

## **RULE OF LAW FOR THE 21st CENTURY - CONCLUSION**

**28 FEBRUARY | 5 PM - 7 PM**

### **PANELISTS:**

1. Shri Prithviraj Chavan, Former Chief Minister, Maharashtra
2. Dr. Jayaprakash Narayan, General Secretary, Foundation for Democratic Reforms
3. Prof. K.C. Suri, Professor, University of Hyderabad
4. Shri DNV Kumara Guru, Director, External Relations, Indian School of Business

**CHAIR:** Shri Justice Kurian Joseph, Former Judge, Supreme Court of India

### **ABSTRACT:**

*The concluding session of the Indian Democracy at Work Conference on Rule of Law served as a befitting finale to the extensive and enlightening discussion witnessed over the past week on Rule of Law. The panelists highlighted some critical deficiencies in our Rule of Law framework broadly, and deliberated on ways to overcome them. The Hyderabad Declaration released during the session presented us with a set of achievable and practical solutions for some of the most pressing issues related to the topic, the details of which are available [here](#). The panelists shed light on the elements of the Declaration and underscored the point that Rule of Law was the bedrock of a democratic system, essential for the progress of any democratic society. There was also a broad consensus that Rule of Law was a prerequisite for not just a strong, modern economy but also for national unity.*

## **Opening remarks by Shri Justice Kurian Joseph, Former Judge, Supreme Court of India**

Justice Kurian Joseph began his address by stressing that this kind of an effort is necessary to lay a roadmap for reforms in the field of Rule of Law. According to him, the Rule of Law is the basic structure on which our Constitution rested, and an independent judiciary is critical for this basic structure. Of late, however, he felt that its credibility had been diluted, which is rather worrying. According to him, the judiciary is in need of proper insulation, to restore its lost credibility. The tectonic plates of the judiciary are so misaligned that the aftershock is perceptible in the seismograph of the Indian democracy. There is now global concern for the plight of our judicial system and democracy. It is important to ponder whether the Indian democracy is able to meet the aspirations of its founding fathers as well as the expectations of its citizens today.

Justice Kurian Joseph enumerated eight different aspects of the rule of law, as noted by Lord Bingham, a British Judge. If there is to be rule of law in India, we need these eight elements:

1. Accessibility of law: The law should be accessible, intelligible, clear, and predictable.
2. Law and discretion: Questions of legal right and liability should be determined according to law, not by the exercise of discretion. There is no scope for discretion in rule of law.
3. Equality before law: The law should apply equally to all, except where objective differences justify differentiation.
4. Rights guaranteed: The law must afford adequate protection of fundamental human rights, which are indivisible, inalienable, inherent and universal. The judiciary must protect these rights irrespective of caste, color, creed, political affiliation, position and power.
5. Access to justice: Means must be provided for resolving without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.

6. Government officials exercise power in good faith: Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
7. Fairness in adjudication: Adjudicative procedures provided by the State should be fair. The procedures provided currently are not unfair according to the speaker
8. Observance of international law: The state must comply with its obligations in international law, which is either derived from treaty or custom and governs conduct of nations. We are positioned in the world as the world's largest democracy. Therefore, we must not only profess so but practise so and show so that we are an effective democracy.

### **Shri Prithviraj Chavan, Former Chief Minister, Maharashtra**

Before beginning his address, Shri Chavan stated that he would be speaking from the perspective of a practicing politician. He said that the political system has failed in some aspects – police, prosecution and judiciary among others and there's been little State expenditure on it. He said that the concept of rule of law is not ingrained in our society, it was brought in after the British rule and it closely resembled the British system.

The speaker said that the separation of powers which is the bedrock of America and is also key in the Indian context, is not working very effectively. He said that the legislature virtually creates a hierarchy when a party elects a political head at the state level or national level and then appoints them as PM and the CM, which are executive positions. As a result of the Anti-Defection Law, neither can a legislation be sponsored from the floor, nor can a legislation proposed by the government be drastically amended. There are some political reforms required, particularly in separation of powers.

Shri Chavan then wondered why is the government able to get away with things that do not conform to strict democratic norms and the rule of law? Under the political reforms, he said that there's a need to focus on the system of legislature and elections (electoral funding). One thing

he particularly referred to was the political control of the police forces. An elected executive tries to gain the concentration of police power, and they usually use it for political purposes. This compromises the entire police machinery. Even the prosecution system is weak, where the prosecution does not bring forward the evidence, and then there's little that the judge can do. As a result, justice cannot be delivered.

Another important point that the speaker highlighted is the shortage of staff and infrastructure in the judicial system, from the police to the forensic lab. He re-emphasized that this is because the State isn't spending enough on these areas. He agreed with the points made by previous committees with respect to the need to significantly increase the strength of the police, prosecution and the judiciary. He said that the only way to get the State to spend on these areas is for the civil society to pressurise the government to do something, and a mechanism is necessary to bring this pressure.

Shri Prithvi Raj Chavan also highlighted the importance of rule of law for an economy. Investments are needed to create employment and improve society but are inadequate and foreign investment would not come unless there is a better legal system in place. Better contract enforcement and dispute resolution are critical for growth and development. He added that the quality of justice is falling and that reforms are needed all the way from the education level. He recommended that all law students undergo a mandatory 1-year internship, and encouraged them to deliver in the court system. He emphasized the need to hire the brightest minds in the judicial system, which are moving more towards the corporate side currently.

The speaker also highlighted the need for a separate legislation for the Central Bureau of Investigation (CBI), like the NIA does, so that they get jurisdiction across the country for certain crimes. There is an additional need for massive expansion of the investigators training system and forensic infrastructure. The system of prosecution in India should be given more thought. We must adopt the American model wherein prosecutors lead the investigation. He recalled the incident of the extrajudicial killing of the accused by police in Hyderabad, much to the satisfaction of the public to show that the faith in the finality of the judicial process has

completely eroded. He questioned if this was because of the disconnect between the police and prosecution. Some models which are best suited to our conditions must be adopted. He felt that training must certainly be improved, required laws must be enacted and there is a need to attract the best minds into the system.

Shri Chavan raised the issue of many democracies or “so-called” ones are now gearing towards authoritarian regimes, and it is important to preserve and maintain the rule of law. It is also important for the study of the Constitution and a level of legal literacy for citizenship to be brought into mainstream education. Given our state of literacy rate, there is a need to speed up the process of people knowing their rights and other relevant important information.

### **Dr. Jayaprakash Narayan, General Secretary, Foundation for Democratic Reforms**

Dr. Jayaprakash Narayan began by noting the common knowledge that democracy is fragile and it requires constant nourishment and rejuvenation. He said that India was the first democracy to have a Universal Adult Franchise from its birth and this was a sign of the immense faith that the founding fathers had put in the citizens to make democracy work. While there are many problems today, democracy has worked and is working, in many aspects such as regular elections, peaceful transfer of power, preservation of liberty and unity. Our institutions have served us reasonably well so far. Adding to the issue raised by Shri Chavan, Dr. Narayan expressed his surprise at the events that recently happened in the US, which has been a beacon of hope for democracy for centuries, where even peaceful transfer of power came into question. In this aspect, the Indian system has prevailed, with all the imperfections and perversities of a democracy in our conditions.

The speaker said that the initial conditions of our democracy have been unfavourable for democratic growth. There has been a tremendous asymmetry of power in the country. He said that a government employee is more powerful, at a better economical position and with better means than 90% of people in the country. There’s also ignorance and illiteracy. Dr. Narayan

opined that democracy doesn't work very well with such asymmetry. On top of it, following the colonial tradition, there is terrible service delivery from the government at the grassroots level, making many people dependent on someone's patronage, which again is not conducive to a good democracy. There is still little notion of "citizenship" among the people, and the new 'monarch' comes to power through an election. People need to realize that they create the government, they fund it and they hold the ultimate power. They should be able to hold the government accountable.

For this understanding to come in, two important institutional mechanisms are necessary, where India's movements have been half-hearted. The first is localized governance and decentralization of power with accountability. Local governance would help people understand the availability and optimal utilization of resources, and the decisions made by citizens by voting and paying taxes and consequences on their lives in a practical manner. "Local governments are schools of democracy" but there has been a lot of hostility from every sector, including the middle classes, urbanites and intellectual elite of the country. The second is that rule of law must be in operation, in order to restrain those in power and protect everyone's rights. Otherwise, there will be permanent hostility and injustice.

The speaker said that we cannot just hope and wait for the best changes to happen naturally, but we must actively accelerate the process, as Shri Chavan expressed it. Dr. Narayan quoted Reinhold Niebuhr, "Man's propensity [capacity] for justice makes democracy possible, but man's inclination to injustice makes democracy necessary." That justice and democracy are inseparable is the context in which we believe that rule of law being a living reality is fundamental to not only making people's lives better but also making our democracy work.

Dr. Narayan said that there are many things that make him optimistic about democracy in India. First, our problems are neither unique nor intractable. Solutions are available in our own thoughts, practice and traditions and in global practices and innovations. Second, even in such a diverse country, it is possible to arrive at a broad consensus if only the issues are exposed in a lucid and fair manner. Third, collective and informed assertions will make things happen. He

quoted Margaret Mead, “Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it is the only thing that ever did”.

Dr. Narayan remarked that over the 9 days of the conference, all the stakeholders and guests had participated very “soulfully” and there was a broad consensus over most issues. One aspect where there was healthy debate was the Indian Judicial Service. On the topic, he said that the principle is meritocratic nation-wide recruitment of the best talent that is aspirational. He said that since the broad consensus has been reached, it is now the right time to bring the reforms.

He said that a viable roadmap is now available from the work of scholars, jurists and practitioners.

- 1) Crime investigation, especially of serious crimes, must be insulated from political influence.
- 2) Prosecution must be strengthened and also made insulated and more accountable.
- 3) Procedural Law changes need to be brought.
- 4) Accessible justice through local courts are important as a part of the independent judicial system, to lessen the judicial burden and for effective delivery of justice.
- 5) Improvement in capacity, forensics, technology, and infrastructure.

Dr. Narayan emphasized the point that rule of law is very important for economic growth, as was also raised by Shri Chavan during the conference. He said that it is the very “breath” of economic life. We add 13 million people to the job market every year without commensurate job creation. When the aspirations of the country are growing, in contrast to dwindling opportunities relative to the need, a volatile situation arises. Not fulfilling our economic potential not only affects our global position, but within the county, democracy will be in peril.

He noted that one of the important objectives of the conference is to bring an agreement among all the stakeholders. He raised the issue of losing control of police by the political leaders being a genuine concern – they may not always have maleficent intentions. He quoted Justice Venkatachaliah, who inaugurated the conference, “Ours is a democracy of compensatory errors”.

If you want to insulate the police from the political vagaries, then the police also need to be made accountable to the people. Independent police without accountability is far more deadly than police under the control of an elected representative. All the stakeholders, elected leaders, judges, legal community, the police need to be brought together and must realize that everyone benefits with a little give and take, and the sum is bigger than the parts.

On the notion that civil society must “pressure” the governments, Dr. Narayan held the opinion that it is our duty to “persuade” the political system, so that their actions are both politically profitable and nationally good; both constitutionally right and benefiting the people. Once the case is made honestly and convincingly, the elected leaders will come together as they have in the past.

### **Prof. K.C. Suri, Professor, University of Hyderabad**

At the outset, Prof. K.C. Suri stressed that this conference was another endeavour in the long history of our country to establish the Rule of Law, which is an arduous task, considering that Rule of Law is not something which is ingrained in our thinking. He opined that our society has been built on tremendous social inequalities for some time now, and thus Rule of Law comes across as an almost revolutionary idea. He, however, went on to mention the likes of the Ajivikas, Charvakas, and the Buddha, who in ancient India advocated for some form of Rule of Law. He opined that all governments of all forms perform three basic functions - rule formulation, rule adjudication, and rule application; what distinguished a democratic government from others was the fact that these functions are based on Rule of Law, which had the following aspects:

1. Rule by law and not by discretion. Any rule by the discretion of the ruler, notwithstanding their wisdom, is bound to be problematic.
2. Law in the interests of the weak and the poor.



3. Recognition that democratic government must be based on rule by consent and thereby cannot curtail certain foundational rights of an individual.

Prof. Suri next raised concerns regarding the trust deficit of the people in the institutions of the country. He stated that several studies indicate that the military and the judiciary are the most trusted public institutions in the country with 90% of the people having faith in the legitimacy of these institutions. On the other hand, the police and political parties are the least trusted, enjoying the confidence of a mere 30% of the people. Placed between these institutions are the various elected bodies and the executive branches of the government.

He further highlighted two issues that go to the very root of Rule of Law - one, thirst for power leading to the abuse of law enforcement agencies by the governments of the day, and two, amassing of wealth by office-bearers using any means available. Lastly, Prof. Suri emphasised that Rule of Law is a prerequisite for not merely nation-building but national unity as well which is possible only when citizens enjoy freedoms and believe that the justice delivery system is fair and effective which in turn guarantees security and well-being. He opined that while institutional reforms were necessary, it was also important to reform the moral and ethical foundations of our society and polity.

### **Shri Kumara Guru, Director, External Relations, Indian School of Business**

Shri Guru began by acknowledging that the concluding session coincided with the National Science Day, on February 28<sup>th</sup> and in that context, he noted that the only way to progress in learning is through asking questions. He said that no matter which segment of the society we represent, we must retain and exert the right to ask questions. He said that what is equally important is to “celebrate the value of dissent”, that is, to encourage an idea without necessarily accepting it. Here, he said, educational institutions play an important role.

He also shared some anecdotes to highlight and illustrate the problem with us as citizens and that we lack the understanding of the rule of law and its significance, particularly the functioning of the Rule of Law institutions.

## **QUESTIONS AND COMMENTS**

The question and answer session began with Justice Kurien Joseph giving his comments on the Hyderabad Declaration. He stressed on the need for follow-up action on the declaration and specifically emphasised on the reforms pertaining to the Constitutional Courts and insulation of investigation wing from political interference. He highlighted the importance of mobilising public opinion and public participation for policy reform.

Shri Prithviraj Chavan then shared his thoughts on the Hyderabad Declaration. He opined that it included some very lofty ideals, and the pertinent question now is regarding the manner and agency of implementation. He opined that one of the agencies who will play a role in bringing about the desired changes is the legislature, through allocating the required resources to build capacity to bring change. He strongly advocated for the introduction of an Indian Judicial Service, and stressed that fears around it are unfounded. He stressed on the need to simultaneously make our judicial services an attractive career option for the youth of the country. He also suggested that the country could also introduce an Indian Security Service constituting the Central forces and the intelligence agencies, as a sister service to the existing Indian Police Service. He opined that the biggest hurdle in the way of the reforms was the issue of inadequate resources. He strongly suggested pursuing the Hyderabad Declaration with the legislatures across the country to build consensus.

Next, there was a question directed to Dr. Jayaprakash Narayan on the prioritisation of the reforms in face of the current political climate. Dr. Narayan opined there were three broad areas of reform. First area pertains to improving infrastructure and resources - human, financial, technological and the like. This is the easiest type of reform to execute provided that the money is available as no political resistance will be encountered. The cost of such reforms, possibly

amounting to 0.1%-0.2% of India's GDP, is not a large sum in the context of India's public expenditure. The second category of reform is procedural reform for which considerable ground work has already been laid. Insulation of crime investigation and prosecution from political vagaries is the final and the most difficult area of reform to implement. However, as an optimist, he felt that if the reforms were aligned practically, with the concerns of the elected representatives and the public both kept in mind, change was possible. He suggested that the regular police can continue to handle about 80-85% of the crime investigation workload, particularly for the minor offences. For the remaining 15-20%, special investigative and prosecution institutions can be set up, which would be accountable to an independent Prosecution and Investigation Board which would be headed by people of the calibre of former chief justices of the Supreme Court and the High Court. He noted that not all states may adopt this, but the mechanism needs to be figured out. He noted that some reforms are easy, while others take a long time, and only marginal improvements are made, citing the examples of the 97<sup>th</sup> amendment and the voting system reforms respectively. He said that it is important to not "bad-mouth" the legislators and recognise that they have a legitimate role in our democratic system. He quoted Mahatma Gandhi, and remarked that "a reformer must have infinite patience", which was also something he had learnt in the course of his own career. At the same time, Dr. Narayan opined that as the conference showed, the time was ripe to initiate discussion, as well as to push for the needed reforms in the field of Rule of Law.

The second question was on the role citizens could play in the reform process. On this, Prof. K.C. Suri remarked that firstly, we can do so by choosing our representatives with care. Secondly, he stressed the importance of constructive criticism as it enables self-correcting mechanisms inherent in a democracy. Finally, he emphasised the importance of non-partisan citizen-led initiatives, such as the Loksatta movement headed by Dr. Jayaprakash Narayan. He called for increased civil society initiatives since civil society participation in India is amongst the lowest in the world at 5% of total population being members of such organisations. In contrast, he noted that about 40% of Indians identify with a political party. He opined that excessive preoccupation with political parties must decrease and focus should move towards non-partisan civil society initiatives.

The next question was on the role young people could play in the reform agenda. On this, Shri Kumara Guru observed that young people today were result and action oriented, and work hard towards their cause. He believed that the suitable approach for the youth to contribute to the reform process can be summarised as three As -

1. Awareness - creating and spreading awareness
2. Action - get involved in reform initiatives
3. Advocacy - participate in advocating for reforms

He concluded that the younger generation must be trusted to lead the way forward and at the same time, it is incumbent on the youth to venture beyond being a mere armchair activist.

## **CONCLUSION:**

In conclusion, Dr. Jayaprakash Narayan noted that over the last few days, the conference witnessed soulful, passionate and insightful debate and a common desire among everyone present was to bring about a synthesis and find solutions for the issues discussed. Dr. Narayan opined that there existed an impressive amount of consensus that emerged during the conference on resolving pressing issues related to Rule of Law. Dr. Narayan added that the conference was not merely an idle exercise in talk or debate; it was an attempt to find practical and achievable solutions to the problems our country faces, and he sought the guidance and leadership of all the panelists towards achieving the same. He also added that it was possible to bring about change without being overly optimistic about the same, and noted that we often overestimate our capacity to bring about change in the short-term, while underestimating our capacity to usher in changes in the long-term. Dr. Narayan opined that, even with all our imperfections, India has a bright future as a democracy. However, he warned against resting on laurels of the past, lest we fall into a “middling democracy trap”, in a reference to the “middle income trap” used by economists. To conclude, he added that it was both possible and necessary to constantly improve our democratic instruments, institutions and incentives, across the board.