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 on 13.03.2016 in the Auditorium of the J&K State Judicial Academy, Bemina, Srinagar

Hon'ble the Chief Justice; Hon'ble Judges of the High Court of J&K; the Commissioner-cum-Secretary to Government, Law Department the Registrar General, High Court of J&K; learned Judicial Officers, ladies and gentlemen.

1. I spoke on the subject in an identical Conference that was held at Jammu. In that Conference the Judicial Officers of Jammu Division participated. Today's Conference has been convened for the Judicial Officers of Kashmir Division. The subject is the same. There is no possibility of any positive change in the fact scenario in the short interregnum; it might have rather worsened.

2. In that Conference, I expressed my view that coinage of the axiom 'justice delayed is justice denied' in itself conveys an inkling that the factor of delay in administration of justice has been there since times immemorial, and that, what is astounding is that we are still searching for the remedial measures to arrest delays in dispensation of justice, despite we having given to ourselves a written Constitution sixty six years back, enshrining in its very Preamble the Peoples resolve to secure to all the citizens of India, *inter alia*, justice. In my speech, I also gave certain suggestions to the Judicial Officers in this regard. The relevance of most of those suggestions is not, and cannot be, time-bound. I would like to restate some of those today.

3. But before I do that, it needs to be understood that there is a grave relationship between justice and the time consumed in rendering it. If justice is not administered at the appropriate time, it may not only

amount to denial of justice, but might even culminate into rendering injustice. I would call such a delayed justice as decayed justice. It may sound somewhat obnoxious, but that is what I have felt it like. After all, though justice is to alleviate pain and suffering, sometimes it does the opposite. Let me quote a real example. Recently two clubbed writ petitions filed one and the same person, one after the other, came up for hearing before me. The first of the two writ petitions had been filed in 2001 and the second one in 2005. The petitioner therein had voiced his grievance against his non-selection for deputation to a training course which would pave way for his future prospects in the service, while few of his colleagues, he claimed to be juniors to him, were selected and so deputed. Both the writ petitions remained pending consideration before the Court – the first one for 15 years and the second one for 10 years. When the matters came up for hearing before the Court in 2016, the petitioner's counsel made a statement at the Bar that the petitioner had retired now. Though there was a simple controversy involved in the two writ petitions, which could have been resolved this or the other way, depending upon the merit of petitioner's claim, within a few months, but that was not to be. The Court was unable to do anything after the petitioner had retired. The persons who had been deputed to undergo training courses in 2001 and 2005 had secured promotions and the petitioner could not be so promoted. Even if he might have had a genuine and legally tenable case, the loss he had undergone could not be reversed by the Court. Thus, on account of the delay not only justice was denied to him but, I believe, injustice was done to him. The Court had no option but to hold that the reliefs claimed could not now be granted as the same would be purposeless and that the Court would not grant a relief which could not be implemented. The writ petitions were, accordingly, dismissed as infructuous. However, while dismissing the writ petition, I made certain observations about the insensitivity of all concerned. That

time a thought occurred in my mind, if such a scenario could be allowed to prevail in the High Court, very much under my nose, would it, by any ethical standards, be right for me to command or expect better accomplishments from my Judicial Officers. I made certain observations in this regard in the order and passed certain directions I thought would arrest recurrence of such lapses.

4. I quoted the above example not with a view to speaking for delay in dispensation of justice, but to canvass the point that delay does not only amount to denial of justice or no justice, but it often results in positively doing injustice. Fundamentally, 'delay in justice' sounds an oxymoron. Oxymoron is like saying hot ice-cream; bitter honey, unweaned Octogenarian etc. These are things which cannot exist. Similarly, delay in justice cannot be allowed to exist. Therefore, we should make sincere endeavours at our own levels to ensure that we do not, in any way, contribute to delay in disposal of cases. We should do our utmost to eradicate the element of delay in doing justice. I am reminded here of the observations of the Supreme Court (Hon'ble Mr. Justice P. N. Bhagwati) made way back in 1976 in ***Babu Ram v Raghunathji Maharaj***, reported as (1976) 3 SCC 492. That was a civil appeal filed before the Supreme Court in 1968 against the judgment of the Allahabad High Court, reversing a decree passed by the civil court. The original decree had been passed on 31.03.1951 in a suit instituted on 10.08.1950. Thus, the suit had been decided within a period of just 7 months. What happened next becomes axiomatic from the observations of the Supreme Court contained in the very first paragraph of the judgment. I quote:

> "This appeal by certificate is directed against the judgment of the Allahabad High Court reversing a decree passed by the Civil Judge, Etah. The original decree was passed by the Civil Judge on 31st March, 1953 in a suit instituted on

> 10th August, 1950. The judgment of the High Court reversing it was given on 31st January, 1964. It took nearly eleven years for the High Court to dispose of the appeal before it. Then followed an appeal to this Court by certificate. The certificate proceedings took about four years. It was on 22nd January 1968 that the certificate was granted. The appeal which came to be filed on the strength of this certificate had then to undergo a period of incubation in this Court for about eight years before this Court could get time to take it up for hearing. At long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee, thanks to our system of administration of Justice and our callousness and indifference to any drastic reforms in it. Cases like this, which are not infrequent, should be sufficient to shook our social as well as judicial conscience and activise us to move swiftly in the direction of overhauling & restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for 25 years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many others like it strongly emphasise the urgency of the need for legal and judicial reform. A little tinkering here and there in the procedural laws will not help. What is needed is a drastic change, a new outlook, a fresh approach which takes into account the socio-economic realities and seeks to provide a cheap expeditious and effective instrument for realisation of justice by all sections of the people, irrespective of their social or economic position or their financial resources." (Unquote).

5. The aforesaid judgment was delivered by the Supreme Court on May 7, 1976. We are in 2016. Forty years have gone by. Much has been done eversince, but we cannot wait and watch for more things to be done and allow cases to pile over in the courts. We all know the problem and the solution. Our Judicial Officers are intelligent and capable enough to chalk out workable strategies and adopt such direction and methodologies as would reduce the pendency in their respective courts. They are not bereft of ability, spirit or empathy. Of course, exceptions are always there. It is not that all is good or all is well everywhere. Strictly speaking, workshops, conferences and such other meetings and

assemblies are convened and held only for revitalising such elements in an organization as are seen to have gathered rust. The question is only of being conscientious about the trust and noble responsibility a judicial function carries with it, taking the required initiative with desired zeal, and being punctual and devoted to duty. Let me now repeat, rather narrate, what I said to the Judicial Officers of Jammu Division in the previous Conference.

6. 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.

7. 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.

8. 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.

9. 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.

10. Given the moral derivable from the celebrated adage 'justice delayed is justice denied', 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 is antithesis to the Constitution.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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 effective manage the courets and cases and exercise due control on the proceedings of cases. They should also encourage the litigants to resort to Alternate Dispute Resolution mechanisms.

20. 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.

21. 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.