I feel privileged to have been invited to deliver this lecture in the memory of Shri Dashrathmal Singhvi, once a leading civil lawyer in the princely state of Jodhpur, and the scion of an illustrious family. He was one of the founding members of the Lok Parishad, a highly respected freedom fighter who defended important Lok Parishad leaders in various Courts.

The efforts of people like Shri Singhvi won us a nation of our own. As we stand on the threshold of the new millennium, it is time for us to reflect on what the future holds in store for us and review what we have achieved so far. As a nation much has been accomplished and yet so much more remains to be done. The world is changing in numerous ways—technology has become a central force—national borders are dissolving and economies are wedded together in ways scarcely imaginable a decade ago. Yet the basic aims of every society remain the same. Securing a just society is one such aim that has been with us long before the Christian calendar began. The institution of the judiciary lies at the centre of this endeavour.

As an institution, the Indian judiciary has always commanded considerable respect from the people of this country. Respect for the judiciary is part of the common man’s aspirations for maintaining the Rule of Law and building a just society. The deeper aim of law is the

The D.M. Singhvi Memorial lecture delivered at the India International Centre on April 12, 1999.
creation of a good society. Chanakya said "Law and morality sustain the world". Morality stems from ethical values. The societal perception of judges as being detached and impartial referees is the judiciary’s greatest strength. The real source of strength of the judiciary lies in public confidence in the institution. Today it is because of this public perception that the higher judiciary in the country occupies a position of pre-eminence among the three organs of the state. An independent judiciary is a national asset.

The Expansion of the Judicial Process

The Government of India Act, 1935, introduced the federal principle into Indian constitutional law. It also made necessary a Federal Court to decide constitutional matters. Appeals lay from the Federal Court to the Judicial Committee. Under the Constitution of India, 1950, and preceding Indian legislation, the Supreme Court succeeded to the jurisdiction of the Federal Court and the Judicial Committee.

If we trace the path taken by the judiciary in general and of the Supreme Court in particular in a historical perspective, we find that the Court has indeed been responsive to the changes in Indian society. The Constitution of India, with its chapters on Fundamental Rights and Directive Principles coupled with the federal system, inevitably threw new burdens on the Indian judiciary. You know the Latin maxim, boni judicis est ampliare jurisdictionem (it is the duty of a good judge to extend the jurisdiction) based as it is on the principle that law must keep pace with society to retain its relevance, for if society moves on but law remains static, it shall be bad for both. The Indian judiciary has, during the last few decades, acted on this maxim quite extensively in cases where protection of fundamental rights or basic human rights is concerned.

On January 28, 1950, at 9.50 am, the Supreme Court of India was inaugurated by the President, Babu Rajendra Prasad. Present on the occasion were Chief Justice Harilal Kania, along with Justices Fazal Ali, Patanjali Sastri, Mehr Chand Mahajan, B.K. Mukherjee and S.R.Das, Attorney General Setalvad and Advocate Generals of different States. Also present was the first Prime Minister of India, Pandit Jawaharlal Nehru, his Cabinet colleagues and members of the diplomatic corps.

On the morning of the inauguration, both Attorney General Setalvad and Chief Justice Kania, were much too conscious of some apprehensions about the institution which they were destined to
operate. They were aware of the following statement of Alladi Krishna-
swamy Ayyar made in the Constituent Assembly:

The doctrine of independence is not to be raised to the level of a
dogma so as to enable the judiciary to function as a kind of
super-legislature or super-executive.¹

The following warning of Shri B.N. Rau, the Constitutional Adviser
about "arming the Supreme Court with vast powers" given in the
Constituent Assembly was also present to their minds:

The Courts, manned by an irremovable Judiciary not so sensitive
to public needs in the social or economic sphere as the repre-
sentatives of a periodically elected legislature, will, in effect, have
a veto on legislation exercisable at any time and at the instance of
any litigant.²

In their address, Chief Justice Kania and Attorney General Setal-
vad, therefore, explained to the country the role that they and their
newly born Court intended to play. They were eager to make the
institution ‘noble and great’. Said Setalvad:

The task before us all is the building of a nation alive to its national
and international duties, consisting of a strong central authority
and federal units, each possessed of ample power for the diverse
uses of a progressive people. In the attainment of this noble end,
we hope and trust that this Court will play a great and singular
role and establish itself in the consciousness of the Indian People.

Justice Kania, the Court’s first Chief Justice, said that the Supreme
Court would declare and interpret the law of the land, and, in keeping
with the tradition of the judiciary in the country, it would work in “no
spirit of formal or barren legalism”. Within the limits prescribed, the
Supreme Court would make a substantial contribution towards the
formation of India into a great entity, retaining its own civilization,
traditions and customs. He trusted that the people of India would also
maintain the "independence, honour and dignity" of the Supreme
Court.

Initially the Court followed a policy of adhering to narrow
doctrine and tended to shy away from development of the law. In 1950,
in A.K. Gopalan’s case,³ the Supreme Court placed a rather narrow
and restrictive interpretation upon Article 21 of the Constitution. By a
majority, it was held in that case that "the procedure established by
law" meant a law made by the State and the Court refused to infuse in
that procedure the principles of natural justice. The Court also arrived
at the conclusion that Article 21 excluded enjoyment of the freedoms
guaranteed under Article 19 because the latter, according to the Court, postulated legal capacity to exercise the guaranteed rights. The Court appears to have been, at that time, clearly influenced by the changes made by the drafting committee to the Article which originally read: "No person shall be deprived of his life and personal liberty without due process of law". The drafting committee appointed by the Constituent Assembly, guided by American Judges, recommended the substitution of the expression "without due process of law" by the expression "except according to the procedure established by law". Gopalan’s case was decided soon after the Constitution had come into force. The judgment was mainly based on the language of the Constitution and the requirements of the particular case before the court.

"The life of law is not logic but experience," and the law has not remained static. The doctrine of exclusivity of fundamental rights as evolved in Gopalan’s case was thrown overboard by the same Supreme Court, about two decades later in the Bank Nationalization case; and four years later in 1974, in Haradhan Saha’s case, the Supreme Court judged the constitutionality of preventive detention with reference to Article 19 also.

Twenty-eight years after the judgment in Gopalan’s case, that is in 1978, the Supreme Court in Maneka Gandhi’s case, pronounced that the procedure contemplated by Article 21 must be "right, just and fair" and not arbitrary; it must pass the test of reasonableness and the procedure should be in conformity with the principles of natural justice and unless it was so, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

This line of precedent is both dramatic and educative. The Court was obviously conscious that in human affairs, there is a constant recurring cycle of change and experiment and that as a society changes, the norms acceptable to it also undergo change. Since social progress is dependant upon proper application of law to needs, the path from Gopalan to Maneka Gandhi, covered the judiciary’s attempt to mould and shape the law to respond to society’s desire that liberty must be effectively protected. I shall revert to the subsequent development and evolution of Article 21 a little later.

Soon after the Constitution came into force, the State embarked upon various agrarian reforms. The Supreme Court felt that during the process of bargain, the fundamental right of a citizen to hold and enjoy property, under Article 31, was being sacrificed. The Supreme
Court held that the method of deprivation was irrelevant and that the compensation must be at market value. There thus arose a conflict between the ideals of fundamental rights, on the one hand, and the socialistic ideals in the Directive Principles and the policy of the Congress party, on the other. Interference by the courts in the implementation of agrarian reforms was seriously resented by the executive, a view shared by Parliament which had an overwhelming Congress majority.

Parliament felt that the judges of the Supreme Court, in matters of land reform legislation, were trying to impose their personal philosophy on the nation rather than accepting the national philosophy. Judgments of the Supreme Court, particularly in the area of land reform, were neutralized by the Parliament by the exercise of its powers (under Article 368 of the Constitution) to amend the Constitution thereby removing the basis of those judgments. This was done, not in a spirit of confrontation, but because Parliament and the Executive believed that the socio-economic fabric on which the Constitution was founded was being defeated by the approach of the Supreme Court to property rights. By the amendment, the Parliament restricted the right to compensation, in cases of acquisitions and requisitions for the State or the State corporations, to the amount which the legislature prescribed.

Faced with a situation where the Parliament was amending the Constitution to neutralize judgment after judgment, in 1967 the Supreme Court, in I.C. Golaknath v. State of Punjab ruled, by a thin majority of six to five, that Article 368 of the Constitution only provided for the procedure to amend the Constitution and was not to be construed as an independent source of power. It was opined that the amendments to the Constitution made by Parliament could not encroach upon fundamental rights and if they did so, the amendments had to be declared void by reason of Article 13(2) of the Constitution. The Court, however, consciously adopted the principle of prospective overruling in that judgment and did not upset anything that had been done before.

The Parliament was once again quick to react and neutralize the effect of Golaknath. It amended both, Article 368 as well as Article 13 by the Constitution (Twenty-fourth Amendment) Act in 1971 with effect from November 5, 1971. Even the marginal note to Article 368 was amended. The validity of the Twenty-fourth Amendment Act
came up for consideration before the Supreme Court and in Kesavananda Bharti v. State of Kerala, a thirteen-Judge Bench (7:6) rendered the judgment, abridging the power of Parliament to amend the Constitution so as to prevent uncontrolled exercise of the amendment power to abrogate or destroy the basic structure on which the very foundation of the Constitution had been built. It is part of history now, that barely two days after the judgment in Kesavananda Bharati’s case was delivered, on the retirement of the Chief Justice Sikri, the Executive struck a blow to the independence of the judiciary. It abandoned the precedent of appointing the senior-most puisne judge as the Chief Justice. Superseding Justice Shelat, Justice Hegde and Justice Grover, who along with Chief Justice Sikri had formed the majority, it appointed the fourth senior-most judge, Justice A.N. Ray, as the Chief Justice. As was expected, the three superseded judges resigned.

The interpretation placed on Article 368 by the thin majority was sought to be removed by Parliament enacting the 42nd amendment to the Constitution asserting parliamentary supremacy. The amendment had far reaching consequences for the judiciary. The Statement of Objects and Reasons makes interesting reading:

The democratic institutions provided in the Constitution had been subjected to considerable stresses and strains and vested interests had been trying to promote their selfish ends to the great detriment of public good.

The internal emergency was declared on 26 June, 1975. Articles 14, 19 and 21 were suspended. The fate of hundreds of political detenus came up for consideration before the Courts. While many of the High Courts in the country faced the situation rather bravely, the Supreme Court, in the infamous case of ADM Jabalpur—except for the courageous lone dissent of Justice H.R. Khanna—declared by a majority of four, that the very right to life and liberty was no more available to a person detained by the State during the emergency. The independence and courage shown by Justice H.R. Khanna resulted in his supersession on the retirement of the Chief Justice Ray on 29th January, 1977. Justice M.H. Beg and not Justice H.R. Khanna was appointed the Chief Justice of India.

After the internal emergency was lifted and there was change at the Centre with the Janta Party coming to power, immediate steps were taken to neutralize the 42nd Amendment by enacting the Constitution (44th Amendment) Act, 1978, and it restored to the judiciary its lost independence.
In the next stage of constitutional evolution by the judiciary, Article 21 came to protect a wider range of interests covering almost every field of human life, including such matters as free legal service to the poor and needy; the plight of the undertrials in jail; the right to consult a lawyer during interrogation and the right not to make self-incriminatory statements; certain safeguards for arrested persons and the right to live with human dignity, free from exploitation.  

The concern of the courts for the underprivileged and the poorer sections of society was again reflected in several judgments during the decade that followed.  

Realizing that while human rights are necessary to promote the development of the personality of human beings, and that a healthy environment is necessary to safeguard conditions conducive to such a personality development—there being a natural link between environment, development and human rights—this Court ruled in Subhash Kumar v. State of Bihar, that the right to pollution-free water and air is also a facet of Article 21. In Doon Valley’s case, the Court held that Article 21 includes clean environment and that the permanent assets of mankind cannot be allowed to be exhausted. Again, with a view to minimize, if not altogether, prevent the violation of fundamental rights, award of compensation consequential upon the deprivation of the fundamental right to life and liberty of a citizen, as a "palliative" for the unlawful acts of the State, the Supreme Court held:

The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil
action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen.

For the weaker sections of Indian humanity, given their poverty, ignorance and illiteracy, access to Justice to protect their fundamental rights was almost illusory. To them, rights and benefits conferred by the Constitution meant nothing, for they lacked the capacity to assert these. Thus, the majority of the people of our country were denied justice. The judiciary regarded it as its duty to come to the rescue and help the underprivileged to realize the benefits of their economic and social entitlements. The strategy of Public Interest Litigation (PIL) was evolved to bring justice within the reach of such underprivileged classes.

The crucial point in the transformation of the Supreme Court was the introduction of wide-ranging changes in the modalities of access. The Supreme Court ruled that where judicial redress is sought in respect of a legal injury or a legal wrong suffered by persons, who by reason of their poverty or disability are unable to approach the Court for enforcement of their fundamental rights, any member of the public, acting bonafide, can maintain an action for judicial redress. A large section of the people in India suffer from different kinds of disadvantages and are not even aware of their constitutional rights. For them access to courts became a reality through the medium of PIL brought by social activists, who were well equipped to espouse their cause.

Judicial creativity of this kind has enabled realization of the promise of socio-economic justice envisaged in the Preamble to the Constitution of India. This weapon was effectively used by the Supreme Court and the High Courts, being Constitutional courts, to a large extent in the 1980s and later.14

One of the essential features of the democratic republic established under our Constitution, is the division of powers between the three important limbs of the State: Parliament and State Legislatures, the Executive, and the Judiciary. These three limbs are meant to operate within their clearly earmarked fields so that the democratic governments both at the Centre and in the States may function for the welfare of all citizens. In the case of Delhi Laws, (1951) the Supreme Court noted the absence of specific provisions in the Constitutional document that vested power exclusively—legislative powers in the
legislature and judicial powers in the judiciary. Though the judges differed very widely as to the constitutional limits to delegation of legislative power, the majority opinion imported the ‘essence’ of the doctrine of separation of powers and the doctrine of constitutional limitation and trust implicit in the constitutional scheme. Distribution and separation of power was treated as a basic structure in Indira Gandhi v. Raj Narain (1975). For the progress of the nation, it is imperative that all the three limbs of the State function in complete harmony.

Power of Judicial Review
Since, the Constitution divides power between different organs and prescribes limitations on the powers of Parliament, the State Legislatures and the Executive, it also provides for an impartial umpire in the shape of an independent judiciary to resolve the inevitable disputes over their boundaries. The founding fathers entrusted this power of judicial review exclusively to the judiciary.

It is not generally appreciated that when a court invalidates legislation, it neither approves nor condemns any legislative policy, nor is it concerned with its wisdom or expediency. It merely determines whether the legislation is in conformity with, or contrary to, the provisions of the Constitution. Similarly, where the Court strikes down an executive order, it does so not in a spirit of confrontation or to assert its superiority but in discharge of its constitutional duties and to uphold the majesty of the law. Likewise, when it upholds legislation or vindicates the executive, the court does not play a second fiddle to the Government. In all such cases, the court discharges its duty as a judicial sentinel, guarding the Ark of the Constitution so as to protect the integrity of the Constitution.

It must, however, be borne in mind that in the exercise of their power of judicial review, courts do not decide a dispute or controversy which is purely theoretical or for which there are no judicially manageable standards available with them. The Courts, generally speaking, do not interfere with the policy matters of the executive unless the policy is either against the Constitution or some statute or is actuated by mala fides. Policy matters, fiscal or otherwise, are best left to the judgment of the executive.

The expanded role of the judiciary has been given the title of 'Judicial Activism' by those who are critical of this expanded role. The main thrust of the criticism is that the judiciary by its directives to the
administration is usurping the functions of the legislatures and of the executive and is running the country—and, according to some, even ruining it. What these critics overlook is that the tardiness of legislatures and the indifference of the executive to address the complaints of citizens about violations of their human rights and unfair treatment, makes judicial intervention necessary. In those cases where the executive refuses to carry out the legislative will or ignores or thwarts the legislative will, it is surely legitimate for courts to step in and ensure compliance with the legislative mandate.

It must be remembered that the judiciary is always moved by an aggrieved person after traditional routes have failed. When the Court is apprised of and is satisfied about gross violations of basic human rights, it cannot fold its hands in despair and look the other way. The judiciary can neither prevaricate nor procrastinate. It must respond to the call for justice by adopting certain operational principles within the parameters of the Constitution and pass appropriate directions in order to render full and effective relief. Judicial activism generally encompasses an area of legislative vacuum in the field of human rights. In my opinion, judicial activism reinforces the strength of democracy and reaffirms the faith of the public in the Rule of Law. If the judiciary were also to shut its door to the citizen who finds the legislature unresponsive and executive indifferent, the citizen would be left with no recourse except to take to the streets. No one can now suggest, as was done twenty years ago, that civil liberties can be deprived by arbitrary means and all judicial interference is unwarranted so long as there is statutory authority.

Future challenges:
Judicial activism and judicial restraint are two sides of the same coin. It is, therefore, essential to remember that judicial restraint in the exercise of its functions is of equal importance for the judiciary while discharging its judicial obligations under the Constitution. In order to see that judicial activism does not become ‘judicial adventurism’ and lead a Judge to pursue his own notions of justice and beauty, ignoring the limits of law, the bounds of his jurisdiction and the binding precedents, the courts must act with proper restraint and self discipline. Failing that, the law will not only develop along uncertain lines but the judiciary’s image may also get tarnished and its respectability eroded. That would, indeed, be a sad day.
A court should only create rights where they are certain that they can be vindicated and its order can be enforced. The danger of creating a multiplicity of rights without the possibility of adequate enforcement is a real one. The judiciary should not become an institution of mere form bereft of substance, for there are real limits to what the judicial process should attempt to accomplish. The decisions of the courts should be within the zone of juridical legitimacy and should not ignore authoritative sources and become inconsistent or incoherent with the larger body of the law.

I may, in this connection, also usefully refer to the observations of Justice V.R. Krishna Iyer. The learned author said:

"...The Court cannot run the Government nor the Administration indulge in abuse of or non-use of power and get away with it. Even the Legislature has limitations and must comply with the parameters prescribed by the Constitution; and when they are breached, the court steps in to correct. The essence of judicial review, which is a basic feature of the Constitution, is a Constitutional fundamental. The radical role of the high bench (and even of the High Courts under Article 226) assigned to the Judiciary, casts on it a great obligation as the sentinel on the *qui vive* to defend the values of the Constitution and the rights of Indians."

The judiciary can act only as an alarm clock and not as a time-keeper. The courts can neither take over the functions of the Government nor allow the administration to get away with its omissions and commissions. Complex problems of policy cannot be resolved with the limited data available within the confines of the judicial process. These kinds of problems are incapable of resolution by ‘judicially manageable standards’ and the courts must tread carefully when confronted by them. We, in the judiciary, must forever remember the well-known saying that ‘absolute power corrupts absolutely’. Greater the power, the greater is the need for restraint. No civilized system of justice can permit judicial authoritarianism. The function of a Judge is divine but the problem arises when the judge starts thinking that he himself has become divine. That is where ego takes over and rationality and logic and the rules of constitutionalism are placed on a back burner.

With a view to retain its legitimacy and efficacy, the potent weapon of PIL—forged for the benefit of the weaker sections of society and those who as a class cannot agitate—has to be used carefully so that it may not get blunted by wrong use or overuse. Care has to be
taken to see that PIL essentially remains Public Interest Litigation and does not become either political Interest Litigation or personal Interest Litigation or publicity Interest Litigation or used for persecution. If that happens, PIL would lose its legitimacy and the credibility of the courts would suffer. Finding the delicate balance, ensuring justice in the society around us and yet maintaining institutional legitimacy, is a continuing challenge for the higher judiciary. One can say that the Court has maintained that balance remarkably well over the past 50 years.

It is well known that Rule of Law sustains democracy and it is equally true that the task of maintaining the Rule of Law to be assigned to a bold and independent judiciary. It is, therefore, imperative that the actions of judges are transparent and constitutionally sound. The judiciary cannot afford to adopt an uncritical attitude towards itself. Judges, at all levels, must make themselves accountable. The judiciary must follow the standards of morality and behaviour which it sets for others and, as a matter of fact, before laying down standards of behaviour for others the judiciary must demonstrate that it follows the same. Constant evaluation of the functioning of the institution needs therefore to be encouraged if the high esteem conferred on the judiciary is to be justified.

The societal perception of judges as being detached and impartial referees is the greatest strength of the judiciary and every judge must ensure that this perception does not receive a setback. The Courts act for the people who have reposed confidence in them and therefore the greatest threat to the independence of the judiciary is the erosion of its credibility in the public mind, for whatever reasons. Lord Denning six weeks after he completed 100 years, said: "Justice is rooted in confidence, and confidence is destroyed when the right minded go away thinking that ‘the Judge is biased’". The import of these observations is that the person who dons the robes of a judge, should be, fair, just, unbiased and impartial, while engaged in the administration of justice, as far as is practicable. As Justice Marshall of the United States Supreme Court put it, "We must never forget that the only real source of power that we as judges can tap is the respect of the people." The source of this respect was beautifully explained by Lord Denning, "They (Judges) will not be diverted from their duty by any extraneous
influences; nor by any hope of reward nor by the fear of penalties; nor by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people confidence in judges." (What Next in the Law, 1982).

If a judge, decides wrongly out of motives of self-promotion, he is no less corrupt than one who decides wrongly out of motives of financial gain. In either case the incumbent is not worthy of being a judge.

One of the greatest challenges that stares us in the face as we approach the twenty first Century is the failure of the judiciary to deliver justice expeditiously, which has brought about a sense of frustration among litigants. Human hope has its limits and waiting endlessly is even impossible in the current life-style.

The first thing to be kept in view by all concerned as we enter the new century, is that the arrears of court cases which have been mounting are disposed at the earliest, with the full and unstinted co-operation of the members of the Bar and the presiding judges, as partners in the great task of administration of justice. The consumer of justice wants unpolluted, speedy and inexpensive justice. In the absence of that, instead of taking recourse to law, he may be tempted to take the law into his own hands. This is what the judicial system must guard against. It has been noticed, for example, that in recent years landlords often do not file suits in rent courts but take the help of anti-social elements to throw out tenants by force and coercion. This is nothing short of the rule of the jungle. If this tendency grows it would be a sad day for constitutional democracy. The Bar and the Bench, together have to resolve these ills and preserve peoples’ faith.

The problem of delay on account of arrears has been discussed for decades. Many attempts to improve the working of the justice delivery system have been made and yet this remains the central challenge facing the Indian judiciary. The lack of speed in the dispute resolution system has had a direct impact on the level of lawlessness in our society and on the nation’s economic development for which a peaceful society is a necessary precondition.

The report of the Arrears Committee 1989–90, opined that unfilled vacancies in the High Courts, largely accounted for the accumulation of cases as loss of man-days was directly proportionate to the accumulation of cases. It is rather unfortunate that in the last 50 years, no scientific study has been undertaken to assess the needs of
the judge-strength more particularly in the subordinate judiciary. A proper study is needed to work out the requirements of the infrastructure and number of judges in the country, on the basis of pendency, rate of inflow of legal matters into the Courts and the estimated growth of litigation in the future. The ratio of judges per million population in this country is the lowest in the world. However, it must not be forgotten that it is not merely the raising of strength of the judges in the subordinate courts and the High Courts which is the need of the day—it is crucial that the right appointments are made based on merit, suitability, ability and integrity. An unfilled vacancy may not cause that much harm as a wrongly filled vacancy. The difficulty in persuading the leading members of the Bar to accept judgeship is real and too well known.

The overflowing dockets of the courts all over the country should, however, should not be taken as a sign of failure of the system but rather as a positive sign of faith in the administration of justice by those who are involved in litigation. Public resort to courts to counter public mischief is a tribute to the justice delivery system.

Cumbersonsome features of the procedural law also contribute in no small measure to the delay in the disposal of cases. Too many appeals and revisions against even interim orders help vested interests to prolong litigation. The Code of Civil Procedure was amended more than two decades ago but experience shows that cases are still adjourned for the asking, either for filing written statements or documents or even for settlement of issues. No attempt is made to examine the parties at the first hearing, which may more often than not narrow down the controversy. This needs urgent attention.

The delay in the disposal of cases can also be ‘judge made’—lack of punctuality, laxity and lack of control over the case-file and court proceedings contributes in no small measure to the delay in disposal of cases. The grant of unnecessary adjournments for the mere asking or on account of ‘strike call’ add to the problem. Court time is sacrosanct and no Judge has any right to waste it. Not adhering strictly to court timings is a serious aberration and must be avoided at all costs. The delay in pronouncing judgments is yet another aspect on which judges at all levels must address themselves. Both Bench and the Bar, as partners in the great task of administration of justice must resolve not to become parties to slow motion justice.
I believe that some of the ills with which our administration of justice is presently afflicted can be cured if financial and administrative autonomy are granted to the judiciary. I have been observing and analysing the functioning of the judicial system as a citizen, as a practicing advocate and also as a judge. The edifice of the administration of justice rests on the shoulder of the district judiciary, as the majority of the litigants go only upto district level. The High Courts have the power of superintendence over the State judiciary but they do not have any financial or administrative powers to create even one post of a subordinate judge or subordinate staff, acquire or purchase any land or building for Courts, or decide and implement any plan for modernization of court working. Chief Justices and their companion Judges of the High Court are best suited to know the requirements of the judiciary in their respective States. Their assessment and demand should receive proper consideration and not be ‘rejected’ on account of merely financial constraints. The Chief Justices of the High Courts who are high constitutional functionaries, know the needs of the judiciary of the State and need to be given financial and administrative power vis-a-vis State judiciary, by transfer of financial as well as administrative powers from the executive to enable them to function effectively. One of the essential elements of the Rule of Law is judicial independence and every society has seen the need for it. Financial dependence on the executive, to an extent, impinges upon the independence of the judiciary when it is required to ‘negotiate’ every time with the largest litigant-the State. Should that not be avoided to make the judiciary truly independent, vibrant and effective?

The high cost of litigation is yet another challenge which must be squarely met by the Bar and the Bench. We must admit that even after fifty years of independence the poor, backward and weaker sections of the society do not feel that they have equal opportunities for securing justice. The Government has demonstrated its bona fides and resolve in this respect by enforcing and supporting the Legal Services Authorities Act, which aims at providing a protective umbrella to the weaker sections, against all injustices and giving it adequate funds to introduce various schemes to ensure speedy and inexpensive justice. Last year, the Authority introduced a scheme for deputing Legal Aid Counsel in every Court of Magistrate in the country, so that the in
custody prisoners who are poor get immediate legal assistance free of cost. The Authority has also initiated steps for establishing permanent and continuous Lok Adalats in all districts for providing a statutory forum to litigants for amicable settlements of their disputes. Efforts are also on to establish such Lok Adalats in different government departments, statutory authorities and autonomous bodies so that the citizens’ problems vis-a-vis these departments are settled through negotiation in the presence of Lok Adalat judges. This experiment of alternative dispute resolution needs the support of the Bar and the Bench.


Administration of Criminal Justice
The administration of criminal justice in our country appears to be at crossroads. Large-scale acquittals are eroding people’s confidence in the effectiveness of the system. When people see persons accused of heinous and ghastly offences getting acquitted, they believe that the courts are either too liberal or pro-criminal or are not functioning the way they ought to function. Unfortunately, they do not know, nor do they try to find the reasons for such acquittals. I must, however, point out that most of the acquittals are on account of the fact that the witnesses produced by the prosecuting agencies fail to support the prosecution cases. A very large number of acquittals are also on account of faulty, non-scientific and disoriented investigation.

Some acquittals also take place because the judicial officers, rather than sifting the evidence with care, take to the easy course of throwing out the prosecution case on account of minor discrepancies and narrow technicalities. They ignore human psychology and behavioural probability when assessing the testimonial potency of the evidence. It is, often, overlooked that justice cannot be made sterile on the specious plea that no innocent should be punished even if many guilty escape. Indeed the innocent should not be punished but why should the guilty escape? The courts must respond to society’s cry for justice and punish the guilty through proper and judicious approach to assess the evidence.

In the light of these challenges and high expectations I would like to counsel humility on the part of the judiciary, as it enters the next millennium. In the words of an American lawyer:
After all is said and done, we cannot deny the fact that a judge is almost of necessity surrounded by people who keep telling him what a wonderful fellow he is. And if he once begins to believe that, he is a lost soul.

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5. AIR 1974 SC 2154.
7. 1967 (2) SCR 762.
9. In Madhav Hoskot’s case, (AIR 1978 SC 1548) it was held that providing free legal service to the poor and needy was an essential element of the "reasonable, fair and just procedure". Again, in Hussainara Khatoon’s case, (AIR 1979 SC 1819) while considering the plight of the undertrials in jail, speedy trial was held to be an integral and essential part of the "right to life and liberty" contained in Article 21 of the Constitution of India. In Nandini Satpathy v. P.L. Dani, (AIR 1978 SC 1025) the Supreme Court held that an accused has the right to consult a lawyer during interrogation and that the right not to make self-incriminatory statements should be widely interpreted to cover the pre-trial stage also. Again, in Sheela Barse v. State of Maharashtra, (1983 (2) SCC 96) the Supreme Court laid down certain safeguards for arrested persons. In Bandhua Mukti Morcha’s case, (AIR 1984 SC 802) the Supreme Court held that right to life guaranteed by Article 21 included the right to live with human dignity, free from exploitation.
10. Bihar Legal Support Society v. The Chief Justice of India and others, (AIR 1987 SC 38). Decisions on such matters as the right to protection against solitary confinement as in Sunil Batra v. Delhi Admin. (1978 (4) SCC 494); the right not to be held in fetters as in Charles Sobraj v. Supdt., Central Jail (1978 (4) SCC 104); the right against handcuffing as in T.V. Valtheeswaran v. State of Tamil Nadu, (1983 (2) SCC 68); the right against custodial violence as in Nilabati Behera v. State of Orissa, (1993 (2) SCC 746); the rights of the arrestee as in D.K. Basu v. State of West Bengal, (1997 (1) SCC 416); the right of the female employees not to be sexually harassed at the place of work as in the case of Vishaka v. State of Rajasthan, (1997 (6) SCC 241) and Apparel Export Promotion Council v. A.K. Chopra, (JT 1999 (1) SC 61), were rendered by expanding the ambit and scope of Article 21 so as to include within its fold the right to live with human dignity because the dignity of a human being supersedes all other considerations.
11. 1991 (1) SCC 598.
12. 1985 (2) SCC 431.