



**The Inaugural
*J.B. Dadachanji Memorial Debate***

***The Rule of Law has become an Illusion that will
not be sufficient to
empower India's development through the 21st
Century***

**Longchamps, Taj Mahal Hotel, New Delhi,
Sunday 26th November, 2017 at 18h30**



The Rule of Law - I

Aristotle – c350BC

It is better for the law to rule than one of the citizens',

... 'so even the guardians of the laws are obeying the laws.



The Rule of Law - II

First Charter of the Supreme Court of Calcutta (1774)

The Supreme Court should be a court of equity, and shall and may have full power and authority to administer justice, in a summary manner, as nearly as may be, according to the rules and proceedings of our High Court of Chancery in Great Britain.
[article 142 in the making]



The Rule of Law - III

**Professor A.V. Dicey
c1890**

I

That no man is punishable or can lawfully be made to suffer
in body or goods except for a distinct breach of law
established in the ordinary legal manner before the ordinary
courts of the land.



The Rule of Law - IV

Professor A.V. Dicey

II

We mean **in the second place**, when we speak of "the rule of law" as a characteristic of our country, not only that with us **no man is above the law, but (which is a different thing) that here, every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.**

The Rule of Law - V



Professor A.V. Dicey

III

There remains yet a **third and a different sense** in which ‘the rule of law’ or the predominance of the legal spirit may be described as a special attribute of English institutions. We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution.



The Rule of Law - VI

**Rule of Law
A guide for politicians**

RAOUL WALLENBERG INSTITUTE

**In essence, the rule of law means
that citizens and those who govern
them should obey the law.**



The Goal for the Rule of Law

**Decisions must be taken in
accordance with "Justice, equity and
good conscience".**

v.

Certainty, Predictability & Speed



Common Causes of Delay and Injustice

(other than lack of resources / judges)



Lack of Judicial Time (improper distribution)

Lack of judicially imposed timing / discipline

***Inordinate time taken in complex
cases to examine witnesses***

***Other factors: Strikes, transfers, adjournments,
re-hearing, changed pecuniary or territorial
jurisdiction, absence of the presiding officer etc.***



The Credibility Crisis

The Times of India 14th March 2016

10

TIMES NATION | Politics & Po

Judiciary facing credibility crisis: CJI

'Judges Need To Protect Dissent And Dialogue'

TIMES NEWS NETWORK

Lucknow: Chief Justice of India T S Thakur said at an event on Sunday that the judiciary was facing a crisis of credibility. At the same event the chief justice of the Allahabad high court said the judiciary must remain committed to safeguarding "dialogue and dissent" which are essential characteristics of a democratic society.

Speaking at the 150th anniversary celebrations of the Allahabad high court, Justice Thakur said, "The judiciary is facing challenges, both outside and within. The outside challenges can be handled, but we should be aware of the challenges within which lead to a 'crisis of credibility' which the judiciary faces today."

Asking judges to be conscientious about their duties,



CJI T S Thakur was speaking at the 150th anniversary celebrations of the Allahabad high court

CJI Thakur shared President Pranab Mukherjee's concern over huge pendency of cases and said that if the Bar cooperated, the judiciary was ready to put extras hours.

"If the Bar is ready, judges are ready to sit even on Saturdays so that the pendency of cases is reduced, especially the cases related to people languishing in jail for years," said the CJI. "We tried it in Punjab but it didn't work out," he added.

"The bar and judges work together and when we say that Allahabad high court has large number of renowned judges, it is because of the bar of

Allahabad high court," he said, adding that reducing the pendency of cases should be priority of Bar and judges.

On safeguarding "dialogue and dissent", the Chief Justice of the Allahabad high court Dhananjaya Yeshwant Chandrachud said, "Judges, in the administration of justice, ought to make wise use of judicial powers. They need to discharge their duties in a manner that promotes dialogue and protects dissent. This is because dialogue and dissent are essential for any democracy to survive and function."

Cautioning against a fixated view of laws, Justice Chandrachud said, "Law tends to follow precedents. But it must be kept in mind that administration of justice also necessarily involves interpretation of laws, that may have been laid down ages ago, in accordance with contemporary needs and challenges."

CJI Thakur said, "During the year-long sesquicentennial celebrations, if the pendency of cases is reduced, it will be a fitting end to the celebrations.

President pitches for speedy justice

Rajeev.Mani@timesgroup.com

justice," he said.

Allahabad: Expressing concern over the huge number of pending cases in courts across the country, President Pranab Mukherjee said, "There are 1,056 posts of judges sanctioned in the country out of which only 591 judges have been appointed so far and the need of the hour is to expedite the process."

He was addressing a galaxy of eminent personalities from politics and judiciary at the sesquicentennial celebrations of Allahabad high court, here on Sunday.

The President said, "Though the Indian judiciary has many strengths, it is yet to fully meet the aspirations of our people for speedy and affordable

information technology in the judicial system for speedy execution of work.

In his address, President called Allahabad high court the "largest temple of justice" in the country.

Governor Ram Naik said in his address that judges perform a tightrope walk between 'justice hurried is justice buried' and 'justice delayed is justice denied' and appealed

to the judiciary to ensure that cases are disposed fast. He also said several decisions of Allahabad high court made a big impact on the country.

Chief minister Akhilesh Yadav spoke about the facilities state government had provided for the lawyer fraternity.



Pranab Mukherjee

Eight years in Jail AFTER the CBI filed a closure report



Won't get apology'

Ali's father Mohammad Yunus moved to Delhi around 50 years ago from Paigambarpur village in Darbhanga, Bihar. Ali was one among his eight children — two boys, six girls. Yunus found work at a shop and sent Ali to Ahmadiya Salfia madrasa in Darbhanga to study. But Ali left it and returned to Delhi in 1991 after elder brother Noushad was arrested for a murder.

That incident was to change the family's life. Ali says he started working as a manual labourer in a factory and "everything was fine" till Noushad jumped parole. "It was stupid. Once he was re-arrested, police charged him in a terrorism case. An additional unsolved murder case was put on him. He was acquitted for that murder but the terror tag didn't go away."

In 1996, Ali was picked up along with his father. "My father was tortured in front of me. They kept saying my brother was a terrorist so I must be too."

Police released them later, but allegedly after warning Ali's mother to keep quiet.

Four months later, Ali says, the Crime Branch picked him up again. "They tortured me for eight days."

Meanwhile, the 41-year-old adds, police kept pressuring him to become an informer. "In 2001, I was picked up by an Intelligence Bureau officer, Majid Din, who would use Khalid as alias. He also picked up my friend Rizwan, who was a tailor. They kept me for three days. They made me write a letter to my brother telling him to do whatever was told to him, so as to save me.

While Noushad agreed to work with police inside the jail, Ali did so outside. "I was scared," Ali says. "They fixed a monthly salary of Rs

FROM INFORMER TO INMATE

2001: Irshad Ali joins as informer for Delhi Police Special Cell, IB

DEC 2005: Ali argues with IB over crossing the border, infiltrating militant groups; put in illegal custody. A friend and fellow informer, Maurif Qamar alias Nawab, later picked up

FEB 9, 2006: Delhi Police puts out a look-out notice for Nawab and Ali. Same evening, both are held, dubbed Al Badr militants

MAY 9, 2006: HC castigates Special Cell investigation, orders CBI inquiry

NOV 11, 2008: CBI files closure report, says the two have been falsely

implicated. Recommends discharge and action against erring officers

FEB 13, 2009: The trial court dismisses CBI report and Ali's discharge plea *3+ Years*

AUG 28, 2009: HC sets aside trial court order *1 1/2 Year*

NOV 19, 2009: Special Cell goes to Supreme Court against HC order *3 Yrs*

DEC 13, 2012: SC tells trial court to either accept the discharge of the two, or direct that the trial may proceed, or order further investigation *+ 4 Yrs*

DECEMBER 22, 2016: Trial court acquits Ali, Nawab

mastermind, the rest would be nabbed and nobody would question the operation."

Around 2004, Ali says he was introduced to a Kashmiri, Fayaz, who was also working for the IB. "The plan was to send me across the border and infiltrate a militant group... My wife Shabana was scared. She didn't want me to go."

Ali was reluctant too and Fayaz and he made an unsuccessful attempt to cross the border in Jammu. Ali says the IB officer's attitude changed after that. "On December 12, 2005, Majid called me to the Dhaula Kuan office. There were Delhi Police Special Cell people present. They put me in a car and blindfolded me. I was shocked."

He says he was kept somewhere near the Red Fort. "Later, they brought Nawab (Maurif Qamar) too. I had got him involved in this work."

CBI eventually confirmed every bit of Ali's story.

"I thought we would be free now. But instead of taking action against its officers, the Delhi Police and government started defending them... Our lives, our destroyed families didn't matter... An entire system was up against two poor nobodies," Ali says.

"When the CBI proved I was falsely implicated, I thought it would lead to an outcry. But this system doesn't work that way for people like us... There was a debate whether the CBI or the Special Cell was telling the truth. Both belonged to the same government."

During his weeks in custody before his arrest was shown, Ali says, he wrote his "name and details" on the wall of his cell with a broken piece of a zip. "I cut my finger and put my blood on it. I thought if I killed someone may

8th Sept. 2017

hindustan

New Delhi/METRO ■ Vol. XCIII No. 214 ■ Price ₹ 5.00/with Hindustan ₹ 9.00 (₹ 7.50 in Faridabad)/with Mint ₹ 9.50 ■ 24 pages • 14 pages of HT City. Area specific pages extra

HURRICANE IRMA TOLL CLIMBS TO 10, LIKELY TO HIT FLORIDA ON SUNDAY >>htworld p16

CBI SUMMONS LALU IN RLYS GRAFT CASE >>htnation p8

2 get death, Abu Salem life for '93 Mumbai blasts

24 YEARS LATER Special TADA court sentences five in India's longest terror trial

Presley Thomas
letters@hindustantimes.com

MUMBAI: A court on Thursday sentenced two men to death and two more, including gangster Abu Salem, to life in jail for the 1993 Mumbai serial bombings that killed 257 people.

A fifth convict, Riyaz Siddiqui, was given 10 years in prison.

The verdict came 24 years after the dozen blasts in India's financial capital and nearly 80 days after they were found guilty by the Special Tada Court.

The 50-year-old Salem was spared the gallows because of an extradition treaty with Portugal, where he was hiding before being brought to India.

Salem and his former actress-girlfriend Monica Bedi were arrested by Interpol in Lisbon in 2002 and were handed to Indian agencies in November 2005.

An important clause in the Indo-Portuguese treaty for Salem's extradition was an assurance by New Delhi that he would not be sentenced to death. "The extradition treaty says the maximum sentence permissible to him is 25 years, since life imprisonment and death penalty are banned in Portugal," special public prosecutor Deepak Salve said.

"The government will take a decision... whether to commute the life sentence to 25 years."

Co-convicts Firoz Khan and Tahir Merchant were free from such constraints.

CONTINUED ON P6

THE CONSPIRATORS

ABU SALEM ANSARI

ARRESTED: August 2, 2005

CHARGES: Supplying arms, ammunition & hand grenades

SENTENCE: Life imprisonment, fine of ₹ 8.51 lakh



KARIMULLAH SHAIKH

ARRESTED: August 21, 2008

CHARGES: Smuggling arms through Shekhadi coast in Raigad

SENTENCE: Life imprisonment, fine of ₹ 8.88L

M. TAHIR MERCHANT

ARRESTED: June 8, 2010

CHARGES: Making arrangements to send other convicts to Pakistan for training

SENTENCE: Death, fine of ₹ 4.85L

FIROZ KHAN

ARRESTED: February 5, 2010

CHARGES: Arranging transportation and distribution of arms, ammunition and explosives

SENTENCE: Death, fine of ₹ 4.75L

RIYAZ AHMED SIDDIQUE

ARRESTED: August 2, 2005

CHARGES: Transporting explosives in a van

SENTENCE: 10-year imprisonment, fine of ₹ 10,000



more stories

RISE & FALL OF TRUSTED DRIVER

Much before he delivered arms in the run-up to the serial blasts, Abu Salem went by the name Abu Samaan in Dawood's gang. He was given this sobriquet because of his good driving skills. Salem was the "natural choice" when it came to carrying the consignment of grenades and rifles from Gujarat to Mumbai. >>P11

Portugal extradition deal may shorten prison term

Ashok Bagriya and Charul Shah
letters@hindustantimes.com

DELHI/MUMBAI: The life sentence pronounced on Thursday on Abu Salem has raised questions on whether he would actually spend his life behind bars, in view of a sovereign undertaking by India to Portugal while extraditing the gangster in 2005. Rishi Malhotra, who has represented Salem in the Supreme Court, said that he was extradited from Portugal on an Indian government undertaking that he would not be given death penalty or sentenced to a jail term exceeding 25 years. However, in 2012, the Supreme Court had ruled that the Portugal government cannot impose pre-conditions on Indian courts. FULL REPORT ON P11



Criminal Case Started 1993

24 Years in trial

One undertrial sentenced to only 10 years, in jail for 24

A Pending Civil Suit Case Study - I



Cause/s of Action	:	1st April 1993 to November 1994
Case filed on	:	15th April 1996
Evidence closed on	:	20th January, 2012
Arguments Started on	:	10th July, 2013
Total number of hearings for arguments	:	52 hearings
Total number of hearings in the matter	:	162 hearings
Status	:	Pending

A Pending Criminal Case Case Study - II



Cause/s-of Action	:	1993 & 1994
FIR filed on	:	25th April 1996
Charge-sheet filed on	:	3rd December 1996
Evidence closed on	:	7th August, 2014 (18 year trial)
Arguments Started on	:	19th January, 2015
Total number of hearings in the matter	:	133 hearings
Total number of hearings for final arguments:		34 hearings

A decided Civil Suit Case Study - III
H.K. Dhingra vs Pan American
World Airways & Delta Air Lines.



Cause-of Action	: 20th October, 1990
Case filed in	: September 1992
Evidence closed on	: 8th October, 2002
Arguments Started on	: 19th July, 2005
Arguments concluded & judgment reserved on	: 2nd August 2005 (fresh hearings from 20 Sept. 2007 to 16 July, 2010)
Total number of hearings in the matter	: 157 hearings
Total number of hearings for arguments	: 52 hearings
Civil Suit Judgment pronounced on	: 6th August, 2010 (No Appeal filed)



Cases Pending in the Courts

(Source Hindustan Times October 1, 2017)

	2014	2015	2017
Supreme Court of India	62791	59272	62537
High Courts (all India)	41.52 Lakh or 4.152M	38.70 Lakh or 3.87 M	40.15 Lakh or 4.015 M
District/Subordinate Courts	2.64 Cr or 26.4 M	2.70 Cr or 27 M	2.74 Cr or 27.4 M
Total	3.06 Cr or 30 M	3.09 Cr or 30.9 M	3.15 Cr or 31.47 M
Increase	-	Nearly zero	3%

SUPREME COURT CASES: DATA ANALYSIS FROM APRIL 2016 to SEPTEMBER 2016 - I



Civil Cases (Category I): Date of Reference from the date of Cause of Action

1.	Total No. of cases analysed	89	Percentage
2.	No. of cases disposed-off between 0 to 5 years from the date of the cause of action	15	16.85%
3.	No. of cases disposed-off between 6 to 10 years from the date of the cause of action	24	26.96%
4.	No. of cases disposed-off between 11 to 15 years from the date of the cause of action	18	20.22%
5.	No. of cases disposed-off between 16 to 20 years from the date of the cause of action	6	6.74%
6.	No. of cases disposed-off 21 years and beyond from the date of the cause of action	25	28.08%



SUPREME COURT CASES: DATA ANALYSIS FROM APRIL 2016 to SEPTEMBER 2016 - II

Civil Cases (Category II): Date of Reference taken from the date of Initiation of Legal Proceedings

1.	Total No. of cases analysed	83	Percentage
2.	No. of cases disposed-off between 0 to 5 years from the date of the cause of action	17	20.48%
3.	No. of cases disposed-off between 6 to 10 years from the date of the cause of action	29	34.94%
4.	No. of cases disposed-off between 11 to 15 years from the date of the cause of action	16	19.28%
5.	No. of cases disposed-off between 16 to 20 years from the date of the cause of action	4	4.82%
6.	No. of cases disposed-off between 21 years and above from the date of the cause of action	16	19.28%



SUPREME COURT CASES: DATA ANALYSIS FROM ARPIL 2016 to SEPTEMBER 2016 - III

Criminal Cases (Category I): Date of Reference taken from the date of Cause of Action

1.	Total No. of cases analysed	32	Percentage
2.	No. of cases disposed-off between 0 to 5 years from the date of the cause of action	8	25%
3.	No. of cases disposed-off between 6 to 10 years from the date of the cause of action	4	12.5%
4.	No. of cases disposed-off between 11 to 15 years from the date of the cause of action	9	28.12%
5.	No. of cases disposed-off between 16 to 20 years from the date of the cause of action	6	18.75%
6.	No. of cases disposed-off between 21 years and above from the date of the cause of action	4	12.5%



SUPREME COURT CASES: DATA ANALYSIS FROM APRIL 2016 to SEPTEMBER 2016 - IV

Criminal Cases (Category II): Date of Reference taken from the date of Initiation of Legal Proceedings

1.	Total No. of cases analysed	26	Percentage
2.	No. of cases disposed-off between 0 to 5 years from the date of the cause of action	8	30.77%
3.	No. of cases disposed-off between 6 to 10 years from the date of the cause of action	4	15.38%
4.	No. of cases disposed-off between 11 to 15 years from the date of the cause of action	6	23.08%
5.	No. of cases disposed-off between 16 to 20 years from the date of the cause of action	4	15.38%
6.	No. of cases disposed-off 21 years and beyond from the date of the cause of action	3	11.53%



Was the choice of common law a good idea?

“An interesting anecdote of legal history is that no country which had not at some time or the other been a part of the British Empire has ever *voluntarily* adopted the common law.”

**“The common law is now inextricably intertwined with
and has become an integral part of the Indian legal system”**

**Fali S. Nariman
India’s Legal System –
Can it be Saved 2017**



What Can Be Done

Change the system of filing evidence affidavits, remove this additional step

Control the time spent by counsel in arguments

Stop Audi Alteram Partem Ad Nauseam

**Stop Transferring Judges and
Make the system of transfer transparent and predictable**

Monitor and discourage failure to deliver Judgments after final arguments

**Return to a Sessions Trial, let all witnesses be examined in one week,
have disciplined and fixed case-management time-lines**



THANK YOU