

Farewell Speech of Hon'ble Mr Justice Badar Durrez Ahmed, Chief Justice, High Court of Jammu & Kashmir on the occasion of his Lordship's retirement on 15th March, 2018

My brother Judges of this court,

Mr Jehangir Iqbal Ganai, Advocate General of the State of J&K,

Chief Secretary, Mr B. B. Vyas,

DGP, Mr S. P. Vaid,

Principal Secretary Home, Mr R. K. Goyal,

Principal Secretary to CM, Mr Rohit Kansal,

The Law Secretary, Mr Abdul Majeed,

Mr B.S. Salathia, President, J&K High Court Bar Association, Jammu,

Mr Sachin Gupta, Vice-President, J&K High Court Bar Association, Jammu,

Mr Prem Sadotra, Secretary, J&K High Court Bar Association, Jammu and other executive members,

Mrs Sindhu Sharma, Assistant Solicitor General of India,

Senior Additional Advocates General, other Law Officers of the Central and State Governments,

Senior Advocates and other Members of the Bar,

District & Sessions Judges,

Ladies & Gentlemen

First of all, I express gratitude for the kind words said about me here today and in the last several days in a series of farewell functions. My wife and I are overwhelmed by the affection showered upon us.

Fifteen days less than a year ago I took oath, on the 1st of April, 2017, as the Chief Justice of this High Court. This period has gone by very fast. This happens when you enjoy something. I have loved working in both the Srinagar and Jammu wings

of this high court and for the entire judicial system of this wonderfully diverse state. It has plains, foothills, ravines, snow clad mountains, lush green valleys, forests, high altitude deserts, sparkling streams, rivers, lakes, springs, bountiful birds and animals and fish, many hued flora and, above all, people with different languages, religions, cultures, customs and cuisine. This is a diversity we should be proud of and which must be saved at all costs because it is the result of the ebb and flow of the history of this State and its people. It is a wonderful example of the variety of human civilization, nourished, nurtured and protected through hundreds of years.

But, there is another kind of diversity or, shall I say, disparity which needs to be removed. In the short span of time that I had in this court, I have traversed the length and breadth of the State to inspect and see, first-hand, the conditions of our courts. There are places where the courts are in a deplorable condition, yet, the judges are performing their duties under extremely difficult circumstances. There are also court complexes at the other end of the spectrum. For example, the Srinagar District Court Complex at Mominabad. It is equal to the best in the country insofar as the infrastructure is concerned and, is certainly, in a more picturesque setting than any other. It is evident that on the one hand we have courts which are in a despicable condition and on the other there are state-of-the-art courts. This is the kind of diversity, or as I said, disparity, which is nothing to be proud of. Any system is gauged not by its best component but, by its weakest. Therefore, it is imperative that those courts which are lagging behind in the context of infrastructure are immediately upgraded. Many proposals are in the pipeline and I hope that the Government expedites them on a high priority basis. This high court is regarded as a small court because our sanctioned strength is of 17 judges, out of which, only 10 are in place – and, one is about to go very shortly.

But, the work load is very heavy. We have a combined pendency in both the wings of about 62,000 cases. So, simply put, each judge has to shoulder the burden of about 6,200 cases. Now, compare this with the figures from my parent High Court (i.e., the High Court of Delhi). The pendency there is roughly the same, around 64,000 cases. But, the sanctioned strength is of 60 judges out of which 38 are in place. Which means that the number of cases per judge is approximately 1680. This implies that the judges of this court have to hear approximately four times the number of cases handled by judges of the High Court of Delhi. I have made this comparison only by way of example to demonstrate that the J&K High Court is by no means, no longer, a small High Court and should not be considered as such. I have, therefore, requested the Union Minister for Law and Justice for raising the sanctioned strength of judges of this High Court to 25. Let us hope that this fructifies in the near future.

In my experience here, I have found that the members of the bar at both places, Srinagar and Jammu, are extremely competent. I was happy to see that younger and junior members of the bar are not shy to appear in court and argue their matters with confidence. There are a good number of bright youngsters and, this is a good sign for the continuity and development of the bar. A competent and vibrant bar is an indicium of a successful judicial system. If the quality of the bar is good it will undoubtedly be manifested in the quality of the bench.

It is my belief that the relationship between the bench and bar, must not be overly friendly, lest justice is not seen to done, yet, it must be cordial and one of mutual respect. Cases must be presented and heard in an environment which encourages debate on points of fact and law. Judges, in my view, should not be overbearing or abrupt, and should permit counsel to put across their points of view. At the same

time, advocates need to be able to make their arguments brief and succinct and they ought to avoid unnecessary repetition.

Use of technology in the courtroom is no longer a pipe dream for this High Court. It is a reality. I am very proud of the fact that the introduction of paperless eCourts in this High Court was facilitated in large measure by my colleagues on the Bench and welcomed by members of the bar, old and young. The fact that this Court is now a front-runner in the adoption and use of technology in the court rooms, is the result of a huge collaborative effort. This is palpable in the changed mind-sets of all. Like in any large venture, here, too, there are many 'behind-the-scene' players. The Computer Committee of the High Court took swift decisions. The registry personnel, from the peons to the Registrar General, have all contributed. But, I must single out the efforts of the CPC Mr Shabir Ahmad Malik and ably assisted by Mr Umesh Sharma in making the dream come true. The NIC teams at Srinagar and Jammu worked tirelessly, supported by our own technical staff. And, of course, our Registrars (judicial) – Mr Mohd Yousuf Wani at Srinagar and Mr Virender Singh Bhou at Jammu – who had a harrowing time in the switch over from paper to electronic files but, they came through with flying colours. I must also acknowledge the full support of the Government in this project and, particularly, of Mr B. B. Vyas, the Chief Secretary who did not take any time in ensuring that we had the requisite support and funding for this project.

Use of technology in the court system is not an end in itself. It is a means to an end. It enhances the efficiency of the judges and also the court staff. At the same time, it enables greater transparency as every detail of a case becomes accessible to the concerned lawyers and litigants. We have achieved a great deal in a very short space of time. But, a lot has to be done to fully realise the dream of an ultra-modern court system using cutting-edge technology so as to provide easy access

to justice and to efficiently dispense justice, without unnecessary delays. A big step has been taken and the road map is clear. I am confident that this High Court will not look back and shall take the lead and conquer every milestone.

In our country and in this State, in particular, the criminal justice system is sub-optimal. The first problem is with the quality of investigation. Our investigating officers are intellectually and infra-structurally ill-equipped. Modern and scientific techniques which are available worldwide are not being used. Even earlier-used techniques such as fingerprinting are rarely employed. Forensic science laboratories are dysfunctional. The pattern in almost every case is of alleged criminals easily confessing before police officers although such confessions are inadmissible. Disclosure statements lose significance as the recoveries pursuant to such disclosures are not established by concrete evidence. The second difficulty is that even the course of trial is plagued by adjournments and consequent delays. As a result, the evidence, in most cases, is recorded several years after the crime. Even in this High Court appeals are not being disposed of as expeditiously as they should be. One of the main reasons, is the huge shortage of Judges. Another cause, though easily remediable, is the lack of English translations of depositions of witnesses. Despite these road-blocks, I am confident that my colleagues would leave no stone unturned in ensuring that the older criminal appeals are taken up for hearing on a priority basis.

Environmental issues are of extreme importance in this State -- be it the cleaning of the Dal lake or saving the Gharana wetlands or the protection of the fast receding Thajiwas glacier at Sonmarg or the preservation of forests and river systems or the issue of solid waste management in Jammu. These and other vital issues have cropped up before this court through PILs. While dealing with PILs our approach has been to shun imposition of arbitrary and ad hoc instructions and to

ensure that the statutory provisions which are already in place are implemented by the executive. It is my view that the courts should not themselves enter into governance but should ensure that those responsible to govern discharge their constitutional and statutory duties within the parameters of law. This is a component of the rule of law and it is our duty that it remains firmly established.

I must acknowledge the blessings of my parents who are no more – late Mr Fakhruddin Ali Ahmed and late Begum Abida Ahmed. I must thank my wife, Saba, who is a wizard at organizing and without her support I would not have been able to achieve what I did. My daughter, son-in-law, son and daughter-in-law have all been extremely supportive and have held fort in Delhi while my wife and I have been here. Of course, my grandson, Aariz, has brought cheer and made life very pleasant even in difficult times.

I also thank all my colleagues on the Bench and the Bar, my friends and other members of my family and the entire High Court staff and members of the media. In particular, I express my gratitude to the Registrar General, Mr Sanjay Dhar and to my Principal Secretary, Mr Jawad Ahmed, who are both excellent officers and have made my life, as a Chief Justice, very easy. The Registrar Vigilance, Mr Puneet Gupta, does a difficult job, quietly, confidentially and efficiently. I cannot forget the contribution of my law researchers Ms Anu Charak at Jammu and Mr Mohammad Ayub at Srinagar, my exuberant Bench Secretary, Mr Asif, my Secretary, Mr Raina, my private secretaries, my stenographers and other members of my personal staff including the extremely diligent and dutiful Jamadar Mr Mangat Ram. The competent assistance given by Mr Rakesh Sharma at the residential office has been of immense help to me. I must also congratulate the entire protocol staff for their seamless and smooth services.

I now come to the end. Life, for me, till now, has gone by in a blink of an eye and continues to do so. As the great urdu poet Mirza Ghalib said:

*rau meñ hai rakshsh-e 'umr kahāñ dekhiye thame
ne hāth bāg par hai nah pā hai rakāb meñ*

Thank you and Jai Hind.