

## Speech

*By Mr. Gopi Nath Kunzru,*

*Vice-President, High Court Bar Association, Allabad*

Delivered on November 27, 1966, on the occasion of the Golden Jubilee of the High Court Building

Sir,

It is my privilege to offer thanks to his Lordship the Chief Justice of India and other dignitaries who have come from different countries of the world and those who have assembled here including ladies and gentlemen. I feel privileged today, as my father had witnessed the birth of this High Court and I am witnessing its Centenary Celebrations. And there is yet another feeling in me today that the High Court building was opened in the year 1916 after I had been enrolled in that year as a lawyer of this Court, so that I have really a feeling of pride in me at this moment, for which I hope I will be pardoned.

When this High Court was established, it had five Judges and a Chief Justice. At the time when Mr. Justice Mahmood resigned, there were nine Judges in this Court. Thus, between 1866 and 1894, three more Judges were added. When I joined this Court in 1923, there were eleven Judges and in the year 1941 there were 13. When in 1948 the Chief Court of Avadh was amalgamated with this Court, the joint strength of the two Courts was of 21 Judges, including the Chief Justice. What has happened since 1950 that the number of Judges has been increasing and both the Bench and the Bar are being accused of not being able to deal with the arrears, the so-called arrears as I call them. The position is simple enough to understand. New jurisdictions have been conferred upon the High Court. To one of them reference was made by his Lordship the Chief Justice of India. That was the writ jurisdiction. Thousands of petitions are filed in this Court and they have to be dealt with and they must be dealt with by sufficient number of Judges. The reason of the ever increasing number of petitions under the writ jurisdiction is, as one of the Chief Justices of the Supreme Court remarked, that the executive has not yet learnt to adapt itself to the new Constitution. If the executive behaves in a manner in which they behaved under the two Government of India Acts, they should also realise that the citizen has not only duties to perform but also has rights which must be enforced by the High Courts and the Supreme Court of India. Therefore the question that arises in connection with the arrears has to be considered in a different aspect altogether, and we have also to consider what is the other circumstance that has brought about an increase in the number of criminal cases, an increase in the number of tax cases and an increase in the number of writ petitions, which absorb more than half the number of the High Court Judges, which is 38 at present. I will beg of his Lordship the Chief Justice of India to consider this position also when he is considering the position in regard to the arrears, the so-called arrears, pending in this Court.

We have been told, and I was glad to hear the day before yesterday from the Law Minister of the Indian Union, that the Judiciary is a great strength and is a great preserver of democracy. It is not only for democracy, but for all reasoned Governments, barring autocracies, to consider that the Judiciary should be allowed to function in an independent manner, uninterfered with and without restrictions being imposed from outside. The Judiciary is rendered incapable of administering justice when emergency is declared, when, as a matter of fact, emergency does not exist; and under these circumstances Judiciary becomes incapable of administering justice; and preserving the rights of the citizen. The other position is that when the Supreme Court decides a case against the Government or against the view of the Government, the laws are amended from time to time. Even the Constitution is freely amended and it is said that what was done before should be considered valid, and retrospective effect is given to the amendments of the Constitution for purposes of removing such defects as were declared by courts to be defects in law. It is not necessary for me to go into the details at the present moment, but I should say that this is a serious matter. Such things never happened in the early history of the High Courts that the laws were amended soon after decisions adverse to the Government or against the view held by Government were given by the High Courts of the country.

Time and again, we are told that there should be co-operation. Co-operation, I understand, was intended to be between the three branches of the Government the Legislature, the Judiciary and the Executive. I suppose, so far as the legislative branch is concerned, there is co-operation between it and the executive; but the judiciary, I am afraid, cannot, in that sense, co-operate with the executive. It has to perform its own functions, and if it begins to co-operate with the executive, then, I am afraid, it will cease to be the real judiciary. And if it is intended that there should be co-operation between the Bench and the Bar, I may say and I may remind the two Chief Justices who are present here that we, the members of the Bar, always offer co-operation; but, at the same time, I must make bold to say that there cannot be subordination of the Bar to the Bench. The Bar cannot surrender. Equality is absolutely essential in a matter like this. We make our submissions. They may be acceptable or they may not be acceptable. That is a different matter. But to think that we should subordinate ourselves to the judiciary and we should think that we have no other duty to perform is not proper.

I have already taken, I think, sufficiently long time because at the fag end of the day and at the fag-end of the proceedings of the Centenary and the Golden Jubilee I do not think that I shall be justified in taking more time. However, I do wish to say something more about the arrears, for which the Bench and the Bar are blamed. I take the liberty of reciting an Urdu couplet of Momin-

Translated into English it means:

We are taunted with the accusation of incapacity and explanations are given for the tyranny which is being perpetrated and they improperly complain after assuming airs."

With these words, I once again offer thanks to all the distinguished visitors and the Chief Justice of India and all

those who have assembled here for fulfilling the task which we have before us.