

**Address by Hon'ble Mr. Justice Ali Mohammad Magray Judge High Court of J&K in One-day Conference on “Delay and Arrears, Problems and Solutions, Strategies and Directions” held in the Conference Hall of District Court Complex Jammu**

Hon'ble the Chief Justice, Hon'ble Judges, learned Judicial Officers, ladies and gentlemen.

1. We are all familiar with the adage, ‘justice delayed is justice denied’. I do not know which civilization or socio-legal or socio-political set up has given rise to this saying, but it certainly seems to be primitive, for its use dates back to times immemorial. Whichever might have been the society or its set up, the saying alludes to the fact that as old has been the factor of delay in administration of justice as the saying. The facts and figures before us tell us that it not only holds true even today, but has assumed graver proportions. That is why we are still discussing the topic more than 66 years after we gave to ourselves the Constitution, solemnly resolving to secure to all the citizens of India, among other things, Justice.

2. Justice, in the layman’s sense, as we know, is putting right the wrong done to a person. In realistic sense, it is the fair and proper administration of laws.

3. In all civilised societies, administration of justice is the obligation of the State. Therefore, the judiciary, comprising of the courts at different levels, is the most significant and vital part of a State’s infrastructure meant to administer justice. Doing justice would, naturally, mean its delivery or administration without unnecessary delay, of course, with due adherence to the procedure established by law.

4. The Supreme Court in *Subhash Sharma v. Union of India*, 1991 Supp (1) SCC 574, said, I quote, “*the Preamble of our Constitution stipulates justice – social, economic and political – for all citizens of India. It is too late in the day to dispute the position that justice has to be administered through the courts and such administration would relate to social, economic and political aspects of justice. The Judiciary, therefore, becomes the most prominent and outstanding wing of the Constitutional System for fulfilling the mandate of the Constitution. For its sound functioning, it is, therefore, necessary that there must be an efficient judicial system*”. Unquote.

5. Alongside, the Supreme Court has, time and again, held speedy trial to be the fundamental right of a citizen under Article 21 of the Constitution.

6. Given the moral derivable from the celebrated adage I first quoted, the solemn resolve of the people of this country to secure justice to all its citizens, the vital position of the judiciary in the country's infrastructure and the right to speedy trial guaranteed by the Constitution as declared by the Supreme Court, delay in dispensation of justice clearly sounds antithesis to the Constitution.

7. The function of the judiciary is to protect the people's rights; adjudicate disputes between two contesting parties; and also whether a person is or is not guilty of an offence alleged against him. The ultimate power of the judiciary (judicial system) is *conditio sine quo non* to the degree of confidence the citizens place in it. In fact, for the survival of a society and its growth, an efficient judiciary / legal system that renders timely justice is imperative.

8. If delay in justice has been equated with denial of justice at some stage of the development of law and the society, in context of our set up and the overall scenario, it would tantamount to gross violation of the Solemn Resolve of the people of this country and failure of the system they have nurtured and sincerely reposed confidence in. The ills and consequences of delay in delivery of justice have to be understood in that context.

9. Keeping in view the Solemn Resolve of the people of this country, as enshrined in the Preamble of the Constitution, a heavy responsibility and onerous duty is cast on the Judiciary to ensure that the people's Resolve is carried out to the letter of the word and in its true spirit.

10. However, to my knowledge, there is no law providing a fixed time frame for disposal of a case by a court. In true sense, therefore, it may not be proper to say that courts are in arrears.

11. Nonetheless, the general perception that delay occurs in the courts in deciding cases is neither exaggeration, nor wholly based on misconception. In this context, it is necessary to understand if there is no limitation prescribed for decision of cases in courts, then how can delay be defined? It is the amount of time spent in excess of due adherence to the procedure between the commencement and the conclusion of proceedings in a case, including its hearing and the final outcome.

12. There can be numerous factors contributing to such delay. The biggest culprit is misuse of procedure. So far as the time spent in due adherence to procedure is concerned, the courts cannot do anything about that, but the problem is that often the procedure is misused and abused to the hilt. The common misuse is adjournments sought by counsel mostly to regal out of a difficult situation faced in the trial and/or to simply prolong the decision and disposal of the case. During my inspections of the courts, while perusing minutes of the proceedings recorded on court files, I have noticed that the Presiding Officers are exceedingly liberal in granting adjournments in sequence and unreasonably.

13. Another misuse and abuse of the procedure is that a sizeable percentage of frivolous cases are brought before the courts with an object to engage the opposite party in an attritional litigation. Generally, in such cases interim directions are randomly passed by courts at the threshold. Once such a litigant succeeds in obtaining an interim order in his favour, he then resorts to such tactics as contribute to tremendous delay in completing the procedural formalities and bringing the case to a logical end.

14. I have also noticed that even the cases of summary nature, like 488 Cr. P. C. proceedings, are being dragged on end.

15. The strategy to minimise the delays is that each Presiding Officer should strictly adhere to the procedure. When I say so, it would also mean award of compensatory costs for unnecessary and unwarranted adjournments. Interim directions should not unnecessarily be made absolute, unless there is material brought on record *prima facie* warranting so. The Judicial Officers should endeavour their utmost to adhere to the drives aimed at reducing pendency of old cases. Each Judicial Officer should fix targets for himself and then sincerely strive to achieve the same. They should properly and effectively manage the courts and cases and exercise due control on the proceedings of cases. They should also encourage the litigants to resort to Alternate Dispute Resolution mechanisms.

16. The Presiding Officers should sit in the court rooms for the full court time, instead of sitting in chambers. Cases should not be heard in chambers. The Judicial Officers should be punctual. They cannot afford to come to their duties late or hold sittings in court rooms at their wish and leave early. Lethargy, if any, here and there needs to be shunned. All these traits are within the control of each Judicial Officer. It is only the question of understanding one's responsibility, pious nature of the duty cast on judicial officers and the confidence reposed in them by the society.

17. At the administrative level, the work done by Judicial Officers needs to be properly appreciated. A Judicial Officer who conducts himself in accordance with the recognised attributes of such an officer, endeavours to bring the main cases to their logical end, tries his best to adhere to the pendency reduction drives initiated by the institution cannot be equated and treated at par, at least, in the assessment of his performance, with an officer whose over all approach is callous and casual and who just seeks to earn points by disposal of miscellaneous matters. I am confident that proper assessment of work done and award of appropriate grading in the ACRs would go a long way in encouraging hard work, invigorating lethargy, inculcating zeal and zest, and infusing objectivity, standardisation and responsibility. Here I am reminded of the decision of the Supreme Court in **Registrar General, Patna High Court v. Pandey Gajendra Prasad**, JT 2012 (5) SC 457, where in para 18, it was observed as under:

*“18. However, before parting with the judgment, we deem it necessary to make a mention about the recording of the ACRs of judicial officers. We feel that the present system of recording the ACRs leaves much to be desired and needs to be revamped. Experience has shown that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. This undoubtedly breeds discontent in a section of the judicial service besides eroding proper and effective superintendence and control of the High Court over subordinate judiciary. The process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period, but it has been noticed that many a times, the ACRs are recorded casually in a hurry after a long lapse of time (in some cases even after the expiry of one year from the period to which it relates), indicating only the grading in the final column. It needs no elaboration that such hurried assessment cannot but be either on the basis of assessment / grading of the preceding year(s) or on personal subjective views of the Inspecting Judge(s), which is unfair to the judicial officer. Undoubtedly, ACRs play a vital and significant role in the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such officer hold supreme importance in ascertaining his conduct and, therefore, the same have to be reported carefully with due diligence and caution. We feel that there is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardisation.”*

18. Last, but not the least, let the Judicial Officers present here feel assured that their hard work does not go unnoticed. It is keenly being observed and will duly and effectively be reflected in their profiles. I may also add here that the institution is not oblivious of the infrastructural difficulties and hardship being faced by the Judicial Officers. The High Court at its level is trying its best to seek necessary help, assistance and funds from the Government to remove such difficulties and hardships. Let us resolve to follow, pursue and obey the constitutional obligations, mandates and duties in their real perspective to reach out ease to litigating public and alleviate their miseries.

I thank you all.