Speech

By the Hon'ble Mr. K. Subbarao,

Chief Justice of India

Delivered on November 25, 1966, on the occasion of the Inaugural Ceremony

Mr. President, Mr. Governor, Mr. Chief Justice, Distinguished Guests, Ladies and Gentlemen-

I am happy that my tenure of office as Chief Justice of India has synchronised with the Centenary of this great institution. Though it is an accident, it has given me an opportunity to take part in these celebrations.

This is the fourth oldest High Court in India, the other three being the High Courts of Calcutta, Bombay and Madras. The four High Courts vied with each other in maintaining the high standards of judicial administration; and an objective observer cannot but say that they had stood the test of time. To complete a century of useful public service is in itself an achievement. But to maintain the continuous but an ever-increasing record of good traditions and high prestige is a more difficult one. These celebrations will be a milestone in the onward march of this institution.

This High Court has produced eminent Judges, powerful Advocates and erudite lawyers. Pandit Ajudhia Nath, Sir Sunder Lal, Pandit Moti Lal, Sir T. B. Sapru and others were known throughout India for their high calibre and forensic ability. The judicial wisdom of Judges, like Mahmood, Morgan, Stanleny Henry Richards, Lindsay, Sulaiman, P. C. Banerjee, Lal Gopal Mukerji and others, is enshrined in the law reports of our country and their judgmentsr are frequently referred to for guidance and elucidation. Some of the members of the Allahabad Bar, like Pandit Moti Lal Nehru, Pandit Madan Mohan Malviya, Shri Purushottam Das Tandon, Pandlit Jawaharlal Nehru and Dr. Kai1as Nath Katju entered a larger arena of politics and contributed to the progress of the country. The present generation of Judges and Advocates of this State has acquired this glorious heritage and it is their sacred duty to maintain it and to improve upon it, so that it might be transmitted with added lustre to the succeeding generations.

Before independence, the functions of a High Court were comparatively limited. While it dispensed justice in civil and criminal disputes, except in the three High Courts of Calcutta, Bombay and Madras, it had no real impact on national life. Broadly, the State in those days could be described as a police State and the rule of law had a very limited significance. After independence, we have accepted, through our Constitution, three concepts, viz. Federalism, Democracy and Rule of Law. The Constitution has provided, through the instrumentality of the said three concepts, for the ushering in of a welfare State wherein there will be prosperity, equality, liberty and social justice. Indeed, the rule of law enshrined in our Constitution transcends the traditional view of law as a rule of conduct imposed by authority and enforced by coercive sanctions. It embodies the great concept of the rule of law in which the principles of natural justice have been inextricably integrated. It is an effective instrument to bring about the welfare State. The High Courts and the Supreme Court, in the felicitous language of Patanjali Sastri, C. J., are constituted the sentinels qui vive to watch the enforcement of the fundamental rights tempered by principles of social justice and to prevent any deviations therefrom. The High Courts have, therefore, the onerous and delicate duty, apart from deciding the traditional disputes between parties, to be the balancing wheel of the federation, to keep a just equilibrium between fundamental rights and social justice and to control the arbitrary action of the Executive. The High Court of Allahabad, during the last 16 years, has discharged the said difficult and delicate functions to the satisfaction of all concerned.

In the discharge of its legitimate duties sometimes it had to come into conflict with other institutions. Our Constitution has provided three great institutions, namely, the Legislature, the Executive and the Judiciary. Though there is no absolute separation of powers in the sense found elsewhere, the functions of the three are separately defined. Broadly, the Legislature makes laws, the Executive administers the State and the Judiciary decides disputes between person and person, between person and State, between State and State and between State and the Union. If the State is visualised as one unit and the three institutions as its component parts, the said functions are only parts of a self-regulating machinery. They are three co-ordinated State instrumentalities. There is no question of any complexes. Each is expected to discharge its allotted duties for the common good of the country. If this aspect of the Constitution is borne in mind, there can never be any scope for conflict. Though the Judiciary, in the role of a corrective agency, has to set aside the orders of the other two wings, if they offend the Constitutional provisions, it only means that one wing of the State corrects the others, as it should do under the Constitution. I hope and trust that this High Court will continue, with humility and impartiality, to enforce the Constitutional mandate of the rule of law.

There is one drawback in the Constitution of this Court. I find that, out of the 39 Judges, 15 are Additional Judges. One of the most important principles, fortunately accepted by our Constitution when it was made, but unfortunately ignored by the subsequent amendments, is that of appointment of Additional Judges. Appointment of Additional Judges or Acting Judges is subversive of their independence, which should be the main trait of any Judge. The system of appointment of Additional Judges detracts from the concept of independence. Their term is short; they may not be made permanent; they lose their seniority and they may even retire before permanency; they have to depend for their being made permanent on the Chief Justice and the Government and, in case they are not made permanent and have to start practice, then on the goodwill of the public. How can a Judge be expected, if he is deprived of all the institutional conditions provided by the Constitution, to discharge his duties in terms of the oath administered to him; Even if he does, and theoretically it is expected of every Judge, whether permanent or temporary, to do so, yet from a practical standpoint it is very difficult for him to live up to the oath, and the public may not have the requisite confidence in him. I hope and trust that this anomalous position, pregnant with such unfortunate consequences, will not be allowed to continue and some way will be found to make the Additional Judges permanent.

I have often said that no institution deserves to survive in a democracy unless it earns public esteem; and it can earn the public esteem only by discharging its duties impartially and expeditiously. It is true that large arrears are pending in this Court. But there is a tendency in many quarters to exaggerate the question of arrears and if this evil has come into existence in this country after independence and as if the present members of the judiciary are not discharging their duties so well as their predecessors in pre-Independence days. While constructive criticism is always welcome, cynical attitude retards rather than helps to remedy the defects. It is not often realised that any uniformed criticism or loose talk from any quarter, though for the moment it appears to be innocuous, may ultimately destroy the prestige of the Judiciary and the confidence of the public reposed therein. After all, law's delay is not a new problem. The basic problem is as old as the English wig. Diogenes likened laws to cobwebs, and Hamlet, even in one of his deranged moments, took time to count the law's delay among the life's "whips and scorns". If a graph of the pendency of cases spread over a fairly long period is prepared, it will be seen that there has been rise and fall in their pendency depending upon various factors.

While it is true that hustled justice is bad, delayed justice is worse. The platitude "justice delayed is justice denied" embodies an eternal truth. The delay I am complaining of is the time lag between the filing of an appeal and its final disposal. As soon as the tendency for accumulation of arrears is discovered, it should be controlled by appropriate action in time; otherwise the accumulation of arrears would become chronic. It is not often realised that the prestige of the Bar depends on the prestige of the Court. Bar and Bench are complementary to each other. The essential condition is that there shall be mutual respect between them. The common ideal of justice shall be the driving force; and the cooperative method shall be the mechanics to reach that ideal. I have no doubt that these celebrations would bring them nearer and instil in them the enthusiasm of common endeavor to reach the desired goal. I would, therefore, request the Lawyers and the Judges and also the Executive to cooperate in finding ways and means to have the arrears of the Court cleared as early as possible; for otherwise this institution will irreparably suffer in the esteem of the public.

We are glad and honoured that our revered President, who is a staunch believer in the rule of law, has found it possible to attend this function, to take part in it and to bless this institution. I pray for the continued progress and prosperity of this institution in the service of justice.