

Talking points for the Minister of Law and Justice

Inauguration of the Rule of Law Project and Website being organized by DAKSH at Bangalore on 7th February, 2015

It is my privilege to join you today for the inauguration of the Rule of Law Project and Website organized by DAKSH. Rule of law is the foundational stone for the efficient functioning of our democratic governance systems. Only by adhering to the rule of law can we seek to deliver timely and quality justice; reinforce public confidence in the law; facilitate investments; enable better distributive justice and promote basic human rights.

The Preamble to the Constitution identifies securing social, economic and political justice for all citizens as one of its key objectives. Access to fair, quick and speedy justice is a constitutional guarantee recognized under Article 14, which lays down the principle of non-discrimination by assuring every person of the right to equality before the law and equal protection of laws and Article 21, which guarantees that no person will be deprived of their life or personal liberty except in accordance with procedure established by law.

It is the responsibility of all organs of the state to ensure that the administration of justice is made easily accessible and affordable for the common man. Yet we find that courts in the country are burdened on account of the large number of cases that are pending before them, often leading to delays in the delivery of justice. The socially and economically weaker sections of society are the ones

who suffer the most on this account. Very often they do not have the capacity or the resources to face prolonged legal disputes causing them to either forgo their rights or settle for less than their due share. One example of this can be seen from the large number of undertrial prisoners, many of whom belong to the marginalized sections of the society. Securing the timely release of such persons is an important facet of upholding the rule of law, which is why they have the first right to obtain timely and free legal aid from the state.

Article 39A, which falls under the category of Directive Principles of State Policy speaks directly on this issue. It requires that the legal system should operate in a manner that promotes justice on the basis of equal opportunity, particularly by providing free legal aid so that citizens are not denied the opportunity for securing justice on account of economic or other disabilities. The National Legal Services Authority and State and District Legal Services Authorities have been established for this purpose under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society. They are also responsible for organizing Lok Adalats for the amicable settlement of disputes in a timely and cost effective manner.

The Government is strongly committed to the cause of improving the investment climate in the country, which is the key to overall growth and development of the economy. Recognizing that timely enforcement of commercial contracts is one of the main factors that influence our ranking on the ease of doing business index, the Government has accorded a high priority to improving India's performance in this area. Some of the measures being undertaken

on priority basis for ensuring the timely and effective enforcement of commercial contracts involve exploring the possibility of setting up of specialized fast track courts/ tribunals at the subordinate level and specialized commercial divisions at the High Courts level to deal with the commercial cases and encouraging arbitration to resolve contractual disputes. This is in addition to the proposals that are being pursued for the adoption of information technology solutions and court and case management systems for handling such cases. The Law Commission of India has recently submitted its 253rd Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 containing their recommendations on speedy disposal of high value commercial suits. The report contains several valuable suggestions that are currently in the process of being examined by the Government.

Commercial and non-commercial cases alike are affected by the issue of overall delays and pendency of cases in courts. This poses a complex problem that needs to be addressed through a combination of legislative, policy and administrative measures. We are therefore working towards examining the real reasons for delays in courts, identifying the appropriate solutions and taking all necessary steps to implement those solutions. Some of the areas that need to be addresses in this regard are as follows:

Inadequacy of judicial manpower – There is a shortage of judges and judicial officers which needs to be addressed through continuous increases in the sanctioned strength of judges and at the same time by the filling the existing vacancies in the posts of judges and judicial officers. As a result of concerted efforts made by all

stakeholders the sanctioned strength in district and subordinate courts has increased from 17,715 in 2012 to 19,518 in 2013. As regards High Courts, the Chief Justice of India has given 'in principle' concurrence to increase the strength of High Court Judges by 25% of the existing strength. Despite the gradual increase in the sanctioned strength of judicial officers, there still remain a large number of vacancies in subordinate courts. We are have been coordinating with State Governments and High Courts to address this issue.

Lack of investment in the judiciary – It has been observed by various expert committees that some State Governments are spending a very small part of their total budgetary resources on the judiciary. While, the primary responsibility of infrastructure development for the High Courts and subordinate courts rests with the State Governments, the Central Government has also been augmenting the resources of State Governments under a Centrally Sponsored Scheme for Development of Infrastructure Facilities for the Judiciary.

Non implementation of existing provisions aimed at expeditious disposal of cases – The CPC has been amended to introduce several provisions, such as those relating to limiting unnecessary adjournments and imposition of costs for the same, for ensuring that trials in civil cases are concluded in an expeditious manner. However, these provisions are not being strictly adhered to by courts leading to delays in court proceedings. Proper training and sensitization of judges on these issues can help in achieving better implementation.

Indiscriminate use of writ jurisdiction - The indiscriminate use of writ jurisdiction and multiple levels of appeals also leads to delays in the final disposal of cases.

Need for Bar reforms – Our currently litigation system is largely advocate driven rather than being driven by the courts. While on the one hand this needs to be addressed through proper training and sensitization of judges, on the other, there is also a need to bring about appropriate reforms in the bar. A robust regulatory mechanism to monitor the conduct of members of the legal profession will help in the proper implementation of the legal provisions aimed at expeditious disposal of cases.

Areas prone to excessive litigation – Certain types of cases, such as those pertaining to dishonor of cheques under Section 138 of the Negotiable Instruments Act, 1881 and traffic *challan* cases under the Motor Vehicles Act, 1988 form a large number of the pending cases before courts. Bringing about appropriate amendments to these legislations to address such cases can help in reducing the burden of courts. A proposal to amend the Negotiable Instruments Act to introduce measures to resolve cases arising under Section 138 through ADR mechanisms is currently under consideration. Similarly the draft Road Transport and Safety Bill, 2014 prepared by the Ministry of Road Transport will introduce provisions for reduction in traffic *challan* cases and resolution of traffic cases without resorting to litigation as well as expeditious disposal of motor accident cases.

National and State Litigation Policies – The Government is also taking effective measures to reduce government litigation and to

make the Government an efficient and responsible litigant. Towards this end, all States have already framed their litigation policies. A National Litigation Policy was also drafted by the Department of Legal Affairs in 2010 but this draft could not be notified. The Department has now reformulated the draft National Litigation Policy 2014 with broadened objectives and scope and the same is going to be placed before the Cabinet soon for their approval.

Developing robust alternate dispute resolution (ADR) mechanisms – There is a need to develop an appropriate institutional framework so that more and more disputes may be resolved using ADR mechanisms. This involves setting up of adequate number of ADR centers, providing training to mediators and arbitrators and creating awareness about ADR processes. This will help in reducing the burden of courts while at the same time providing parties with recourse to timely settlement of disputes. The Law Commission has proposed certain amendments to the Arbitration & Conciliation Act 1996 aimed at ensuring that the arbitration process is conducted expeditiously and effectively. The Cabinet has already approved the Arbitration and Conciliation (Amendment) Ordinance to amend the Arbitration and Conciliation Act and it will be introduced in the Parliament in the next session.

Weeding out old laws – Many laws that have been outdated and are no longer relevant continue to remain in the statute book. We are working actively towards the identification and repeal of such laws. The Law Commission of India has given its recommendations on the issue of repeal of obsolete laws in its 248th to 251st Reports. Following this, the Government has drafted the Repealing and

Amending Bill, 2014 and the Repealing and Amending (Second) Bill, 2014 for the repeal of certain laws, both of which have been placed before the Parliament for approval.

The adoption of information and communication technology (ICT) in the administration of justice is another important area. This will help pave the way for revamping court processes, adopting court and case management systems and overall process re-engineering of the judicial system. All of this is sought to be achieved through the eCourts Mission Mode Project that is being implemented by the Department of Justice in association with the Supreme Court eCommittee and the National Informatics Centre. The objective of the eCourts Project is to provide designated services to the citizens as well courts by ICT enablement of all district and subordinate courts. Phase I of this project focused on the computerization of subordinate courts, which will be followed by the setting up of centralized filing centres, digitization of documents, adoption of document management systems, creation of e-filing and e-payment gateways in Phase II of the project that was approved by the eCommittee of the Supreme Court in January 2014.

The successful completion of these initiatives is a focus area for the Government as it will facilitate better identification and classification of cases, efficient monitoring and time management in individual cases and improved tracking of overall pendency trends. It will also relieve judges and other court staff from administrative duties and allow them to focus on judicial functions. At the same time our procedural laws have also been amended to allow for better use of technology in court processes, including through audio-video

recording of evidence and statements and delivery of summons through various electronic means.

Another area that needs urgent attention is the lack of comprehensive and accurate data relating to court cases. This issue has been noted by the Law Commission of India in its 245th Report as well as in the Action Plan of the National Court Management System set up by the Supreme Court. There is therefore an urgent need to evolve uniform data collection and management methods for our judicial system. To address these issues, the NCMS is working on a National System of Judicial Statistics that will provide a common national platform for recording and maintaining judicial statistics from across the country. The Action Plan of the NCMS also suggests that High Courts should appoint professional statisticians to oversee the collection and processing of data.

Positive steps in this direction have been initiated through the launch of the e-Courts portal, which showcases the National Judicial Data Grid, providing citizens with online information about case filings, case status and electronic copies of orders and judgments from courts that have already been computerized. However, we are still some way from providing real-time access to pendency data and statistics to all persons. Ensuring the availability of such real-time judicial statistics at the earliest possible will go a long way in enhancing transparency and accountability in our legal system. It will also encourage more insightful research and studies on various issues relating to judicial administration.

The present efforts of the Government to promote research on the subject of justice delivery and legal reforms include the launch of the Plan Scheme for Action Research and Studies that is being implemented by the Department of Justice. The objective of the scheme is to promote research on issues relating to dispensation of justice by organizations working in this area. Further, National and State Judicial Academies may also be encouraged to engage with people from diverse backgrounds to facilitate research in areas relating to judicial administration and the dissemination of these ideas to all stakeholders.

I would like to end by thanking the organizers for inviting me to this event. Initiatives such as these will go a long way in furthering research and understanding on issues relating to the administration of justice in India. I wish you all the very best for the success of this project.