

Speech of Hon'ble Mr. Justice Madan B. Lokur at the Global Pound Conference in Chandigarh on 12th May, 2017

Hon'ble Mr Justice Misra, Hon'ble Mr Justice Sikri, Hon'ble Chief Justice of the Punjab and Haryana High Court and all the Hon'ble Judges of High Courts present here today, dignitaries, mediators, trainers, distinguished participants, students, ladies and gentlemen.

It is a great pleasure being here once again in Chandigarh. It is a wonderful city and I am very glad to be here to participate in today's programme.

This programme has come at a very crucial stage in our justice delivery system. From the discussions that we have been having about justice delivery in the country over the last one year or so, all of us know that the system requires several reforms, whether it is in the area of civil justice delivery or in the area of criminal justice delivery. This is despite steps being taken at various levels by the Courts – by the Supreme Court, by the High Courts, by the Government of India and by NGOs, who are participating in helping out litigants in getting access to justice. Ultimately the discussion centres around two issues – namely, delays and costs. We have been discussing about huge

delays such as cases pending for several years, which is thought to be pretty normal. The cost of litigation too has gone up dramatically – when I was a lawyer, the cost was still affordable but today it seems to have gone out of reach for many people. So when we discuss reforms, we should concentrate on these two issues of delays and costs.

What are the solutions proffered for expeditious and inexpensive justice delivery? One of the solutions that people tend to discuss is the appointment of more judges. This discussion originated from a report of the Law Commission which said that India has very few judges as compared to the population. I am not sure whether that theory is correct or applicable. A State may have a very large population but perhaps, it doesn't need so many judges. In Mizoram, if we had gone by the theory propounded by the Law Commission, we would need 60 judges in the State, which by the way, is the most peaceful State in the country. But there is not enough work for even 20 judges. Therefore, I am not sure if the theory of judge-population ratio is a good idea.

While there is talk of having more judges to speed up justice delivery and simultaneously reduce the cost for the litigant, we don't

look at another side of having more judges – namely, the need for greater financial assistance from the Government and better infrastructure. As it is, the judiciary gets negligible funding – about 0.7% of the GDP – and yet, we do not discuss the necessity of having greater financial assistance and better facilities. Discussions on judicial reform have become somewhat limited over the years and have remained stagnant and stale on these issues. The time has now come to think out of the box. We need to look at different avenues and different solutions. Mere discussions on appointment of judges, infrastructure, delays and costs do not seem to be taking us anywhere.

One of the ways that we can think out of the box is by looking at some alternatives already available to us – Section 89 of the Code of Civil Procedure is one such alternative for civil justice; plea bargaining is an alternative available for criminal justice. Section 89 of the CPC gives us a variety of possibilities for improving our justice delivery system. It is crucial, so far as judicial reforms are concerned, to enhance the rule of law. Section 89 of the CPC persuades us to look at alternative dispute resolution mechanisms that are more appropriate to the litigant, to the litigation and to the culture of the

people from where the litigation has originated. Litigants need choices and litigations need options. We cannot have a one-size-fits-all attitude. Section 89 is important because it gives a choice to the litigants, depending on the kind of litigation before the Court. This could vary from arbitration, to Lok Adalat, to judicial settlement to mediation. Lok Adalat has certainly caught the fancy of the people and it has existed for many years. It has been promoted very actively by NALSA, especially with Justice Misra as its Chairperson. We are really going places by encouraging Lok Adalat in simple cases.

But we also need to look at mediation a little more seriously and closely as a viable alternative dispute resolution mechanism. Justice Sikri mentioned that the Senior Advocates Association was really the starting point – the match that lit the fire – for mediation. It has now been more than 10 years since that decision and since the first few mediation centres were established in Chennai, Bangalore and Delhi. We now need to think, as the theme of the conference suggests, about shaping the future of dispute resolution and improving access to justice. These go hand in hand. Litigation certainly does exist and will continue to exist, but we also need to look at the future of dispute

resolution in the context of alternative methods and improving access to justice for the people of our country.

As one of the members of the Mediation and Conciliation Project Committee of the Supreme Court, I have had occasion to be a participant in several mediation related programmes. It can safely be said that today we are in a position where we have stabilized the number and content of mediation programmes in the country. We have stopped spreading ourselves too thin, but still have more than 100 trainers and are in the process of developing another set of more than 100 trainers. From January 2014 to March 2017, we have had about 300 programmes of different varieties – awareness programmes, refresher training programmes, advanced courses, mediation training programmes, referral judge training programmes and so on.

We are now at a cross road. At this stage, we need to sit back and introspect about whether we are taking the right steps and going in the right direction, or if there is something in the programmes in terms of content or in the manner of training. We need to assess whether there are any strengths we have developed over the years, and if so, what these are and how we can enhance and take

advantage of them. So really, we need to audit our programmes to see whether they are proving useful to the public. We need to ensure that these programmes are being effectively carried out in various States across the country – not only in Tamil Nadu, Karnataka and Delhi, but in places like Punjab, Haryana, Jharkhand, Madhya Pradesh, Maharashtra, Telangana, Kerala, Andhra Pradesh and other places. We need to check whether we are doing as well as we think we are. We may say that in Maharashtra or Karnataka or Tamil Nadu, we have resolved 70,000 cases or that in Delhi we have resolved more than 1 lakh cases, but what is the nature of these cases? Is court annexed mediation really helping the justice delivery system and is it bringing access to justice to the common person? Has it had an impact on justice delivery as a whole? These are issues that we now need to debate and discuss.

This Global Pound Conference gives us the opportunity to think about these issues and about shaping the future of dispute resolution in our country. Over the next two days, there will be demonstrations on new techniques of obtaining feedback on various issues. Can we not use some of these techniques to evaluate and improve our own programmes? Can we not use technology for improving our

programmes as well? For instance, one of the possibilities of encouraging mediation could be through online mediation on judicial websites. We speak about delivery of justice at the door step – resort to such technological innovations may well ensure this. Recently the Government of India launched a number of programmes on access to justice, including *pro bono* lawyering. One such programme, which is still in infancy but is an excellent initiative, is that of the *Nyaya Mitra*. Under this programme, paralegal volunteers speak to litigants and find out their problems and why their cases are getting delayed. This too is justice at the door step. These *Nyaya Mitras* will be able to help litigants understand what the justice delivery system is all about and how they can access it. It will also assist in giving a feedback to the Courts and to decision-makers within the judiciary, Parliament or the executive on how to improve justice delivery. If we use the services of these *Nyaya Mitras* and of *pro bono* lawyers and combine this with existing methods of alternative dispute resolution including arbitration, mediation and Lok Adalats, the discussion on delayed justice could vanish.

This conference organized by the Punjab & Haryana High Court is going to be critical for the future of justice delivery, alternative

dispute resolution and access to justice in this country. We have the experiences of people from different States, different experiences, different cultural backgrounds, different walks of life and different systems – some from foreign countries, and some from local institutions. We have this huge gathering of participants and with the assistance and cooperation of all the participants we can surely shape the future of dispute resolution in keeping with the theme of the conference and thereby also improve access to justice.

There is one more topic that I would like to highlight, which is that it is not only mediation between individuals or corporations that we should consider – we must also look at a larger and broader perspective. When I was travelling in Nagaland, near a place called Wokha, the Registrar of the High Court, who knew my interest in mediation, suggested that we take a small detour to see a pillar constructed there. On this pillar, it was engraved that two tribes in Nagaland who had been in conflict for about 60 years, during which time there was a lot of bloodshed, had settled their disputes through the intervention of the Church and society, as mediators. Therefore, it cannot be said that major conflicts are intractable – even they can be resolved.

I would also like to mention here, another very important mediation that took place in Chennai. Mr. Shriram Panchu, a mediator *par excellence* who is with us today, resolved a dispute between Standard Motors and its workmen. It was a wonderful effort which resolved a conflict that had been pending for many years with many people involved. Mr. Niranjan Bhatt another excellent mediator who has put in pioneering efforts is also present today. Recently he was appointed as a mediator in a very acrimonious matrimonial dispute. The parties were from Maharashtra and Gujarat but despite the best efforts of Mr. Niranjan Bhatt, the dispute between the parties could not be resolved. When the case came up before our Court a couple of days ago, both the lawyers, without it being put to them, stated that Mr. Niranjan Bhatt had spend about 70 hours trying to facilitate the resolution of the dispute and had put in great effort and that he deserved to be adequately remunerated. This is the kind of feeling that litigants have when a mediator has done his job seriously. It could be a matrimonial dispute or a dispute between labour and management such as the one Mr. Sriram Panchu resolved, or it could even be a dispute between two tribes as in Nagaland. I would also like to mention that Kerala too has had some wonderful success in

the settlement of large disputes. I have read in the newspapers that a couple of years ago, a prolonged strike by nurses in all hospitals was resolved through mediation.

We need to see beyond what we have looked at in the last decade or so and recognize the need to find amicable solutions to conflicts. One view which I fully endorse is that mediation is the best possible way of amicable resolution. Therefore this conference has come at a significant time and with the right theme. I would appeal to all of you to put in your best efforts in this endeavour. I know that you have already been putting considerable effort – I have been in touch with almost all the States in the country to find out how mediation is progressing and I know it is doing very well. It has been a long journey of more than 10 years, but we are now at a stage where it can and must take off. So let us join together and ensure that this happens. I am sure we will succeed.

I would like to thank Punjab & Haryana High Court and all others who have come from different parts of the country, including some mediators from Assam who have taken two days to come here - this shows their commitment. It has been wonderful to meet with you here and all the best for a successful conference.