

**Speech Delivered by Hon'ble Mr. Justice Ranjan Gogoi, Judge,
Supreme Court of India dated 07.12.2013 during the One Day
Special Programme for District Judges**

on

**Challenges facing the Indian Judiciary –
Identification and Resolution**

Respected Brother Kalifulla, learned Chief Justice and Judges of the High Court, learned District Judges and other judicial officers present.

Let me begin by paraphrasing Franz Kafka's famous parable, titled "Before the Law":

Before the Law, stands a doorkeeper. A man from the country approaches him and asks that he be allowed to enter the Law, but the doorkeeper refuses, saying that he cannot allow him to enter just now. The man thinks this over and then asks whether that means he might be allowed to enter the Law later. "That is possible," the doorkeeper says, "but not now." For years, the man waits outside the door, constantly requesting the doorkeeper to let him in. Quite often the doorkeeper gives him a brief interrogation, asking him questions about the place he comes from and many other things, but they are dispassionate questions, such as important people ask, and at the end he always says he cannot let him in yet. The man, who has equipped himself well for his journey, uses everything, no matter how valuable, to bribe the doorkeeper, who accepts everything, but says, as he does so, "I am only accepting this so you will not think there is something you have omitted to do." The man grows older, and just as he is about to die, he asks the doorkeeper the question that sums up his experiences: "Everyone seeks the law; so how is it that in all these years, no one apart from me has asked to be let in?" The doorkeeper responds: "No one else could be granted entry here, because this entrance was intended for you alone. I shall now go and shut it."¹

This story simply expresses the ordinary man's perception of the Law and its doorkeepers, i.e., Judges. In the eyes of the public, while we are formidable authorities vested with great powers, regrettably, we may also appear unapproachable. It is to ease this disconnect between judges and litigants that

¹ See Franz Kafka, THE TRIAL, Oxford World Classics, pp.153-155.

I have chosen to speak on the challenges to the Indian Judiciary. I am aware of the vast knowledge and experience possessed by my audience, and therefore, do not consider it appropriate to address you on a narrow, contextual issue. Rather, I wish to speak on the innate problems being faced by the Indian judiciary and attempt to identify possible solutions to the same.

Very recently, the newspapers carried a story of postman Umakant Sharma, who was acquitted of appropriating Rs 57 by a metropolitan magistrate, but not after he faced 350 oral hearings, and 30 years of suspension from work. While the accusation came in 1984, Umakant was acquitted after a long 29 years. While Umakant's story depicts the sorrier side of the justice delivery system, Mahipat Bamgude's case captures its trivialization. Mahipat Bamgude and his friend, Ghanshyam Bhosale, then aged 22 were travelling to a wedding in a launch, when a fellow passenger's leg accidentally hit the complainant, Shankar Nivangune. This minor accident led to such heated arguments, that Shankar filed a complaint in 1982 against the two u/s 325 (voluntarily causing severe hurt) and 504 (intentional insult) read with S.34. The case remained forgotten until 2010, 29 years later, when it was listed for first hearing. By then, the complainant and all but one of the 13 witnesses had died.

The backlogs plaguing our judicial system have gained us disrepute in the international community, too. A prime example is the investment arbitration award in the case of ***White Industries v. Republic of India***. An ICC Tribunal found that the Indian Supreme Court's inability to hear an Australian investor's appeal for over 5 years amounted to a breach of India's obligation to provide investors with effective means to enforce their rights under the India-Australia Bilateral Investment Treaty. India was asked to pay a hefty sum of AUS\$4.85 million to White Industries.

Let us take stock of the hard facts. Against the 900 seats available in different High Courts of the country, almost 250 are vacant. About 15,000 courts at the district and sub-divisional levels are functioning against the sanctioned number of about 18,000. In Tamil Nadu almost 162 courts are going unmanned. The pendency in the district and subordinate courts is a staggering figure of 2.68 crores out of which Tamil Nadu and Pondicherry contributes about 12.5 lakh cases.

Forty four lakh cases are pending in the High Courts of the country. The share of the Madras High Court is about 5 lakh cases. A former Chief Justice of the Delhi High Court has gone on record in admitting that it would take his High Court over 400 years to clear the backlog of criminal appeals alone assuming no appeals are filed in the meantime. I do not know the basis of the assessment made by the learned Chief Justice but what can surely be

perceived is a systematic failure compelling Courts to pass interlocutory orders taking into account the time frame that would be required for the trial or to hear the appeals. Are we heading to make delay the fourth principle for grant of injunction or a legitimate basis to seek bail even in heinous offences?

As far back as in 1987, the Law Commission had recommended that the Indian judge to population ratio of 10.5 judges to a million persons, ought to be increased to 107 judges to a million persons within a quarter of a century (by 2000) and to 50 judges per million by 1992.² Today, the sanctioned judge to population ratio stands at 15.4 judges per million persons. At a recent joint conference of Chief Ministers and Chief Justices, the participants decided to double the strength of the Indian judiciary to 37,000 judges, resulting in a ratio of 30 judges per million persons. This still falls grievously short of the targets set by the Law Commission. When compared with ratios in other countries, such as Australia's 58 per million, Canada's 75 per million, the UK's 100 per million, and the USA's 130 per million, this is indeed a sorry state of affairs. Even if we go back to the 1987 recommendation of the Law Commission, namely, 50 judges per million of population, India needs about 50,000 courts as against the present strength of 18,000, out of which, on an average, about 3000 seats seem to be vacant at any point of time.

The National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays was held in New Delhi in October 2009 to facilitate an immediate solution to the worrisome arrears of cases in Indian courts. The participants at the Consultations identified two major goals for judicial reform - increasing access to justice by reducing delays and arrears in the justice delivery system, and enhancing accountability through structural changes and by setting performance standards and capacities. It also formulated four strategic initiatives of policy changes, re-engineering procedure, human resource development, and leveraging information and communications technology.

These initiatives, along with a fifth initiative, namely, to improve infrastructural facilities of subordinate courts, were formulated as the 'National Mission for Delivery of Justice and Legal Reform' in 2009. The National Mission was approved by the Centre in 2011³. It aimed to reduce pendency of arrears from 15 years to 3 years by the end of 2012. We have not been very successful.

² Law Commission of India, "Manpower Planning in Judiciary in India: A Blueprint", Report No. 120, July 1987, p.3, paras 9 and 11.

³ Press Information Bureau, Press release dt. 23.06.2011.

Clearly, establishing more courts may not be the most feasible solution. Especially in times of austerity, such as these, it is inappropriate to seek unending financial assistance with a Dickensian, “Please sir, I want some more”.

There is an established link between literacy and economic wealth on one hand, and the filing of cases on the other. Litigants are generally greater in numbers in States with higher literacy rates and economic wealth.⁴ As literacy levels rise, so will the quantum of litigation.

By the most conservative estimates, the Scheme for National Court Management Systems (NCMS) formulated in 2012 by the Supreme Court predicts that the number of cases in Indian courts will increase to 15 crores by 2040, requiring the creation of 75,000 courts. Future Parliamentary enactments and growing trade-related disputes arising from globalization will also lead to an increase in litigation.

Perhaps it is time for us to look within ourselves for a solution for our multifarious problems.

The Indian legal system is a particularly refined system, bearing testimony to the ingenuity of human thought. The threads of Constitutional philosophy have weaved an exquisite tapestry of substantive and procedural laws. As a polity, we seek to achieve high values of liberty, equality and justice. The justice delivery system translates the rhetoric of these ideals into practical rules, such as, ‘no man shall be a judge in his cause’ and ‘no man shall be condemned unheard’.

However, the enormous challenges facing us today, combined with the pressing demands of the future, are compelling us to rethink and reassess our existing jurisprudence, to effectively deal with the increasing complexity of our problems. There is an urgent need for a debate on our substantive and procedural principles. Such a debate must emphasize on *shortening the judicial process* without sacrificing the extremely refined principles already determined or the quest for greater refinement thereof. It is quite unfortunate that judicial reform has been hitherto directed toward making external additions to the judicial superstructure (i.e., increasing courts, developing e-courts, additional support staff etc.), and that there has been no discussion on reassessing our jurisprudential aims. I firmly believe that a long-term solution to our problems lies in an informed debate on the above lines.

⁴ NCMS Policy and Action Plan, Supreme Court of India, 27.09.2012, p.4. : “For example, Kerala, with a literacy rate of over 90%, has some 28 new cases per thousand population as against some 4 cases per thousand population in Jharkhand which has a literacy rate of some 53%.”

The quality and timeliness of justice can also be improved by adopting simple procedural strategies.

‘Management’ is understood as the judicious deployment of resources for optimum output. In the context of backlogs and delay, court management is an innovative method of ensuring maximum output from a court by efficiently utilizing its human, physical and technological resources.

Subordinate courts are the first point of contact of the common man with the justice delivery system. They grapple with questions of both fact and law, without the privilege of choosing the composition of their docket. For this reason, the problem of delay and pendency affects them more acutely. Court management practices should, therefore, be adopted by judges in the subordinate judiciary to combat the challenges of backlogs.

Of course, it is the prerogative of every Judge to determine the manner in which his court functions. However, it is possible to cull out certain common principles. For instance, cases must be categorized immediately upon admission to the docket according to the statute, provision and subject matter. Categorization must also follow the rule of priority, as it is appropriate to decide certain types of cases more expeditiously than others, such as cases filed by senior citizens, terminally ill persons etc. Certain cases have been described as “bottlenecks” for their tendency to clog the justice delivery system.⁵ This is not to term them unimportant, but to underscore their susceptibility to repetitive rounds of litigation and slow rate of disposal. Pre-hearing categorization of cases can effectively identify such cases and improve the quality as well as timeliness of justice.

Categorization can immediately point to certain cases that may be equally, if not better, resolved through Alternate Dispute Resolution (ADR) mechanisms. These days, matrimonial disputes, where it is more essential to focus on the human relationship than the legal, are being increasingly resolved through mediation and conciliation. Arbitration appears very attractive to parties in a highly complex commercial dispute. Moreover, a significant portion of “bottlenecks” are offences which are not properly speaking, *criminal* in nature, but have been statutorily described as such. This is due to the tendency of viewing the Judiciary as the solution to all, and not merely legal, problems. The subordinate judiciary must respond quickly to these cases since it is inessential to delve into the minute details of the facts surrounding such disputes.

⁵ Such as matrimonial cases, cases under S.138, Negotiable Instruments Act, traffic challan cases, motor accident claims, cases under S.498A, IPC, cases under the Prevention of Corruption Act, cases under S.482, CrPC, and civil suits which may have become infructuous.

Apart from case management, Judges must control the time period of cases before them. The average term of a case can be controlled through litigation management, too. This involves fixing a time-table for the main stages of a case and strictly adhering to it. Doing so also reduces the opportunity for advocates to seek multiple adjournments on flimsy grounds and thus, protract the case. As far as possible, interim applications must be disposed of in a single hearing.

It is also possible to shorten the lifespan of a criminal case by proposing that parties engage in plea-bargaining, rather than a full-fledged trial. This alternative may appear attractive to the accused in the context of average pendency of criminal cases, to say nothing of the interim applications and appeals arising from these. Admitted socio-economic offences, particularly white collar crimes, may be quicker resolved through plea-bargaining. It additionally offers visibility and compensation to victims of an offence, a benefit that is all too often forgotten by legal practitioners.

In the twentieth century, Judges must engage with information technology systems. It is unfortunate that Indian courts remain wholly paper-dependant, while their foreign counterparts have long since embraced paperless systems of court administration. The executive has approved the establishment of e-courts in India on these lines. We must now rise to the occasion by adapting ourselves to the changing times.

Under the e-courts scheme, it is proposed to make the entire court and court administration process online. Pleadings will be filed online, defects pointed out by the Registry rectified online, electronic payment of court fee, summons issued via email, and judgments and orders available online in real time (as and when they are dictated).

Also, Judges must acquaint themselves with online journals and databases that provide immediate results to legal quandaries, as well as contemporary jurisprudential thought. While case databases make it easier for a judge to research the latest judgments, Indian and international law reviews offer deeply analytical food-for-thought. Through such practices, I believe that opinions emanating from lower courts will become as informed and strong as the Constitutional courts'.

In this context, it is important to train the judges in writing judgments which are precise and clear. Judges must also remember that apart from laying down or interpreting law, they are resolving a dispute between members of the public, who are often strangers to the world of law. A concise, clear and coherent judgment improves public accessibility to the Law.

Limited guidance on writing judgments in civil and criminal matters are provided in the Codes of Civil and Criminal Procedure respectively. In ***CIT v. Saheli Leasing***⁶, the Supreme Court laid down further guidelines for writing judgments, such as avoiding over-use of citations, excessive rhetoric or mention of unrelated matters.

The rules of judgment writing in civil and criminal matters are common to the extent that they require statement of the points at issue, decision thereon and reasons for such decision. This guidance provides some formal structure to the judgment. However, it leaves the more substantive aspects of the judgment to flow naturally from the subjective understanding of a Judge. This freedom has allowed the Indian legal system to be informed by judges, diverse in thought as well as expression.

The cardinal principle of writing a judgment is that it must be concise. Brevity is indeed the heart of a judgment; it enables the appellate court to quickly grasp the conclusion and the reasons for the same. While a court of the first instance has often little choice but to deal with every aspect of the matter, it is also true that a well-considered opinion needs no adornment.

On a lighter note, some judges in the USA have taken the principle of conciseness to its logical extreme. Take for instance the entire opinion of Judge J.H. Gillis of the Michigan Court of Appeals in ***Denny v. Radar Industries Inc.***: “*The appellant has attempted to distinguish the factual situation in this case from that in [another case]. He didn’t. We couldn’t. Affirmed. Costs.*” Let me clarify that I am certainly not advocating this brand of brevity.

One particularly avoidable feature in lower court judgments is the verbatim reproduction of precedent, often filling precious page after page of the decision. Where precedent must be relied upon, it is more useful to sum up the *ratio decidendi* in a few lines. In crystallizing the words of past peers, there is gain to the Judge penning the opinion, since his views become clearer to his own self. Conciseness is also apposite while writing interim orders.

The problem of backlog and delay is not as acute in other parts of the world. This is for a variety of reasons. The US Supreme Court, for instance, practices a selective docket system. At least four out of its nine judges must opine that a petition contains important questions on the interpretation of the US Constitution or federal law. In this manner, it annually grants hearing to only 75-80 cases out of the 7000 petitions filed before it in a year. In countries such as Germany, where the Federal Constitutional Court must decide each petition

⁶ (2010) 6 SCC 384.

filed before it, a 3-Judge panel called a 'Chamber' pre-screens cases that fall under established precedent or raise no new issues, and quickly disposes of these. The Court hears only those cases that pass the Chamber's screening.

The US Supreme Court also follows a strict schedule once cases are admitted to the docket. The dates scheduled for hearing are earmarked on the Court's calendar. Once calendared, they are rarely changed. Each case is assigned two weeks for hearing, and counsels are allotted 30 minutes each day to argue their case. The Court rarely permits extra time to the counsels for argument. This is a good practice, and can be adopted by a Judge where he deems it suitable.

There is also a qualitative dimension to the challenges facing our judiciary. Judges must possess qualities befitting the nature of their office. They must exhibit the utmost integrity and honesty, both in and outside the courtroom, as well as a sense of total commitment to the cause. Their actions must be dictated by the determination to achieve, what may appear to most, unachievable.

In the words of the great Oliver Wendell Holmes, "*The life of the law has not been logic; it has been experience... The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.*"⁷

In our experience, the quality and timeliness of justice is under considerable attack from both external and internal quarters. Yet, if the judiciary adopts certain simple solutions, the problem may well be contained if not obliterated. We must not permit outwardly criticisms of delay and unresponsiveness to quell our spirits. In our quest to open the doors of the Law, let the doorkeepers know no repose.

⁷ O.W. Holmes, THE COMMON LAW, 1881, p.1.