

Speech of Hon'ble Mr. Justice Tirath Singh Thakur, Chief Justice, Punjab & Haryana High Court, Chandigarh in the Workshop on "Backlog of Cases Under Section 138 of the Negotiable Instrument Act, 1881- Challenges & Solutions" held on 29.11.2008 at Rock Garden Auditorium, Sector-1, Chandigarh.

Hon'ble Mr. Justice Sinha, my esteemed brother and sister Judges, Advocate General for Punjab, Advocate General for Haryana, Judicial Officers, Trainee Judicial Officers, Senior Advocates representatives of the financial institutions and distinguished invitees, I was being introduced as having been the Finance Minister of Kashmir, the Dy. Chief Minister of Kashmir and also Governor of one of the States in the North East. Justice Sinha asked me that part of my profile as a Judge and as a lawyer was not known to him whether I would qualify to continue as Chief Justice of Punjab & Haryana High Court after having such a varied career. In fact, there is some confusion when you have a father like the one I had it is always very difficult to live up to the expectations of the people. Some how the person who introduced me has mixed up his career profile with that of mine. I feel dwarfed in front of what he had achieved in life but whatever I am today perhaps is only because of his blessings. The total pendency in the country is, it is said, today is about 2.06 crores. Yesterday we had Professor Mohan Gopal saying that it has arisen to 2.90 crores but if you think about the single largest identifiable group of cases, you will find that 138 cases are perhaps the single largest number of cases on a given subject. Why I say so it that if we take Delhi, in Delhi there were about 6.00 lacs around 6.50 lacs cases pending in the Lower Courts, out of that around 5 lacs cases or 4 lac cases and 70 thousand cases were under 138. If we take an average of 5 lac cases under Section -138 in a place like Delhi and if we estimate that every other metro like Delhi, whether it is Bombay, Calcutta, Madras and every other big place, like Bangalore, like Hyderabad also has an equal number of cases under 138. We would have something like 30 lac cases pending under 138 in different courts. The second category of cities is where these cases are pending, may be like Ludhiana, Ambala, Jalandhar, commercially active places, where we have something like 20 to 50 thousand cases pending under 138. Chandigarh itself accounts for merely 55000 cases under 138. Now if we add up all this, the total number of cases pending today in the country under 138 of the Negotiable Instruments Act would be in the range of a crore out of a total of three crores or so 1/3rd of the pendency today in the country is cases under 138. Now these cases are taking a very large share out of the court time. The result is

that the traditional litigation to which we should be diverting and which we should be disposing of within a reasonable time frame is suffering and we also know that these cases are filed by financial institutions, banking institutions and by service providers. Everyone today has a cell phone everyone is issuing a cheque. This is a climate where you see everyone has a car so he has a financing arrangements with the bank, Cheques are issued in advance and sometime get dishonoured, so the majority of these cases is filed by banks, banking institutions and service providers and these cases eventually become the means for recovery of the outstanding amounts. It is not that it is a principal that is involved that it is an offense against the state and therefore the system must come under this kind of pressure, it is actually a method by which you coerce the accused to pay up. This has been realized even the Chief Justice of India has publicly said that Courts are, because of lack of a proper study to determine the impact of the amendment to 138 by which this becomes an offense, come under tremendous pressure and therefore we need to do something. It is not for the first time that people have thought about devising a module or framing a strategy to address this difficult question. In Delhi while I was a Judge of that Court and I had the privilege of interacting with Justice Sinha we were working on a mechanism by which these cases can be effectively handled. We had multiple rounds of discussions and we had arrived at a tentative framework which would perhaps help us in addressing the problem. Before we could put it in action, I was shifted out. I came here and when Justice Sinha last visited Chandigarh, this issue was discussed and his lordship said that what we have left in Delhi perhaps we could pick up the threads in Chandigarh and start again working on it, not because we may necessarily have a major problem like Delhi has because 55000 is still manageable but because if something can be worked out in Chandigarh. It may become a module for the entire country to follow. In fact the whole idea was that Chief Justice of India was supposed to come to inaugurate the workshop the North region workshop that is going on and was also scheduled to inaugurate this programme so that it comes in international focus for one reason or the other. His Lordship could not spare time and we have among us Justice Sinha who has a very clear and deep understanding of the nature of the problem is also the possibilities of finding effective solutions. It is not a programme where Justice Sinha will give you a formula or give you a mantra that will solve the problem. No. It is a programme where Judges who are dealing these cases will be free to express

themselves. It is interactive programme. After this inaugural, we are going to have a short tea break and thereafter the working session in which I would request all our Judges who are here and other trainee Judges, who are here and even the members of the Bar who are here to please come out freely as to how they have handled and what is real difficulty in quickly deciding these cases. I do not want to stand between you and Justice Sinha and I am sure once you hear him and once you apply yourselves to the various possibilities that we have in view you will certainly find that we will be clearer in our approach. I was told sometime that we were discussing about 138, somebody suggested that there is an easy solution out. Make 138 a cognizable offence, any one who has a dishonoured cheque goes to the police, the matter will be resolved, but there are various possibilities, there is an other suggestion that let the court fee be payable on a complaint filed under 138 so that the bank does not rush to the Courts. All that they have to do now, perhaps without even a stamp if it is a non-cognizable offence may be bailable, but no stamp duty nothing you just file a complaint and get the process issued. In Delhi the system is so much under pressure that we are unable to even issue summons because the number of cases that are filed everyday is so large that the judicial infrastructure is unable even to cope with the number of summons that have to be issued. So the lawyer who represent the companies, or the banks, themselves bring the summons, they prepare the summons and get them signed. In Bangalore, it was said that in one single day 30,000 cases are filed one single day under 138. That is the kind of problem we are facing. Unless we address this problem in right earnest in right time, I am sure we will reach a stage where we may find it difficult to resolve it. It is high time that we, with the help of distinguished jurists like Justice Sinha apply ourselves and find some ways out. Thank you very much.