Law Day Speech*

Mr. Minister, President and Secretary of SCBA, President of Bar Association of India, my esteemed colleagues, Acting Chief Justice of Delhi High Court, Members of the judicial fraternity, Members of the legal fraternity, Registry personnel, Ladies and Gentlemen.

We have assembled today to celebrate the anniversary of a momentous event, the anniversary of the adoption of our Constitution, the day on which our founding fathers subscribed to this document by signing the same and thereby unfolding the philosophy - social, economic and political, for the governance of free India. We have every reason to be proud of and to celebrate that unique occasion. We take this opportunity to thank the founding fathers, for this document, who spent a good deal of their time and energy in giving shape to this *suprema lex* which was to guide the future destination of the country. We are ever grateful to them.

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* Law Day speech by Hon'ble Shri S.H. Kapadia, Chief Justice of India at the Supreme Court Lawns on 26th November, 2011

The foremost reason why we are proud of our Constitution is that it promises governance through the Rule of Law. While in many countries which initially opted for a democratic form of Government the euphoria lasted for brief spells, we are of the view that in our country, notwithstanding its complexity, democracy has stabilized and democratic institutions have flourished. The survival of democracy in India has left many bewildered.

The socio-economic transformation – a welfare State and an egalitarian society as its objective – must also be through the process of law. It is true that such desired socio-economic transformation through process of law has been slow, however, the march has been steady. Today, rule-specific laws are being substituted by rights-specific laws (RTE, RTI, Food Security Bill). These socio-economic legislation requires a paradigm shift in the matter of interpretation of Article 14, Article 21 and Article 19(1)(g) of the Constitution. Courts have come from formal equality to egalitarian equality to the concept of Deprivation.

Judicial independence is one of the essential elements of Rule of Law. Every civilized society has seen the need for an impartial and independent judiciary. The principle of Judicial Independence has acquired renewed significance, since the Constitution of India has conferred on the Judiciary the power of judicial review. However, keeping in mind the doctrine of Separation of Powers, Judiciary has to exercise considerable restraint to ensure that the surcharged democracy does not lead to a breakdown of the working of the Parliament and the Government. The Judiciary needs to work in the area demarcated by the Constitution. Awareness about rights has grown while correspondingly redressal from the Executive has been reduced. The Executive has its own compulsions – huge population, lack of resources, high inflation, global economic region etc. As a consequence litigation has multiplied. Despite commendable achievements in terms of disposal which I will presently demonstrate, the challenge is and should be for Zero Pendency in which direction a lot needs to be done.

Today, the crisis of confidence in human institutions has come to the forefront. The deficiency of every institution in

tackling the growing and complicated social problems has become a common feature. It is a challenge for every institution. Every democratic institution needs to meet this challenge. The viability of judicial institutions depends upon their acceptability by the people. When the viability of the system gets into disrepute and ultimately the system becomes less and less useful to the community, the challenge lies in rejuvenating the system by restoring its credibility and people's faith in it. Thus, the foremost challenge to the Judiciary today is viability of the system. Citizens approach the Court only when there is confidence in the system and faith in the wisdom of the Judges. This is where the Public Trust doctrine comes in. The Institution stands on public trust.

I am an optimist. I do not share the impression that judicial system has collapsed or is fast collapsing. I strongly believe and maintain that with all the drawbacks and limitations with shortage of resources and capacity, we still have a time-tested system. This is no justification to discard

the system by giving it bad name. Judiciary has performed a commendable job, which is indicated by the Status Report.

Before reading the statistical data, let me say that there is a need to highlight that all the stakeholders are accountable for maintaining and achieving standards of Court Excellence. The general tendency is to put the entire blame on the Judges. The executive including the police and the Bar have an important role to play in expeditious disposal of cases. There is a backlog of cases, however, it is not as big as is sought to be projected. **Please note that 74% of the cases are less than five years old.** The focus: expeditious disposal of 26% of cases which are more than five years old i.e. **"Five plus free" should be the initiative**.

Solution: appointment of Working Committee on Arrears and Court Management.

CONCLUSION :

India is an aspirational democracy. It is the shared idea of India to emerge from Society which has individuals of diverse ideologies, cultures and religious denominations. We must, therefore, identify common strands that will bind us, as one nation and one people. Unless this is done we cannot build a modern and strong India.

In the hierarchy of values, judicial integrity is above judicial independence. Judicial accountability needs to be balanced with judicial independence. I would request the Bar as well as eminent jurists to deliberate upon constitutional concepts such as Judicial Independence and Judicial Accountability. We, the Judges, do not mind a studied fair criticism. However, as an advice to the Bar please do not dismantle an Institution without showing how to build a better one.

Please remember "When an Institution No Longer matters, we no longer matter."

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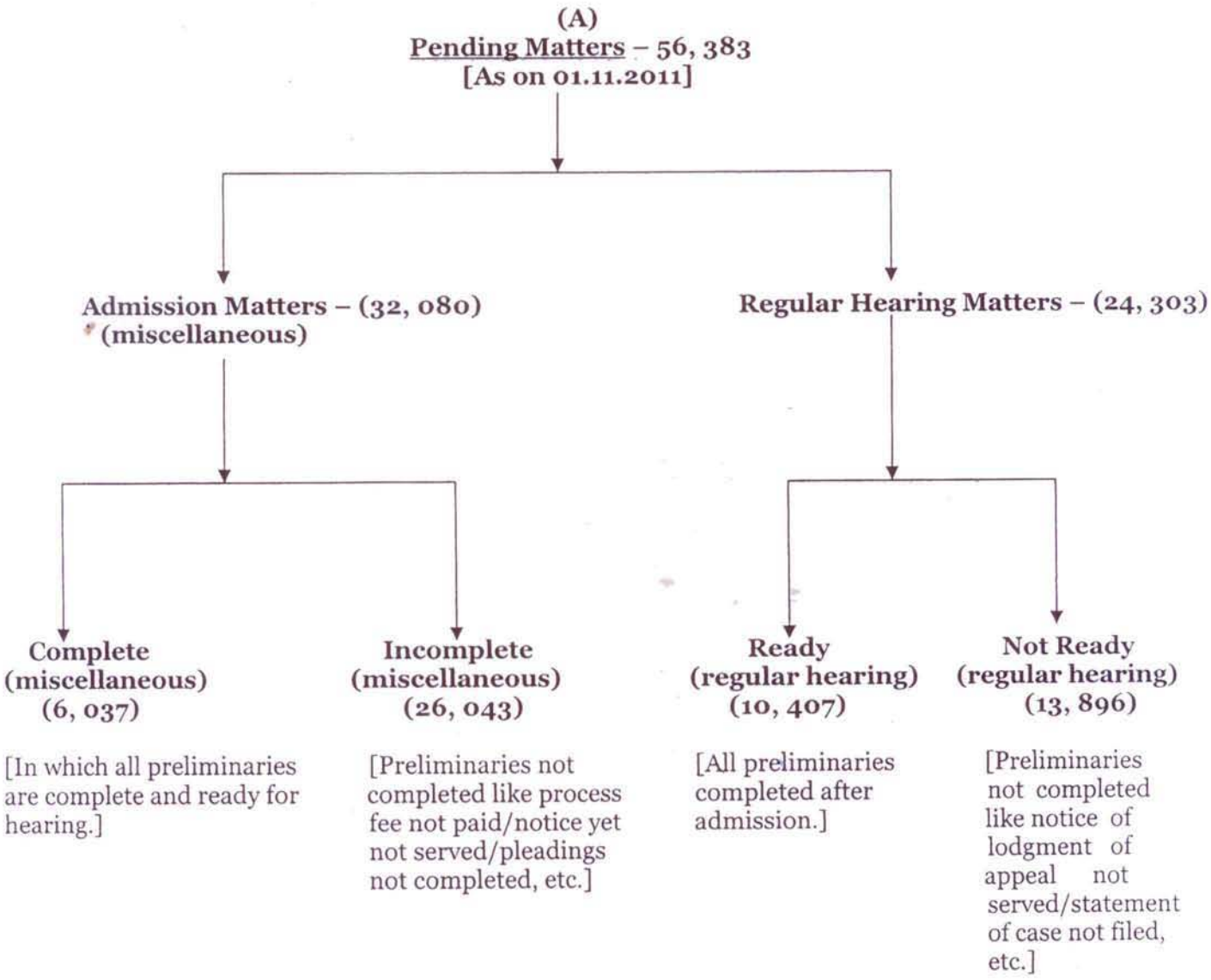
NOTE: Statistics referred at the time of Law Day Speech.

SUMMARY

TYPES OF MATTERS IN SUPREME COURT OF INDIA



SUMMARY

(I)

Status Report of Arrears in Supreme Court - As on 1.11.2011

Total Number	56,383
Not Ready	39,939 (71%)
Ready	16,444 (29%)
Arrears in Ready Matters	8,710

N.B.

(i) 40,000 matters are Incomplete and Not Ready.
(ii) On average, 710 days (two years) are taken to make matters complete.

Alternative Calculation of Arrears

Total Number of Cases (Pendency-wise)	56,383
Arrears	36,049

N.B.

(i) Cases which are less than one year old – 20,334

Rate of Disposal by Supreme Court

May, 2008 to April, 2009	61,850
May, 2010 to April, 2011	79,621

(II)

Disposal of Cases on 5 years Basis

In 5 years (31.12.2005 to 31.12.2010) cases filed in Supreme Court, High Courts and Subordinate Courts	11.16 cr.
Total Cases Disposed	10.77 cr.

N.B.

(i) Total Disposal by 12600 Judges.

Subordinate Courts (1.1.2011 to 31.3.2011)

Institution was	44.15 lacs
Disposal	46.06 lacs

Lok Adalats (1.4.2010 to 31.3.2011)

Disposal	36.17 lacs

(III)

Five-Plus-Zero (as on 31.12.2010)

High Courts and Subordinate Courts

Total numbers	3,19,27,263
74% are less than 5 years old	2,34,30,990
26% are more than 5 years	84,96,273

N.B.

(i) CJI has asked High Courts to dispose of more than 5 years old cases - 84,96,000

(ii) Today, approximately 37,95,000 cases are pending in the Subordinate Courts only under one Section, namely, Section 138. This is mainly due to problems in effecting service. Therefore, one of the solutions to this problem is attachment of police stations to the courts handling such cases. The court duty constables should be deployed not only for security reasons, these constables could be used to collect warrants from courts to be handed over to the concerned police stations through which warrants could be served.

(IV)

Achievements (after 12.5.2010)

Budget under Central Sponsored Scheme:

For 2010-11	Rs. 110 cr.
For 2011-12	Rs. 543 cr.
Increase	Rs. 433 cr.

Central Budget Provision

For 2010-11	Rs. 372 cr.
For 2011-12	Rs. 1025 cr.
Increase	Rs. 653 cr.

Budget for Infrastructure

For 2010-11	Rs. 604 cr.
For 2011-12	Rs. 809 cr.
Increase	Rs. 205 cr.

Cost estimate for "E" Court	Rs. 442 cr.
Revised by Government of India	Rs. 935 cr.
Infrastructure Projects Implementation since June, 2010	Rs. 446 cr.