International Conference of Jurists –

Seminar on Judicial reforms

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Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India

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Shri Prakash Singh Badal (Chief Minister of Punjab)

Shri Bhupinder Singh Hooda (Chief Minister of Haryana)

Justice Mukul Mudgal (Chief Justice)

Esteemed colleagues from the High Court of Punjab and Haryana,

Members of the Bar, Ladies and Gentlemen,

I am grateful for the opportunity to attend this seminar on the theme of reforms in our judicial system. It is common knowledge that the root causes for the high pendency levels are the chronic shortage of judicial officers as well as inadequate budgetary allocations. While the erstwhile colonial government may have deliberately under-staffed and under-funded the judicial branch, the problem of a low 'judge to population' ratio has unfortunately persisted till the present times.

In recent years, the disposal rates of judicial officers have actually been improving with each passing year but the rate of institution of fresh proceedings is far higher. This is but natural in a society where millions of individuals are gradually emerging from the clutches of poverty, illiteracy and status-based discrimination. With a more egalitarian socio-economic order, more and more people will gain the capacity and the confidence to approach the judicial system. In this sense, we must recognise that a strong and efficient judicial

system is not only a pre-requisite for enabling social justice but also a public service which will be increasingly demanded by more citizens. While the existing pendency figures may be a cause for worry by themselves, we must prepare for a far bigger ‘docket explosion’ in the future. The onus is on us to improve access to justice for those sections of society who were excluded in the past. Hence, our agenda for judicial reforms should not only focus on reducing the existing pendency and arrears, but it should also account for the incremental challenges that await us in the years to come.

The comparison between judicial statistics from different States also shows that the litigation rates in various States do not bear a consistent correlation with their respective population. This means that in some States, a larger proportion of the population has been approaching the Courts as compared to that of other States. What is especially worrying is the immense disparity between the number of civil and criminal cases instituted in backward and insurgency-hit areas. A perusal of the pendency figures indicates that while there are more civil cases filed in developed areas, the reliance on the civil justice system is shockingly low in States such as Bihar, Jharkhand, Chattisgarh, Jammu and Kashmir as well as the North-Eastern States. This disturbing trend could have two explanations – one, that the number of courts if grossly inadequate, and secondly, that ordinary citizens are consciously not bringing their civil disputes before the judicial system. If the second of these explanations holds good, then it indeed calls for targeted interventions.

We must keep an open mind in addressing these issues. In order to make effective interventions, there might be a need to depart from some well-established practices and opt for radical changes in our judicial system. While the judiciary enjoys an exalted status in the opinion of the public, there must also be a willingness to change with the times.

Manpower planning: The first and foremost requirement is that of progressively increasing the number of judges, especially at the subordinate level. Unfortunately, it is perceived in many quarters that it is only those who are unable to build a practice of their own, who appear for the judicial services examinations. There must be some pro-active measures taken to change this perception. The prevailing system for recruiting judicial officers needs to be overhauled in order to attract the best available talent. Apart from improving pay-scales and service-conditions, there must also be a commensurate improvement of prospects for career-advancement.

However, it has been argued in some quarters that the recruitment process in most States is itself quite lengthy and cumbersome, thereby leading to the piling up of vacancies. It must be highlighted here that an elaborate selection process is necessary to ensure that only competent and suitable persons join the judiciary. The recruitment process is coordinated by the respective High Courts and the State Public Service Commissions who are responsible for conducting the written examinations and interviews. Hence, there are always bound to be some vacancies on account of the time needed

to conduct a thorough evaluation of the candidates, but nevertheless efforts must be made to keep the vacancies within proper limits.

There is, of course, scope for improving the examination-process by incorporating problem-based questions that test the candidates' analytical and communication skills rather than those of rote-memorisation. Some High Courts have also taken the initiative of organising pre-appointment training for selected candidates in order to equip them with necessary skills such as research, judgment-writing and case-management. In this regard, we must wholeheartedly support the activities of the National Judicial Academy (NJA) and the various State Judicial Academies that organise periodic training programmes for serving judicial officers. It is only through constant upgradation of knowledge, that our judicial officers will be able to tackle the challenges before them.

Another proposal for improving the quality of subordinate courts is the creation of an All India Judicial Service (AIJS). This would entail the formation of an All-India cadre for officers appointed at the rank of Additional District Judge (ADJ). The recruitment would be through a national-level examination and it is suggested that upto 25% of the officers in each State could be drawn from this All-India cadre. However, this proposal has faced some criticism since there are apprehensions that individuals belonging to one State may face language problems when they are posted to another state. This can be addressed by factoring in the candidate's language skills while

deciding on the location of their assignment. The main objective is to ensure a degree of uniformity in the examination process.

An important measure taken for expanding the subordinate judiciary is that of the Gram Nyalayas Act. It envisages the creation of courts at the level of Intermediate Panchayats or a group of contiguous Gram Panchayats. These village-level courts would be manned by judicial officers of a rank equivalent to a Civil Judge (Junior Division) or a Judicial Magistrate First Class (JMFC) and they will be known as ‘Nyaya-Adhikaris’. It has been estimated that nearly 4,000 judicial officers will be needed in order to implement this scheme. I must also lay stress on the fact that these officers will be chosen through the regular judicial services examination conducted by the respective State governments. There is tremendous potential in the Gram Nyayalayas scheme since the intention is to reduce the costs that are borne by litigants in approaching courts located at district-centres. The underlying philosophy is of course to bring justice to the doorsteps of rural citizens. The Central Government has already assured financial assistance to the State Governments for the purpose of establishing the ‘Gram Nyayalayas’.

Coming to the High Courts, I must reiterate here that there has been an upward revision in the sanctioned strength of several High Courts in recent years. The Central Government has promptly approved of the requests for increasing the number of judges at the High-Court level. However, there exists a disparity in the proportion between the number of High Court judges and the respective

population of different States. This is so because the rate of institution, disposal and pendency of cases is also taken into account for deciding the strength of the judges.

As far as appointments to the Supreme Court are concerned, I must say that we are bound by the procedure in accordance with the Constitution Bench decisions given by our predecessors in 1993 and 1998. The proper forum for suggesting changes to the appointments process is the Union Parliament. It would of course not be proper for me to enter the debate at this stage.

Physical infrastructure: A vast majority of our Magistrates and Civil Judges work with very poor infrastructural facilities. Even the District and Sessions Judges face numerous obstacles in their daily routine on account of poor maintenance of court complexes. While the progressive expansion of the judiciary through measures such as the Gram Nyalayas Act should be supported, there is also a compelling need to ensure the proper maintenance of the existing courts. This calls for consistent financial commitments from the respective State governments. Independent studies have shown that the budgetary allocations for the judiciary form a very small portion of the aggregate public expenditure. Some commentators have suggested that the picture will drastically improve even if a large portion of the Court-fees that is collected at different levels is re-invested into the judicial system. It must be recognised that expenditure directed at the judicial system will help in preventing the long-term costs associated with

protracted litigation as well as the intangible costs that are incurred by society on account of unresolved disputes.

Apart from financial commitments, the judiciary has also been making attempts to streamline its own administration. One such measure is a comprehensive system for compiling reliable statistics on the institution, disposal and pendency of cases at all levels. The National Informatics Centre (NIC) has implemented a computerised system for compiling this data from the Supreme Court and the various High Courts which are also responsible for collecting data from the subordinate courts lying in their respective territorial jurisdictions. These statistics are compiled on a monthly, quarterly and annual basis with a clear indication of various subject categories. The availability of accurate and reliable judicial statistics is of course a necessity to implement the proposed 'National Arrears Grid'. It is important for judges, administrative staff as well as policy-makers to study the statistics at length for identifying the root causes behind pendency in particular areas.

Of particular note, is the implementation of the E-Courts project under which thousands of judicial officers have been equipped with computer facilities. Information Technology (IT) tools are being progressively used in the administration of justice – especially for purposes such as notification of cause-lists as well as the publication of orders and judgments on court websites. Efforts are underway to devise comprehensive programmes which will help advocates, litigants and the general public to easily track the progress of ongoing

cases. The National Judicial Academy (NJA) at Bhopal has been developing a ‘Case Signalling System’ for this purpose which will also generate reliable empirical data on the problematic stages in the proceeding of each case.

In order to implement these technological solutions, the judiciary must of course hire the software and hardware professionals who have the relevant expertise. The efficiency of the judges can be greatly enhanced if they are ably supported by the administrative staff which looks after numerous routine functions such as filing, correction of records, listing and eventual processing of decisions. With the increased use of IT facilities, the performance of these functions can also be made more smooth and litigant-friendly. In the larger scheme of things, due emphasis must be placed on recruitment methods and service-conditions of the various personnel who work in the judicial system.

Procedural Innovations: While expanding the size of the judicial system is an important objective, I must also highlight the importance of pursuing several other strategies to streamline the administration of justice. All of you are conversant with the benefits of resorting to Alternative Dispute Resolution (ADR) methods, especially since civil judges are now empowered to refer disputes for resolution through Permanent Lok Adalats, Mediation and Negotiated settlements. Most of the High Courts and numerous District Courts have established ‘Mediation’ centres for the twin purpose of resolving disputes as well as training judicial officers and lawyers in these methods. For many

categories of cases filed before the courts – such as those relating to traffic offences and petty property disputes, methods such as conciliation and negotiation are far more appropriate than the traditional model of adversarial litigation.

While the Legal Services Authorities have been increasingly organising Lok Adalats for many categories of disputes, it is also important to inform the general public about the utility of these methods. On account of incomplete information about the various options, an aggrieved party often chooses to proceed with lengthy-adversarial litigation instead of choosing more conciliatory methods. Even the Code of Criminal Procedure was amended in 2006 to include provisions for 'plea-bargaining' but public awareness about the same is quite limited. It goes without saying that all of us need to think about and promote solutions that need not always be 'Court-centric'.

The Union Law Minister as well as the Attorney General and the Solicitor General have repeatedly stressed on reducing the volume of litigation that involves the government as a party. This is indeed a welcome trend. They have already spoken at length on how to strengthen administrative remedies under the various statutes and on how to streamline the representation of the governments' interests before the courts. It goes without saying that judges should not be asked to second-guess and examine administrative actions as a matter of routine. Judicial interference should be confined to patent acts of illegality and unreasonableness. The Law Officers and

Standing Counsel who represent the various Ministries, Departments, Authorities and Public Sector Undertakings (PSUs) must also work to promote conciliatory methods for the purpose of addressing the grievances of citizens, public employees as well as disputes among government agencies themselves.

There are many other issues which deserve our collective attention and I hope that all of you will utilise the working sessions scheduled for today and tomorrow to discuss them at length.

Thank You!

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