and rule according to law.

Judiciary in Indian Democracy

In a democratic society, the concept of justice is not confined to judiciary alone. It is also true of all the other pillars of democracy. If people lose faith in the justice dispensed to them, the entire democratic set up will crumble down. It is the trust and confidence of the people, in the responsiveness and ability of every organ of the State to deliver true, fearless and impartial justice, which is the foundation of democracy and the bedrock of every civilised society.

The seekers of justice approach the courts of justice with pain and anguish in their hearts, on having faced legal problems and having suffered physically or psychologically. They do not take law into their own hands as they believe that they would get justice from the courts at the end and on some day. We owe an obligation to them to deliver quick and inexpensive justice shorn of complexities of procedure. At the same time, it is to be remembered that sheer quantum justice without quality would be disastrous. The elements of judiciousness, fairness, equality and compassion cannot be allowed to be sacrificed at the altar of expeditious disposal. The hackneyed saying is that justice delayed is justice denied. But justice has to be imparted: justice cannot be hurried to be buried. We have to 'decide' the cases and not just 'dispose' them off.

The theme of the Conference reminds us of our having entered the 21st century. The turning point of this millennium has been full of challenges. Globalism is the order of the day. We are parties to international agreements and treaties like the GATT and the WTO. We shall have to march with the advancements in the fields of science, technology, trade and

commerce, if we have to have our share in international prosperity and achievements. The secret of survival lies, not in keeping away but in joining the race and competing so as to achieve excellence by international norms. We shall have to strive for it and that cannot be an isolated effort; it shall have to be an effort of the nation as a whole. That is why, today, we are here together.

Challenges before Judiciary

I owe a duty to share with you the pleasant perception of members of other judicial systems. Indian judiciary is held in high esteem, in all the developing as well as the developed countries of the World. It is not now uncommon to hear from time to time, encomiums showered by eminent jurists and judges on the quality of the decisions delivered and the hard work, incessantly done by members of the Indian Judiciary. We, as citizens of India, can legitimately feel proud of this recognition. However, there is criticism often from uninformed or misinformed quarters that the Indian Judiciary is unable to clear the backlog of cases. At times, question marks have been placed on the credibility of the judiciary on account of some aberrations which are not the product of the system but are individual in nature and are isolated cases. These factors have tendency for bringing bad name to the entire system.

We are not touchy about criticism, so long as it is done with objectivity. Full facts are not brought to the notice of the people and brighter aspects of our justice administration are not highlighted. Available and relevant statistics would show that it is much easier to be critical than correct. For example, though the pendency of cases is always highlighted, what is never spoken of are the figures of annual filing and disposal. During the last three years, on an average, the subordinate courts have disposed of 1.30 crores cases every year while the High Courts have disposed of 15 lakhs cases per year. The Fast Track courts have disposed of 3.70 lacs of cases, during the last three years. The Supreme Court of India is disposing of 48,000 to 50,000 cases per year. It is often remarked that the percentage of conviction in criminal cases is just 6%. 'Crime In India, 2000' published by the National Crime Records Bureau, Ministry of Home Affairs, Government of India reports that the conviction rate is 41.8% in IPC cases and 81.4% in offences, under special and local laws. According to the same Report for 2001, 9.31 lacs of IPC cases and 26.60 lacs of non-IPC cases were disposed of during that year. Such facts, when brought to the notice of the people, would certainly change their perception about the judiciary.

The above statistics have to be appreciated in the light of the fact that the Law Commission, in its 120th Report (1987), stated that the number of judges per million population in India was 10.5 (which is now said to have gone up to between 12 and 13 per million) which is the lowest in the world. Recently in the *All India Judges Association's* case, (2002) 4 SCC 247, the Supreme Court has desired the number of judges to be increased, in a phased manner, in five years, so as to raise the judge to population ratio to 50 per million. Any substantial progress in that direction will silence the critics of Indian judicial functioning.

Calling for some introspection, I pose a question for the consideration of all those present – whether the Judiciary is solely responsible for the backlog? I have given the broad statistics of the performance of the judiciary. The fact remains that the people's faith in our judicial system has continued to remain firm inspite of the backlog and delays. It is an appropriate

time to sit together and make a scientific and rational analysis about why and how the backlog has occurred and whether, with a specific plan we can clear the backlog. The ticklish problem has indeed a simple solution as in school-arithmetic on quantum of work, average workload and minimum number of workmen is required. We have diagnosed the ailment. The medicine is known. But we have yet to make provision for purchasing the medicine and administering it. We cannot leave it to the patient, alone, to cure his illness, all by himself.

Meagre Plan allocations work out to 0.071% and 0.078% of the total outlay in Ninth & Tenth Plans:

During the *Eighth Plan* (1992-97), the Centre spent Rs. 110 crores on improving infrastructure, such as constructing court rooms etc. In the *Ninth Plan* (1997-2002) the Centre released Rs. 385 crores for fulfilling priority demands of the judiciary. This was *0.071%* of the Centre's Ninth Plan expenditure of Rs. 5,41,207 crores. During the Tenth Plan (2002-2007), the allocation is Rs. 700 crores which is *0.078%* of the total Plan outlay of Rs. 8,93,183 crores. The experience shows that these meagre allocations of *0.071% and 0.078% by the Planning Commission in the 9th and 10th Plans,* respectively, are totally inadequate and coupled with the formulation of a centrally sponsored scheme with a condition that the utilisation of the Central Grant, is permissible only if a matching grant is provided by the States, makes it also unfortunate. The Central Government had represented before the Supreme Court, in the year 1993, that it had included the judiciary in the Plan expenditure. The Planning Commission is then expected to make not such meagre allocations and that too by way of the formulation of a centrally sponsored scheme, which makes the utilisation of the Central Grant, conditioned and dependent upon a matching grant being provided by the States, in the context of the grave need to establish more courts, ignoring immense pressure on Courts and general criticism as to the heavy backlog.

In this background, I would like to share a few thoughts on the subjects which are on the agenda of the Conference, of which you are well aware.

Modernisation of courts

The core values of justice and judges are eternal and have been handed down as a rich heritage from the past to the present. However, today, we are living in the age of computers. Our methodologies are outdated and need a re-look with innovation. Lord Devlin, a great law lord with profound common sense had said sometime on the courts of England – and it would be interesting to quote what he said – that "if our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back". Records of the courts have to be computerized. Facilities for e-filing and hearing through video-conferencing need to be introduced. This will eliminate such deficiencies in the working of the courts as are the outcome of human weaknesses. The system will be fast, neat and clean and accessible with more ease. It would add to the efficiency of the judges. The Supreme Court has to be inter-linked with the High Courts and the High Courts with the subordinate courts, including those situated in the remotest corners of the States. A litigant sitting in north-east or down-below in Kanyakumari should be able to find out the progress/status of his case in the Supreme Court or the High Court just by the push of a button, dispensing with the need to contact someone in Delhi or travelling to Delhi for this purpose alone.

In this regard, a proposal has been sent to the Central Government for establishing a Cell in the Supreme Court consisting of experts having knowledge of judicial system, information technology and management, who will prepare the blue-print and oversee the implementation of the plans, once finalised. The experts in the Cell will also be available to assist the High Courts, ensure uniformity in the system and implementation of projects throughout the country. Computerisation in courts does not need very substantial investment and the results would far outweigh the amount of expenditure involved.

In advanced countries, research has been done for standardising the court buildings so that the lock up, the Magistrates and connected departments/facilities are available within one campus, avoiding the need for frequent movement of prisoners, security personnel and other associated movements and that would take care of security risks as well. Similar research is required to be carried out for our system so as to rationalise and standardise court buildings, court staffing patterns and even residences of judges. The judges, in the very nature of their duty, have to work beyond the court hours, in mornings and evenings, and hence need to maintain a residential office and library. Old and outdated court buildings can be phased out by a time-bound programme.

New trends in litigation, such as those related to intellectual property rights, cyber crimes, environment, money-laundering, competition, telecom, taxation, international arbitration and so on, need expertise. The judges need to be trained and updated for achieving and maintaining professional excellence. Need for judicial training and continuing education is, to a large extent fulfilled by establishment of the National Judicial Academy in a beautiful campus situated on a hillock at Bhopal in Madhya Pradesh. The State Judicial Academies have already come up in 14 States. The national and state level academies would work in co-ordination with each other, avoiding overlap. While the state level academies would target members of the subordinate judiciary, the National Judicial Academy would aim at catering to the requirements of the higher judiciary. Advent of National Law Schools with five years' course of study has caused a revolution in the field of legal education and legal profession. Brilliant students are coming out of these law schools and are competent enough to appear and argue before courts of law on the first day of their entering the profession. A dialogue has already been initiated to re-model the imparting of instructions in law, tailored in such a way that, after initial education, different levels of legal education are available to those who aspire to enter the legal profession, to those who aim at joining judicial services and to those who wish to just acquire a degree in law for academic purposes only or wish to remain confined to academics and research.

Use of ADRs

The philosophy of Alternate Dispute Resolution systems is well-stated by Abraham Lincoln – "discourage litigation, persuade your neighbours to compromise whenever you can. Point-out to them how the normal winner is often a loser in fees, expenses, cost and time." Litigation does not always lead to a satisfactory result. It is expensive in terms of time and money. A case won or lost in a court of law does not change the mind-set of the litigants who continue to be adversaries and go on fighting in appeals after appeals. Alternate Dispute Resolution systems enable the change in mental approach of the parties. Lok Adalats have worked very well and satisfactorily in our country. The first Lok Adalat was held on 14-3-1982 at Junagarh in Gujarat – the land of Mahatma Gandhi. Lok Adalats have been very successful in settlement of Motor Accident Claim cases, matrimonial/family

disputes, labour disputes, disputes relating to public services such as telephone, electricity and bank recovery cases and so on. Ever since 1987, Lok Adalats have been given statutory recognition. Some statistics may give us a feeling of tremendous satisfaction and encouragement. Upto 30th June, 2004, 2,23,159 Lok Adalats have been held and therein 1,63,31,357 cases have been settled, half of which were motor accident claim cases. More than 4,751 crores of rupees were distributed by way of compensation to those who had suffered accidents. 66,73,240 persons have benefited through Legal Aid and Advice. In 2002, the Parliament of India amended the Legal Services Authorities Act, 1987 requiring establishment of permanent Lok Adalats for public utility services. Most of the State Governments have not cooperated in establishing such permanent Lok Adalats.

Section 89 of the Code of Civil Procedure, as amended in 2002, has opened the scope for introduction of conciliation, mediation and pre-trial settlement methodologies. Once the model rules, framed by the Committee headed by Justice Jagannadha Rao, Chairman, Law Commission of India, under the directions of the Supreme Court of India, have been adopted by all the High Courts, funds will be required to be sanctioned to meet the need for providing the requisite infrastructure and for employment of mediators and conciliators as part of the justice delivery system. This would drastically bring down the pendency of cases by accelerating disposal of such cases. In California, where the systems of mediation, conciliation and pre-trial settlement have been introduced only two decades ago, it has been found that 94% of cases are referred for settlement through one or the other of the ADR systems and 46% of such cases are settled without contest. The result is that California has been able to achieve the goal of final decision of civil cases within a period of less than 2 years from the date of institution. The mediators and conciliators shall have to be trained so as to acquire professional expertise in the art of mediation and conciliation in India. The Hon'ble Minister for Law and Justice and the Chief Justice of Bombay High Court are in touch with me for holding a Conference on ADR systems in Mumbai on 20th November, this year, where, leading experts in the world, on ADR systems would be available for launching the movement on a large scale.

Limited financial autonomy needs to be given to the High Courts. The budgetary demands raised by the High Courts are generally reasonable and never extravagant. Ordinarily, such demands should be met by way of allocation and as a part of plan expenditure. The Chief Justices of the High Courts should have authority to make appropriation and re-appropriation within the overall allocation. However, the High Courts should also have proficient accountants and a system of internal audit so as to exercise full financial checks and cross-checks.

The Supreme Court experience

The pendency of cases in Supreme Court, which was more than 1,06,000 in the year 1993, stood reduced to a mere 19,032 in the year 1997. This was made possible by computerisation, certain innovative steps such as grouping of cases, modernising the case management system and allocation of needed funds by the Central Government. Supreme Court has cleared almost all the criminal appeals in which the accused may be in jail and today such an appeal can be heard and decided within 3 to 4 months from the date of filing. The Supreme Court has introduced the system of Law Clerks or Research Assistants, one each being attached with every Judge, so as to assist in research work which will improve the quality of judgments and also accelerate the decision making process.

Unfilled vacancies

The total strength of judges in the Supreme Court is 26 of which 25 are in place. The sanctioned strength of Judges in the 21 High Courts of the country is 719 out of which 228 remain to be filled up. Against these, 115 recommendations have been received from Chief Justices of which, after my assumption of office, I have cleared 71 recommendations while 30 are in pipeline. 14 are with the Government. 113 recommendations are yet to be received from Chief Justices of the High Courts. In the subordinate courts, the sanctioned strength of the judges/magistrates is 13,204 out of which 2010 posts are lying vacant and are yet to be filled. There are long standing vacancies in the court staff which are not being filled because of financial crunch or ban on appointments. The courts have bare minimum staff and that too is already over-burdened. On account of unfilled vacancies, the subordinate courts function like lame ducks. These are the matters to be taken up by Chief Justices of the High Courts with the respective Chief Ministers of States.

Special Judges are appointed at the request of the Central or State Governments. But that is done, out of the existing strength, without increasing the number of Judges and without providing additional infrastructure. Far from delivering speedier justice this has an adverse impact on the justice delivery system.

The courts established by State Governments deal with litigation, 50-60% whereof is referable to laws, enacted by the Central Government. According to Justice Jagannath Shetty Commission, there are 340 central statutes which are being administered by the trial Courts in the States. This justifies a larger share of contribution by the Central Government for justice administration through subordinate courts of the States. After the 42nd Amendment in the Constitution, "Administration of Justice, Constitution and Organisation of Courts" is a subject brought from the State List into the Concurrent List, as Entry 11A. Further, Article 247 of the Constitution vests power, coupled with duty, on Parliament to provide for the establishment of additional courts for the better administration of laws enacted by Parliament. These constitutional provisions are yet to receive the requisite attention of the Central Government.

Every Bill in Parliament or State Legislature does have a Financial Memorandum, attached to it and the Memorandum mentions the allocations required from the Consolidated Fund of the Union/State but it confines itself to the expenditure for administrative purposes. The judicial impact of legislation on the Courts is not being assessed in India as is done in the United States where, there is a special statute for this purpose. Almost every statute made by the Parliament or State Legislatures, creates rights and offences which go for adjudication before the trial and appellate Courts established by the States (or before the High Courts). I strongly urge for a policy decision being taken to make adequate provision in the Financial Memorandum of every Bill, presented in Parliament or State Legislatures to reflect the additional expenditure, likely to be incurred by the judiciary as a consequence of any Central or State legislation.

Union of India, State Governments, Public Sector Undertakings and Government Corporations, taken together, are the largest litigants in the courts of law and contribute the larger chunk of litigation. Indecision, apathy for civilians' rights and absence of accountability are the major factors. Added to this, are the problems of not appointing government advocates and public prosecutors, promptly and in requisite numbers or

making such appointments often on considerations other than merit. All the governments should develop an in-house mechanism for settling such disputes, to which they are parties, before they reach the court and also by taking a conscious decision whether to litigate or not to litigate by constituting high power committees, assisted by former Judges or Legal Advisors of outstanding integrity and independence. In the appointment of government advocates and public prosecutors, consultation with heads of the judiciary at the level of Chief Justice or District Judge should be made compulsory. This would avoid unnecessary litigation and also save the government from suffering decrees by default.

87 Family Courts in the country are loaded with 2,24,838 cases. In the year 2003, 83,439 matrimonial cases were decided but in the same year 97,549 new cases were filed, leaving behind an annual backlog of 14,000 matrimonial disputes! The purpose of establishing Family Courts is to save the institution of marriage and not to demolish it casually. The number of Family Courts needs to be so increased, as to reach the target of every matrimonial dispute being decided within six months from the date of institution. Such Family Courts must be assisted by Marriage Counsellors who can artfully persuade the parties to unite and not to break.

Various Commissions and Tribunals have been constituted to share the burden of courts. Most of such alternative forums are limping. Absence of proper accommodation for office and for residence and inadequate staffing are common complaints. I regret to mention the nature of some of the problems which came to my notice, sitting on the judicial side. The Chairman of one Commission could not write judgments because his secretary, made available on deputation was withdrawn by the Government, without notice. Certified copies could not be delivered to the successful party for reaping fruits of the decision or to the losing party for exercising his right to appeal because there was no paper and also no money to purchase the same. These are minor issues and will not arise, if only a little care and caution is taken.

Periodically, the Chief Justices of all the High Courts of the country meet under the chairmanship of the Chief Justice of India. Resolutions passed at such a high level Conferences, sent to the governments, do not receive requisite attention. I feel sorry to mention that many of the recommendations, made collectively by the heads of judiciary in the country, are dealt and disposed of mostly at the hands of bureaucracy by simple words like – 'rejected', 'considered' and 'not feasible'. On inviting attention, the only response which is given is – 'matter is receiving consideration by the Government'. Such responses, to say the least, are lacking in propriety and courtesy.

The problems of our justice delivery system are very many but not insurmountable. Similar problems are faced by judiciaries of other countries. The only difference is that we lag behind in implementing solutions. Each wing of governance must discharge its duties and fulfill its obligations towards the other one. The judicial branch cannot fund itself. The framers of the Constitution have chosen not to provide for a judiciary which is financially self-supporting. It's dependence on executive for funding is part of a system of checks and balances and is not intended to create obstacles. The concepts of independence and accountability of the judiciary are two arms of a triangle, resting on the baseline of funding. I am told that most of the States are suffering from financial crunch but it is only a question of

determining correct priorities of cutting on avoidable expenditures. Justice dispensation is unavoidable.

Presently, as a matter of policy, Chief Justices of the High Courts are appointed from outside the State barring exceptional situations. During the Chief Justices' Conference, held on September 4, 2004, majority of the opinion has been in favour of discontinuing such policy and enabling appointment of Chief Justices in the High Courts from within the State. I have gone into this demand and also held some high level discussions. This policy decision was taken in the year 1990 by an agreement between the then Chief Justice of India and the Central Government, backed up by a Cabinet decision. For any modification in the policy, the same process shall have to be followed. I have initiated the dialogue and the result shall have to be awaited. Obviously any change in policy which has been in vogue for two decades, would need a serious and cooler consideration of pros and cons, guided by various relevant factors.

I am very confident that the deliberations in this Conference would succeed in arriving at a better understanding of the constitutional obligations and generate a better outlook, envisioning justice in the Twenty First Century. Our deliberations at the last Chief Justices' Conference are testimony of our determination for rising to the occasion and our dedication to make available an independent and efficient judiciary, capable of delivering 'justice with excellence' to the people of India. We need your helping hand in discharging this obligation. I declare, on behalf of Indian Judiciary, *the year 2005 as the year of excellence in Indian Judiciary*, dedicated to reduction in arrears without sacrificing quality and rising to the highest standards of conduct and behaviour. There will be no place for any corrupt or indolent in the system. I mean business. The newspaper reports of last few days will show that cracking the whip on those who by their conduct or behaviour do not deserve to be members of an ideal judiciary, has already commenced. I am confident of developing a system in which the best of talent and men of character and integrity shall alone have a place.

Our laws have to be alive to global scenario, consistent, with the international treaties and agreements and taking care of national interests as the uppermost and so has to be the interpretation and administration of laws. India has to be a venue for international arbitrations and world leader in IPRs. Legal aid and legal literacy programmes have to expand to take care of the poor and ignorant. With the introduction of five years' course of study in Law Schools, National Judicial Academy and other State-level Academies, having come up for providing training and continuing learning with emphasis on lessons in ethics and morality, modernisation of courts, inter-twining of ADR methodology with justice dispensation process and, at the end, a little care towards strengthening the judicial services – numerically and qualitatively – so as to attract better talent, I am confident that the Indian judicial system would succeed in delivering more quick and inexpensive quality justice and stand taller over all its counterparts, elsewhere in the world. Let me assure you, as the head of Indian Judiciary, that we shall leave no stone unturned in our endeavour to uphold the Constitution and the laws and fulfilling aspiration for justice of the people of India.

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* Key-note Address delivered at the Conference of the Chief Justices of High Courts and Chief Ministers of States on 18th September, 2004, at Vigyan Bhavan, New Delhi.