

“The Judiciary Makes the World a Better Place to Live In”

FORMER CHIEF JUSTICE OF INDIA (CJI) MN VENKATACHALIAH needs no introduction.

He served as the 25th CJI from February 12, 1993 to October 24, 1994. His tenure was marked by efforts to reduce pendency. An avid champion of human values and rights, he served as the chairman of the National Human Rights Commission. In 2000, he headed the national commission to review the working of the Constitution where he gave many valuable suggestions. Justice Venkatachaliah was conferred the Padma Vibhushan in 2004.

Currently, he is the patron and guiding light of India Legal. He imparted his wisdom on many topics—the judiciary, religion, Ayodhya, upbringing of children...—to RAJSHRI RAI, MD, India Legal and Editor-in-Chief, APN NEWS. Excerpts from the interview:

People call you Non-age Narayan, a person who doesn't age. Once you told us that the secret of your youth is green tea and omega fatty acids. How do you keep yourself young and vibrant?

Once Sir Winston Churchill was asked what was the secret of his durability. He said enduring qualities of alcohol and tobacco. (laughs) I don't take alcohol, but this is perhaps pure God's blessing that has given me longish life. That's all I can say.

When you retired, you refused to take up any position offered to you by the government. Instead you said that you will study Indian spiritualism and religion. Tell us about that decision of yours.

I said I will study the *Upanishads*. I didn't want to take paid assignments or arbitration because I thought that the chief justice of India has some restrictions about his post-retirement options. I was sounded by the then prime minister whether I will accept the vice-presidency of the country. One of his minister came here. I told him that the moment I

signed this offer, I would bring the edifice of the Supreme Court several notches down. Therefore, I pleaded my inability to respond to that offer. Other judges can do arbitration. They are good people. But the CJI should keep away from it. This is my personal conviction.

As a patron of India Legal, how do you see its role in the field of legal journalism and what is your take on the current state of legal journalism in India?

Legal journalism has come of age. In England once photograph of three judges was published upside down and captioned 'three-old fools.' That sort of journalism was always there in the West. The Indian press was very deferential to the judicial system. *Punch*, the comic journal of UK, never touched the judges except one or two occasion. In this country judiciary was treated as a sacred cow. Now judiciary is more open to scrutiny. That is good.

Do you think India Legal is maintaining the standards of legal journalism?

Sometimes I think that *India Legal* is practising that virtue in excess. (laughs) That's good. As long as it is bonafide. As every institution, the judiciary must also be open to external assessment. The judiciary must be open to assessment of its social relevance and utility.

Your tenure is best remembered for your initiative to enforce judicial accountability. You famously said that no one can watch a watchman. You said that the judiciary has to adopt a culture of accountability. Please elaborate.

My impression is judiciary down the years in India has been treated as a holy cow. but respect shouldn't generate immunity from criticism. This will bring irresponsibility in the system. We should constantly guard against it. If the judicial system fails, the whole democratic system fails. The problem in judiciary is in the lack of speed in the disposal of cases. We concentrated on the problem during my tenure. My team of judges did enormous work. They worked half an hour more daily. The result is for all to see.

From 1991 to 1998 in eight years the backlog of cases fell from four and a half lakhs to 19 thousand. People said that it is the most commendable work of any post-Independence institution. That was the collective work of all the judges. There were great judges in our time. I am not in touch with the system now but I can say that those years were very productive.

Pendency is a major problem facing India's judicial system. We are badly understaffed in terms of judges. Now, with the advent of Artificial Intelligence (AI) and other high-end technologies, will the judiciary embrace it to solve pendency?

Pendency is a serious problem plaguing our judicial system. There are 22,764 subordinate courts in the country. Each court lists around 60 case per day. Around one case per day is decided. There are 250 footfalls on the either side of advocates and clients. Multiply 22,764 by 300 footfalls everyday and then multiply that by 290 days of work. Then you will

know the enormity in terms of loss of productivity and man hours. If you calculate it at the rate of Rs 300 per head, per day, it may amount to a lakh and fifty thousand crore rupees per year. This is the notional loss in addition to the actual expense involved in it.

Talking about Artificial Intelligence (AI), the scanner can read some four-lakh pages in about three to four minutes. But the language platform must be compatible with the material available in courts. Only then the advantage of AI solutions will accrue. AI has some limits but it can be done.

You were part of the group formed to review the working of the Constitution. What changes are you looking for in the Constitution?

We were part of the group which was formed to assess the Constitution. It was called the National Commission to

Review the Working of the Indian Constitution. The Constitution provides the framework and if there is good and responsible governance, then the results of growth and development are visible. Take the example of Kerala where social indices have dramatically improved. For example, social welfare is exemplified in maternal mortality figures which have come down significantly.

You once said that you were the most unpopular chief justice ever. What did you mean by it?

A judge is unpopular in every sense. His views and world pictures somehow influences his decisions. Sometimes prejudices enter into his principles. So greater wisdom is expected of judges than mere technical knowledge and details. He should have an idea that into what kind of society he is administrating, what kind of system. We coin beautiful slogans, use expressions borrowed from foreign experience and try to incorporate them in our system. Indian predicament is totally different. It requires different solutions and one size doesn't fit all. There are ➔



regional differences, regional imbalances and what is needed is a kind of pervasive wisdom which can assess the utility of any system appropriate to any situation. That instinctively should develop in a judge. It is very difficult to straitjacket everything everything in one formula.

Somebody asked what does it take to be a Lord Chancellor. The answer was first and foremost he must be a gentleman. It doesn't matter if he knows a little also. So the importance of technical knowledge is being emphasised today. That also is important. Law is increasingly becoming a junior branch of economics. Economics is increasingly becoming a junior branch of technology. When explosion of technology is witnessed then all other systems also have to change to suit the demands of innovation. That's why every institution requires introspection. Because the world is changing rapidly. It should also suit the mindset of the present generation. According to me, the present generation of Homo Sapiens is not a genetic descendent of caveman. It is a new specie in itself. It has immense potential. We are not able to imagine the magnitude of potential of the human brain. This is my take on how system should change to suit the present generation.

India is essentially a religious country. Does inculcation of scientific temper as envisaged in our Constitution preclude its religious ethos and practices?

You can't eliminate religion through scientific thinking. Science can't replace religion. Both have a unique place and can mutually coexist. Religious values are of paramount importance and we shouldn't abandon them. We should expose our children to religious values and traditions. Development of a scientific temper doesn't in any way rule out embracing religious values.

India is a land where diverse faiths have flourished. But now with modernisation and rapid social change, religious practices are being freely questioned and



challenged in courts of law. Women's rights and essential religious practices are at odds. Sabarimala is a case in point. What is your view about it?

Cases involving questions of religion, essential religious practices and constitutional rights are being brought to courts more frequently. It's being seen as the rule of law versus tradition and cultural practices. Courts have been adjudicating such matters for some time now. Arguments in such cases should be televised live and people, especially children, should watch these proceedings. The bottomline is that we should value everything for the common good.

Our political system is under tremendous strain. Deviant political behaviour and electoral malpractices have created havoc in the system. What solution do you prescribe for the ills affecting the political system so that it becomes healthy once again?

BR Ambedkar once said: "Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic." Democracy is a new soil and it has to be nurtured carefully. In India, strict electoral reforms are needed in order to

overhaul the political system. Laws for the formation of political parties, funding and public scrutiny of the workings of political parties are needed. I worked along with a group to draft a model legislation to this effect. Sources of political funding should be revealed by proper audit. Cash and caste are a dangerous mix, and if used wrongly can ruin democracy. Dynastic politics should be done away with. Holding party presidency on account of heredity is a crime. We have to bring changes in these areas. By political reform, we can nurture the soil of democracy and make it healthy and whole.

Today, the country is embroiled in controversies and conflicts related to the Citizenship (Amendment) Act, sedition laws and the National Population Register. What is your take on these controversies?

Every nation has its laws and is free to enact them. If some apprehension has crept into the minds of a section of people regarding some law, then these fears need to be addressed. This can be best addressed by debate and discussion. You have to use the power of persuasion to

show that nothing is intrinsically wrong with the laws. The apprehension that laws will be applied discriminately is probably creating problems.

We today operate in a polarised atmosphere. Conflict is common and often leads to violence. In such a strife-ridden atmosphere, the role of the police is often under the scanner, and when matters relating to communal conflict reach courts, questions get raised on the judgments. How justified is this?

We have to trust our judiciary and accept its decisions on critical issues. If we don't trust the judiciary, we will lose confidence in it and also in democracy. Judges are aware of both sides of the matter. They know what is horrific for the nation. Don't substitute their wisdom with your impositions. Let the system work.

The judiciary must interpret the law and apply the rule of law. It should do so without taking sides or taking personalities into consideration. That is the only way in which it can gain public confidence. We shouldn't depend on the judi-

ciary for everything. It is a mark of a weak society. This will prevent people from settling disputes democratically. For the protection of human and fundamental rights, the judiciary is the best institution and we should trust it.

In times when executive action is found wanting in important areas of public concern and policy matters, the judiciary

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takes on a proactive role. This is often termed as judicial activism. This has been on the rise, and in many cases, led to a face-off with the executive. What are your views on this?

Judicial activism is a slippery slope. You are acting in an area where legislators or administrators should be doing their duty. You see somewhere and somehow some institutions are not performing their constitutional duties and obligations. Then the courts have to intervene. Someone else has to do the job so

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Rajshri Rai is all ears as Justice Venkatachaliah makes a point

that the demand of the Constitution is met. The government has no choice. It has to take the decision of the court in a gracious way and work out democratic equality.

Going back in history, you were criticised for not acting to stop the appointment of a multi-member Election Commission and for allowing the symbolic *kar seva* in Ayodhya. Given a chance, would you have acted otherwise?

I don't think so. There are limits of judicial intervention. The courts can only instruct and set goals. It is the executive that has to execute the action plan. The court sets the objective, for example, protect the structure, but the executive has to perform, taking into account all the ground realities.

The Ayodhya judgment has now become a case study of sorts. It was not only one of the longest-running legal battles, but the judgment touched upon the sensitive issue of faith versus rule of law. How do you see the verdict in retrospect?

This case didn't turn on pure legal logic, but on the broader issue of national conciliation and consensus. There is a power peculiar to the Supreme Court under Article 142. It empowers the Court to pass such

"decree or order as may be necessary for doing complete justice between the parties". This power was invoked during the Ayodhya judgment. It was a broader exercise and not limited to mere determining of the legal rights of the land. It wasn't an emotional judgment, but based on wisdom.

You have given so many ideas to bring about reforms in the social, political, judicial and constitutional arena. Now, when optimism has become a politi- ➔

cal war cry and Prime Minister Modi's slogan *achhe din* has been hailed as a game-changing mantra, when do you think the wait for better days will come? For the judiciary, there will always be *achhe din*. This is because they take the responsibility to resolve tensions and help people carry on with their lives. They make the world a better place to live in. It's not their technicality but wisdom which we should respect. We should trust the Supreme Court.

In the past and in recent times, inter-community strife has led to bloodshed. Politicians indulging in hate-mongering have been let off without punitive action. In this context, the political class needs to be more responsible and responsive. Political parties have the responsibility to evolve systems that go beyond their interests. They should sit together and



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evolve systems to improve electoral politics. Though the executive and the civil servant work in tandem, pressure is often brought on the bureaucracy by the political class to serve its interests. Hence, the executive and the civil services should be separate and there should be a buffer between them. Civil servants shouldn't be misused by the political class.

EVMs are seen as tools to correct electoral malpractices. Now a question mark is being raised over them also. Do you think EVMs are a good solution?

There is an expansive message in the paper trail of EVMs. By collaborative evidence, model statistical analysis and big data analysis, we can assess the degree of divergence. It is working quite well and the results are coinciding with exit polls. It is one of the tests. You can't achieve perfection in assessment but EVMs are better than paper ballots. I have seen bunches of paper ballots being manipulated. They are not reliable and are more open to mischief than EVMs. The paper trail analysis is significant.

Some margin of error is all right.

Swami Vivekananda said that if you are very logical, you can't be spiritual. What is your view on this?

Vivekananda says so many things beautifully. He talks about evolution and not revolution. He talks about diversity of religious traditions and the need for coexistence. Vivekananda stresses unity of religious values and their integration. He doesn't talk about one religion for all, rather, to each according to his own is his motto. This is relevant for our times.

The new generation is very attached to the internet which has become the primary mode of knowledge transmission and interaction. However, the State has clamped down on the internet in troubled times. In this context, the Supreme Court recently held that access to the internet is a fundamental right.

We are now thinking of its ill-effects and

potential for misuse. The internet is one of the greatest inventions mankind has seen, almost next to the railroad. If the question is how to protect

children from its ill-effects, the answer lies in the fact that the internet is a protection against itself. There lies a way in which the internet can be manipulated to prevent unwanted information reaching children or vulnerable groups. AI is exciting. It is based on logic and logic is a friend of justice. Humanity has a lot to look forward to. Spirituality and human evolution are taking an upward course.

Can you expand on the underpinnings of the judgment on internet access and its importance?

Times have changed. Access to the internet is equated with the right to information, the right to knowledge. It is an attribute of the human being or human personality. Internet access can be abused, but then everything can be abused.

Social media has the potential for misuse. With current cyber laws, are we



ready to regulate the internet?

No, we are not conscious of the magnitude of the problem or the ill-effect it can produce. Take a kitchen knife. It can cut vegetables and it can injure a human being. Science is like that. The nuclear bomb killed millions but when nuclear science was used for medicine or constructive purposes, it enhanced the quality of life. How to minimise bad effects and maximise good effects depends on the genius of the man.

Religion seems to have become a divisive tool and much hatred is being generated in its name. Is the political system to be blamed for this?

Religion *per se* doesn't divide. No religion says that. Some religious practices are peculiar to a certain social context and when seen without that context, they are construed to be divisive. Nothing should be seen outside context. When we understand this, then the message of religious traditions is properly understood. We should also assess the potential of science and governance.

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Today, human dignity is coming centre-stage. The great challenge before today's political leadership is how to mobilise positive forces for the good of one and all. Political leadership has the immense task of synthesising the positive forces and taking it forward. That can be done by the right-thinking sections of society. It is possible that some day, science will lead to that. Internet, AI will do that. Perhaps God will be made manifest by the scientist. Scientists will place before us the conception of God.

Today, everyone has a mobile phone and this can cause mischief. Have we not properly harnessed the mobile phone revolution?

A hand-held mobile phone is a symbol of immense social and technological change. We not only communicate through it but also access information and control devices. The responsibility to use it correctly lies with the

individual.

Finally, what message would you like to give our readers?

Give kindness and understanding to one and all. Admire people who do good and can change the world. Take care of children. Make them good citizens with beautiful, blossoming minds. Give them positive thoughts. I am the founding chairman of Sarvodaya International Trust. It is a beautiful institution. We encourage that each Hindu boy should have a Muslim friend and vice versa. The families of boys meet every three months and this promotes mutual understanding and communal harmony. It is this spirit which we should promote in society. Be positive. Things will happen. There is so much of beauty and goodness in the world.

You are the patron of India Legal. What would you like to say to us?

India Legal is providing substantial leadership and it will contribute in making a better future. It is examining critically every issue. Critical analysis is the foundation of progress. The *India Legal* conclaves are beautifully arranged. People who have participated in them are eminent personalities. The thoughts expressed by them are so relevant. There is no negative thinking about the society. Thirty thousand years back, we were cavemen. Now we are civilised. We are constantly evolving as human beings.

People who constitute *India Legal* have great responsibility for bringing an era of peace, contentment and progress. We should aim for a society where everybody is happy and well looked after. We should aim for creating a society where everyone gets the best opportunity to develop one's higher self. *India Legal* should aid this process. ■

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