

Indian Judiciary: Challenges of future

- 1.** I am honored to be speaking at the fifth Late Sri Lavu Venkateswarlu Endowment Lecture. Sri Venkateswarlu was known for his love for his people and his native village - Pedanandipadu. Sri Lavu Venkateswarlu established a library in his native village and promoted sports, especially volleyball. He was an “agro entrepreneur” with social consciousness.
- 2.** He always encouraged the youth to follow the path of righteousness. He was a strong proponent of the belief that a good value education to the youth will secure the future of the nation. It is his ideals that has inspired my brother Justice Nageswara Rao to adopt his village and bring in an era of growth and progress. I deem it an honor to deliver this lecture instituted in the memory of late Sri Lavu Ventakateswarlu.
- 3.** After 75 years of functioning as a democracy and 72 years of abiding by the Constitution, India still is one of the youngest, yet one of the most steadfast democratic republics. Distancing modern independent India from its colonial past was not an easy feat.

4. Post-Independence, one of the biggest challenges was modernization and shifting gears from primarily an agricultural economy to an industrial one. The 1960s and 1970s may be remembered as the most challenging periods in modern Indian history. Two wars, a liberation movement, armed rebellion by a certain section of students and the youth, nationalization of banks and general insurance companies, devaluation of the rupee and declaration of emergency, etc., marked the turbulent times of a young democracy.
5. The 1990s were particularly difficult for the Indian economy. The Gulf war, fall in foreign remittances, increase of global oil prices, the resultant depletion of forex reserves, a very high inflation rate – **all in all, a crisis was at our doorstep**. Desperate times called for desperate measures. The result was an attempt to end the License Raj, new market friendly legislations, and the formulation of the New Industrial Policy of 1991 which aimed at liberalizing the economy and attracting foreign investments. The end of the 1980s witnessed the beginning of formation of the coalition era in the central level.

- 6.** In this background, I would like to discuss the growth of the Indian Judiciary. The judiciary was also confronted with many challenges over this 72-year period. The Supreme Court distinguished itself by ironing out many wrinkles, and merging welfare with the rule of law. The Courts have played an important role in ensuring that the rights enshrined in the Constitution are not a dead letter. The judiciary has reinforced the idea that justice demands balancing the needs of an individual with the welfare of the community. It is because of these reasons that, today, we thrive as the largest democracy governed by a written Constitution.
- 7.** The Indian Supreme Court has immensely contributed towards the establishment of a constitutional culture in the nation. The Supreme Court initially had to expound on jurisprudence afresh, without the help of earlier court decisions on the constitutional front. Slowly, and progressively, in the first two decades of its functioning, the Court has built its own jurisprudence to ensure that Rule of Law is always maintained.

8. Initially, the Supreme Court provided a very literal understanding of the Constitution, like in the ***AK Gopalan*** case. It was after almost three decades that the Supreme Court declared the transformative power of the Constitution in the ***Maneka Gandhi case***.
9. In ***Kesavananda Bharti***, the Court for the first time expounded on its power to review amendments to the Constitution. It was only through such an exposition that the 39th Amendment Act was struck down in the ***Indira Gandhi vs. Raj Narain case***.
10. The power of judicial review is often sought to be branded as Judicial overreach. Such generalisations are misguided. **The Constitution created three co-equal organs, namely the legislature, the executive and the judiciary.** It is in this context that the judiciary has been given the role of reviewing the legality of steps taken by the other two organs.
11. **It is a well-known fact that; a popular majority is not a defence for arbitrary actions taken by a Government. Every action is mandatorily required to comply with the Constitution. If the judiciary does not have the power of judicial review, then the functioning of democracy in this country would be unthinkable.**

12. The concept of separation of powers cannot be utilised to restrict the scope of judicial review. This concept only protects bona fide legitimate actions. It is required that the legislative and executive wings recognise their limits under the Constitution to ensure the smooth working of the democracy.

CHALLENGES BEFORE THE JUDICIARY

13. This brings me to the various challenges before the Indian judiciary. Broadly these can be categorized into two groups. The *first* relate to issues before the judiciary due to changing times. I call these “new challenges”, although some of them are already being faced by us. These include issues such as:

- I. Need for Domain Expertise
- II. Absence of Well-Considered Legislation
- III. Non-Cooperative Executive
- IV. Dysfunctional Criminal Justice System
- V. New Threats to the Judiciary
- VI. Increasing Judicial Resilience

14. The second category relates to perennial issues before the judiciary. These are issues that have been a concern for many years. Much has already been said about them. Despite this, I am highlighting these challenges again because they require immediate resolution. I call these challenges “persistent challenges” and they are as follows:

I. Improving Judicial Infrastructure

II. Filling Judicial Vacancies

III. Ever Increasing caseloads

15. I will first discuss the “new challenges” to be faced by the judiciary, before giving some of my thoughts on the “persistent challenges” before us.

Future Challenges

Need for Domain Expertise

16. Due to the rapid development of science and technology, new types of problems and cases are coming up every day. Take for example, the internet. Sale of illegal material on the dark web, identity theft, fraudulent online transactions, hacking, spread of defamatory content and hate speech, etc., are all challenges that we must confront.

- 17.** Another example relates to money laundering or crime funding through virtual currencies. At present, even understanding the mechanisms underlying such an offence might be beyond our Judges and investigators. An additional layer of complexity relates to issue of jurisdiction over the above.
- 18.** Apart from changing dimensions of criminal law, there are also new and complicated civil law issues that have arisen due to advance in technologies. These are all transforming the legal landscape and require judges and other authorities to have vast technical knowledge. Our understanding and the laws cannot lag too far behind changing technology. We are still discussing issues related to internet, while technologists are talking about the “Metaverse”.
- 19.** An aspect that we need to contend with is the rise of specialized regulatory authorities like the Competition Commission, Securities Tribunal, the Electricity Regulatory Commissions and TRAI. The complexities involved in adjudicating such cases necessitated the co-opting of technical members in Tribunals. However, no such provision to co-opt experts is available to the judiciary, causing difficulties in deciding appeals.

20. This issue becomes even more urgent when it comes to appeals or petitions relating to environmental pollution and the climate crisis.
21. **There is therefore a requirement of domain expertise.** We not only need highly trained judges and lawyers well versed in fundamental legal principles, but also those with an understanding of developments across various fields.
22. **It is necessary to have continued judicial training from technical experts. Legal education needs to keep pace with the times and constantly update their curricula.**

Absence of Well-Considered Legislation

23. I have highlighted this earlier, but there is usually no impact assessment or basic scrutiny of constitutionality before passing of legislations. The minimal that is expected out of the legislature while drafting laws is that they abide by settled Constitutional principles. While making laws, they must also think of providing effective remedies for issues which may arise out of the law. But these principles seemingly are being ignored.

- 24.** A lack of foresight in legislating can directly result in the clogging of courts. For example, the introduction of the Bihar Prohibition Act in 2016 resulted in the High Court being clogged with bail applications. Because of this, a simple bail application takes 1 year to be disposed of.
- 25. Un-refined law leads to a mushrooming of litigation. A proposed law can only be refined through the involvement of all stakeholders and through meaningful debate. Parliament introduced a remarkable mechanism in the 1990's to enhance scrutiny of bills - that of standing committees. However, it appears that the legislature has not been able to make optimum use of the Committee system. I hope this will change, as such scrutiny improves the quality of legislations.**

Non-Cooperative Executive

- 26.** Courts do not have the power of the purse or the sword. Court orders are only good when they get executed. The executive needs to assist and co-operate for the rule of law to prevail in the nation. However there appears to be a growing tendency to disregard, and even disrespect Court orders by the executive.

27. One ought to remember that ensuring justice is not the responsibility of the judiciary alone. Unless the other two coordinate organs make sincere efforts to fill the judicial vacancies, appoint prosecutors, strengthen infrastructure, and make laws with a clear foresight and stakeholders analysis, judiciary cannot be held responsible alone.

Dysfunctional Criminal Justice System

28. There is a need to liberate the institution of public prosecutors. Total independence must be granted to them and to make them answerable only to the Courts. Historically, prosecutors in India have been under the control of the government. Hence it is not a surprise that they do not act independently. They do nothing to prevent frivolous and non-deserving cases from reaching the courts. Public prosecutors automatically oppose bail applications, without independently applying their mind. They attempt to suppress evidence during trial which could benefit the accused.

29. A holistic rework needs to be undertaken. In order to insulate the public prosecutors, an independent selection committee may be constituted for their appointment. Best practices should be adopted after a comparative analysis of other jurisdictions.

- 30.** The responsibility of a public prosecutor is immense. They act as gate keepers who ensure that rights of citizens are not sacrificed and that citizens are not harassed through malicious prosecutions.
- 31.** Another facet of the criminal justice system that needs to be changed relates to investigators. There is absolutely no system of accountability in place for faulty and inordinately delayed investigations. A person wrongfully incarcerated due to false implication loses his right to liberty, property, etc. He suffers enormously. There is no real remedy left for him and no compensation whatsoever even after an acquittal.

New Threats to the Judiciary

- 32.** An area of grave concern for the judiciary, which as the head of the family I have highlighted multiple times, is the increasing attacks on Judges. In recent times, physical attacks on judicial officers are on the rise. At times, there are also concerted campaigns in print and social media against judges if parties do not get a favourable order. These attacks appear to be sponsored and synchronised.

- 33.** The law enforcing agencies, particularly the specialised agencies, need to deal with such malicious attacks effectively. It is unfortunate that unless the Court interferes and passes orders, the authorities generally do not proceed with the investigation. The Governments are expected and duty bound to create a secure environment so that the judges and judicial officers can function fearlessly.
- 34.** Another aspect which affects the fair functioning and independence of judiciary is the rising number of media trials. New media tools have enormous amplifying ability but appear to be incapable of distinguishing between right and wrong, good and bad and the real and fake. Media trials cannot be a guiding factor in deciding cases.

Increasing Judicial Resilience

- 35.** The necessity to co-opt technology in the judicial process was brought into sharp focus with the Covid-19 pandemic. Virtual hearings allowed Court proceedings to take place at the peak of the pandemic. It proved to be an essential tool towards enhancing access to justice.

- 36.** Of course, there are many issues with virtual hearing that need to be worked on. The main challenge is to turn it into an effective system. For the same, Courts, litigants and advocates must be equipped with adequate infrastructure across the country. Unfortunately, this is not yet in place.
- 37. There is a wide gap to be bridged. Advocates and litigants who are from rural areas, smaller towns or who are economically weaker; are disadvantaged and excluded. They have suffered immensely.** This needs to be remedied.
- 38.** Virtual hearings are just one method to increase the resilience of the system. However, this endeavour still needs much introspection and we need to develop tailor-made platforms to meet the specialized needs of the judiciary.

PERSISTENT CHALLENGES

Improving Judicial Infrastructure

- 39.** I now come to some of the persistent issues before the Indian judiciary. The current state of judicial infrastructure is terrible to say the least. It does not even meet the requirements of already existing judicial officers. To meet the present and future needs, a major influx of funds and a systematic plan is imperative.

The setting up of National and State Judicial Infrastructure Authorities is long overdue and I have been attempting to impress upon the Government to do so as soon as possible.

Filling Judicial Vacancies

40. The appointment of judges is a continuous process. After being elevated as the Chief Justice of India, I have focussed on increasing judicial appointments. I appreciate the Government's effort in appointing several judges in recent times.
41. However, some recommendations made by High Courts are yet to be transmitted to the Supreme Court by the Union Law Ministry. It is expected that the Government needs to strictly adhere to the timelines laid down in the ***Malik Mazhar Case***.
42. High Courts must also accelerate the process of making recommendations to fill vacancies. I am constantly persuading Chief Justices of various High Courts to take up this issue. My desire is to witness a near zero vacancy.
43. Another issue is the alarming number of vacancies in various Tribunals.

- 44. It is nowadays fashionable to reiterate phrases such as, “judges are themselves appointing judges”. I consider this to be one of the widely propagated myths. The fact is the Judiciary is merely one of the many players involved in the process.** Many authorities are involved including the Union Law Ministry, State Governments, Governor, High Court Collegia, Intelligence Bureau, and lastly, the topmost executive, who all are designated to examine the suitability of a candidate. **I am sad to note that the well-informed also propagate the aforesaid notion. After all, this narrative suits certain sections.**
- 45.** An important aspect worth highlighting relates to improving the service conditions of judges to attract the best talent and fill vacancies. On an average, judges of constitutional courts hear about 40 cases every day on various issues. Holidays are devoted to completing pending judicial work.
- 46.** Even after 2-3 decades of service in the judiciary, after retirement, judges are not given basic security, housing or healthcare. If we are deliberating about a strong, vibrant, and independent judiciary, these must also be deliberated upon.

Increasing Case Loads

- 47.** I have consciously decided to address the issue of pendency towards the end of my address. This is because I believe pendency is the most complicated and misunderstood topic.
- 48. Pendency** relates to cases which have not yet been disposed of, without any reference to the period it has spent in the system. **Delay** relates to cases which have been in the system for a period longer than what is generally required. Every delay is not an arrear. Some delays might be due to valid reasons. Unwarranted delays are **arrears**.
- 49. Backlog** refers to a situation where the number of cases instituted in a period is more than the number of cases that were disposed of. Tackling judicial delay refers to reduction of arrears and backlogs.
- 50.** Recent statistics indicate that 4 crore 60 lakh cases are pending before Indian Courts. By itself, this number is not a very useful indicator. Further, the population of India, which is nearly 1.4 billion, and the judge-to-population ratio of 21 judges per million must be kept in mind.

- 51. An additional fact that needs to be considered are the types of cases clogging the system. A 2017 study by the Department of Justice indicated that Government litigation constitutes 46% of the total litigation.** Actions or inaction of authorities leads to a lot of litigation in the country, expected particularly those relating to land acquisition. **The Government needs to make settlement through ADR mechanisms ,the norm in such cases.**
- 52. When other State organs fall short of constitutional expectations, people decide to approach the judiciary. After all, considering the monetary and psychological impact of litigation, no individual wants to approach the court without a serious grievance.**
- 53. Therefore, attributing this issue only to the judiciary is only viewing one side of the coin. To resolve this challenge we need to view the larger picture. Pendency is a complex issue. It can only be resolved through a multi-pronged approach. Increased use of ADR, clear legislations, executive actions within legally prescribed limits, cooperation of advocates and litigants, prompt implementation of orders, respecting the rule of law, etc., are part of the solution.**

54. Another aspect I would like to highlight is effective case management. Judges should identify the approach to dispose of a case expeditiously. Timelines should be adhered to. Judges should be strict with respect to adjournments. Additionally, technology should be effectively utilized for case management purposes. I would encourage all judicial officers to keep themselves updated on the status of cases pending before them through the National Judicial Data Grid.

Conclusion

55. Ultimately, what is essential is for the judiciary to be quick to adapt and be flexible to resolve any challenge that comes its way. As a Greek philosopher had once said, “***The only constant in life, is change***”. The moment any institution stagnates, it is bound to erode and collapse.

56. The document that is the basis of our democracy, the Constitution, creates ample space for change as we move forward. It is incumbent upon us to evolve mechanisms and principles that enable our continued growth.

57. Only by resolving issues and challenges in a manner satisfactory to the polity, we can maintain the credibility and legitimacy of the institution.

58. When we fail to meet new challenges, we betray the Constitutional trust imposed on us by the people that we are meant to serve.

59. **It must also be understood that the success and failure of any organ is not dependent solely upon it. All of us are stakeholders in this judicial enterprise. It calls for a cooperative effort by all organs of the State, judges, advocates, academicians, and the public at large.**

60. **Before I end, I would like to quote Dr. Rajendra Prasad, I quote**

“If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution.

If they are lacking in these, the Constitution cannot help the country.

After all, a Constitution like a machine is a lifeless thing.

It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them.”