

Inaugural R.K. Jain Memorial Lecture

(New Delhi – January 30, 2010)

Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India

Justice R.C. Lahoti (Former CJI)

Esteemed colleagues from the bench,

Mr. K.K. Venugopal, Dr. A.M. Singhvi, Mr. C.S. Vaidyanathan,

Mr. Manoj Goel, Members of the bar,

And Ladies and Gentlemen,

I am grateful for the opportunity to attend this inaugural lecture which has been organised in memory of Shri. R.K. Jain. It is only apt that an annual lecture series has been instituted to commemorate the contributions of a prominent legal practitioner.

Coming to the theme of today's discussion, Shri K.K. Venugopal has examined the various possibilities for restructuring the apex court in the coming years. Since I am presently at the helm of affairs, it will not be proper for me to take a conclusive stand on any of the suggestions. However, I can comment on the pros and cons of some of the issues that have been raised by the learned senior counsel.

To begin with, I must clarify that the judiciary's power to examine the validity of constitutional amendments has now become an essential

part of 'judicial review' in our country. Of course, in some quarters it is argued that the 'basic structure' doctrine was not part of the framers' original vision and that it affords too much discretion to judges. However, we must remember that the doctrine was formulated in **Keshavananda Bharati's case (1973)** at a time when the incumbent government had a dominant majority in the Parliament. Here I must lay stress on the fact that in a constitutional democracy, the judiciary often has to play a decisive role in order to restrain the tyranny of the majority. In doing so, the judges are not driven by idiosyncrasies and personal agendas. Instead, they have to arrive at an optimal balance between the values enshrined in the constitutional text. If a proposed constitutional amendment does violence to some of the controlling ideas of our socio-political existence, then constitutional adjudication serves as a safeguard against the same. Similarly, the judicial review over legislative acts is not merely a negative act in so far as the Supreme Court and the various High Courts are empowered to strike down statutory provisions. In many ways, the higher judiciary in our country engages in a continuous dialogue with the legislature by pointing out excesses or flaws in the legislations that are passed. This could be done through the reading down of statutory provisions or through constructive suggestions offered in judgments.

Similarly, the changes in the method of judicial appointments that were brought about by the decisions in the **SCAORA case (1993)** and the **Third Judges case (1998)** should not be seen in isolation. In fact many legal scholars agree that the collegium system was devised as a response to the excessive interference by the executive in the matter of appointing and transferring judges during the 1970s and the 1980s. Our predecessors in the Supreme Court thought it fit to give the senior-most judges a more effective say in judicial appointments, since it was widely felt that the quality as well as periodicity of appointments had been dissatisfactory in the preceding years. Many commentators have expressed concerns about the seemingly opaque nature of the appointments process. On this issue, I must emphasize that a certain degree of confidentiality is needed to ensure that the collegium obtains the most accurate and incisive views about the individuals who are considered for appointments.

Having said that, it is of course open to the Parliament to phase out the collegium system by means of a constitutional amendment and replace it with a more broad-based appointments process. However, until such a change is brought about, we are bound to follow the collegium system.

Coming to the substance of Mr. Venugopal's speech, there should be a vigorous debate on the feasibility of creating intermediate courts of appeals in different regions of the country. As pointed out earlier, the most obvious benefit of creating these Courts of Appeal would be improvements in access to final appeals for litigants belonging to far-flung states. A recently published statistical study seems to corroborate the hypothesis that the distance from Delhi bears an inverse correlation to the rates of appeal from a particular High Court. However, there are some other factors which also have a bearing on the same – such as the financial capacity of the litigants and the resourcefulness of the counsel who represent them. The second benefit of creating regional courts of appeal would be the streamlining of the docket before the Supreme Court, since it is urged that the apex court should only decide cases requiring constitutional interpretation and those under its original jurisdiction such as Inter-state disputes and Presidential References. Yet another benefit of creating Courts of Appeal in different regional centres is that it can check the concentration of the bar in the national capital, thereby encouraging some high-profile practitioners to set-up base in the regional centres.

In this regard, we can examine the model of the Federal Courts in the U.S.A. where a Court of Appeals functions for each Circuit that consists of a group of States. The creation of another tier in our judicial

system (i.e. Courts of Appeal at a level between the Supreme Court of India and the High Courts) would necessarily require a Constitutional Amendment. This would be a better course of action rather than the establishment of regional benches of the Supreme Court itself. Dividing the apex court into multiple regional benches will dilute the integrity of the institution and create an unhealthy sense of hierarchy between the judges who serve on the different benches. At this point, I must clarify that the power granted under Article 130 of the Constitution to set-up regional benches of the Supreme Court is meant for extraordinary circumstances and it cannot be inferred that the framers' intended to have multiple regional benches of the apex court. If the main concern is with improving access to final appeals, our Parliamentarians can examine the suggestion for creating an intermediate tier of final appellate courts.

I cannot deny the fact that a substantial part of the Supreme Court's docket at present consists of Special Leave Petitions (SLPs) and ordinary appeals which only have a bearing on the interests of the parties involved. In fact, statistics maintained by the Supreme Court Registry reveal that more than 60% of the freshly instituted matters each month are in the form of Special Leave Petitions (SLPs). A large chunk of the judges' workload can be attributed to these SLPs since each division bench hears an average of 40-50 freshly instituted matters on the

miscellaneous days (Mondays and Fridays). It would be quite reasonable to say that in many instances, the judges are racing against time to prepare for the admission hearings. I must also concede that the admission hearings themselves are often conducted in a hurried manner which leaves little room for in-depth deliberation and scholarly debates on the contentious issues. This situation will change only if the judges, lawyers and litigants act collectively in a responsible manner.

While it is understandable that litigants who are driven to desperation will indiscriminately file SLPs, it is the role of the counsel to give them well-meaning advice on the possibility of obtaining the desired results. It is common knowledge that only a fraction of the instituted cases are eventually admitted for regular hearing. Yet another suggestion is that at the time of filing, the counsel must be required to submit a concise statement of the contentious issues thereby reducing the time needed for the judges to prepare for the preliminary hearings. I must mention here that in some countries, the admission of cases for regular hearing is done solely on the basis of written briefs, with no room for oral arguments at the admissions stage. That would not be a viable measure in our system since most counsel view the admissions hearings as an essential means of earning their bread and butter. In respect of regular hearing matters, counsel should be precise in their submissions and stick to reasonable time-limits. Better time-management of court

proceedings will take place only with the cooperation of the counsel, thereby increasing the rate of disposal.

I must also take this opportunity to inform this audience about some reforms on the administrative side of the Supreme Court. There is an ongoing project for the digitization of the permanent records maintained by the registry. When complete, this will make it easier for counsel to inspect documents and facilitate scholarly study. The statistics on the institution, disposal and pendency of cases are being computed on a monthly-basis, and data is maintained with regard to the various subject-categories as well as institution and disposal by case-type. For the purpose of listing of cases before the various benches, cases pertaining to similar branches of law are listed before the same benches as far as possible. This practice reduces the likelihood of conflicting decisions being given by different benches.

There are of course many other issues that can be raised in the context of improving the functioning of the Supreme Court. Of late, some sections of the bar and the press have taken a confrontational stand on some administrative aspects. I would urge all the stakeholders to work in an atmosphere of cordiality and mutual respect. With these words, I would like to thank all of you for being a patient audience.

Thank You!
