

## **INAUGURAL CEREMONY**

**21 FEBRUARY 2021 | 9:00 AM - 10:30 AM**

### **DISTINGUISHED GUESTS:**

1. Dr. Jayaprakash Narayan (General Secretary, Foundation for Democratic Reforms)
2. Prof. B. Raja Shekhar (Pro Vice-Chancellor, University of Hyderabad)
3. Shri Justice M.N. Venkatachaliah (Former Chief Justice of India)
4. Dr. Duvvuri Subbarao (Former Governor, Reserve Bank of India)
5. Prof. Ashwini Chhatre (Associate Professor of Economics and Public Policy, Indian School of Business)

### **ABSTRACT:**

*This year's Conference on the theme "Rule of Law" hosted by the combined efforts of Foundation for Democratic Reforms, University of Hyderabad and Indian School of Business was inaugurated under the auspices of former Chief Justice of India, Justice Venkatachaliah and former Governor of Reserve Bank of India, Dr. Duvvuri Subbarao. Prof. Rajashekhar, the Pro Vice-Chancellor of University of Hyderabad and Prof. Ashwini Chhatre, Associate Professor of Bharati Institute of Public Policy also attended. The session witnessed an official welcome address by Dr. Jayaprakash Narayan followed by other distinguished panelists. The panel agreed that for becoming a major power in the world, India needs to modernise its justice delivery system and strengthen institutions such as police, forensics, prosecution and the judiciary. They also touched upon the importance of Rule of Law for economic growth. The collective consensus was that the foremost task of the Indian state is to ensure order, bring millions of people out of poverty and provide them with security of life and livelihood.*

## **Welcome Address By Dr. Jayaprakash Narayan, General Secretary, Foundation For Democratic Reforms**

Opening his address by welcoming two esteemed personalities for the inaugural session, Shri Justice M.N. Venkatachaliah (Former Chief Justice of India) and Dr. Duvvuri Subbarao (Former Governor, Reserve Bank of India), Dr. Jayaprakash Narayan stated that the rule of law and justice is not limited to the constitutional sense but also extends to the economic growth and opportunities that can be afforded to all. The speaker opined that democracies are a constant work in progress - they require constant vigilance, review and renewal. In doing so, he stated the objective of the second edition of the Indian Democracy at Work Conference, which is a result of the collaboration of a multifaceted partnership between the Foundation for Democratic Reforms, the University of Hyderabad and the Bharati Institute of Public Policy at the Indian School of Business. Dr. Jayaprakash Narayan stated that Rule of Law was chosen as the theme for the conference with great optimism. A rational and pragmatic solution for the challenges plaguing the Indian judicial system can be found, and for that, citizens must strive to be a part of the solution and not a part of the problem. The aim of the conference is to bring together all stakeholders to find workable and pragmatic solutions. He implored the attendees to recognise the precept that striving for the impossible best is the enemy of the possible good.

Recalling Willaim Gladstone's quote, "The proper function of a government is to make it easy for the people to do good and difficult for them to do evil", Dr. Jayaprakash Narayan stated that Indian society is strong and largely stable, with our crime rates faring at 377 per 100,000, which is far lower than that of some of its more developed counterparts. The speaker then highlighted that despite the low crime rates, nearly 27 million criminal cases are pending in Indian courts, with nearly 60% of them pending for more than 1 year. The speaker also observed that most people are shunning courts. Around 1 crore criminal cases are instituted in a year, and whereas only 40 lakh civil cases are instituted and about 10 million civil cases are pending. These figures indicate that largely, people avoid taking matters to court and prefer to suffer silently or resort to extrajudicial remedies. The speaker also stated that the annual volume of disposal of cases per

judge per year by courts goes as high as 800 cases per judge per year at the trial court level, and around 3500 cases per judge per year at the high court level.

Dr. Jayaprakash Narayan pointed out that community bonds in more closely-knit rural societies often ensure that people behave in a predictable and peaceful manner. However, with a rise in urbanisation, anonymity and impersonal lives, such social controls cannot be maintained, and therefore, crime rates are bound to rise. He also stated that evidence of the same has been found in urban areas. The speaker further noted that with more economic growth and prosperity and a consequent growth in the volume of economic interactions and transactions, the need for dispute resolution and contract settlements an imperative. When such matters are not settled in a fair and speedy manner, and people will start looking for other means of settlement, mistrust will rise, people will become risk averse, investment will come down, growth will suffer and poverty will continue.

He then highlighted the challenges that are currently plaguing India's justice system. He pointed out that India has the lowest number of police per unit population, around 156 policemen per 100,000 population. India also has the lowest number of judges per unit population, around 14 per 1,000,000 population, and even fewer prosecutors per unit population at 6 per 1,000,000 population. The speaker also pointed out that India has a weak forensic infrastructure, with the ability to handle only 20,000 cases per year. He also highlighted that justice procedures are complex and slow, and crime investigations can often be partisan and entirely politically controlled. As Dr. Jayaprakash Narayan further pointed out that it is therefore a matter of no surprise that in the World Justice Project's Rule of Law Index, India fares poorly at 69th rank out of 128 countries. He further specified that India ranks 98th and 78th in civil and criminal justice respectively.

Dr. Narayan stated that India also has the lowest conviction rate, at 50%, a majority of which is based on confessions, largely by the poor and weak, who cannot afford defense lawyers. India also has the longest duration in contract enforcement of 1445 days, among the significant economies of the world. 70% of the inmates in India's prisons are still under trail, most of whom are poor and cannot afford lawyers. Police brutality is a common occurrence in police stations, in

order to extract confessions or provide extralegal justice. India's total expenditure on the rule of law and courts is about 0.76% and 0.1% of the GDP respectively, which are dismal figures in comparison to other significant economies. Dr. Jayaprakash Narayan stated that these figures point towards the urgent need for meaningful reforms.

Dr. Jayaprakash Narayan further spoke about the pragmatic solutions that can be implemented in the 4 practical aspects of the rule of law - police, prosecution, procedures and courts. He first highlighted reforms that could be brought about in the police. He advocated the provisions of better infrastructure, particularly in forensics, community policing, and shifting 20% of the cases to CB CID in states. He also advocated empowerment with accountability, by making them free from political vagaries and appointing competent and efficient personnel. Moving to reforms in prosecution, Dr. Jayaprakash Narayan suggested the appointment of a judicial officer at the district level, who can perform the duties of the district attorney, and also head the prosecution wing as required. He also advocated the need to ensure independence and better coordination, and highlighted the need to institute an independent investigation and prosecution board at the state level. The speaker further suggested that to make procedures seamless and efficient, the multiple amendments suggested by many committees and experts must be examined and feasibly implemented. He also highlighted the fact that the judiciary is plagued by the burden of pendency. At the trial court level around 3000 cases per judge are pending, while at the High Court level around 8000 cases per judge are pending. To overcome this burden of pendency, Dr. Jayaprakash Narayan suggested that local courts should take the bulk of simple cases through summary procedures. He also suggested that the number of judges and judicial infrastructure must be enhanced.

The speaker also stressed that most of the rule of law and justice administration is at the state level. Therefore it is not necessary that national efforts for reform get translated into outcomes at the state and local level. Dr. Jayaprakash Narayan then further highlighted 4 key questions that must be probed into, to find pragmatic solutions:

1. What reforms must be brought about?
2. How do we get a buy-in for all key stakeholders - police, prosecution, judiciary, elected representatives? While elected representatives have a legitimate stake in a crime-free society, where must the line of their involvement be drawn? More importantly, how can we bring the State and Union to work together in a polarised and partisan environment?
3. How do we get legal and institutional framework in place?
4. After having the framework in place, how do we make it work?

In conclusion, Dr. Jayaprakash Narayan reiterated that the purpose of the second edition of the IDAW conference would be to search for solutions to the aforementioned questions, create a roadmap for reforms and implement it.

### **Opening Remarks By Prof. B. Raja Shekhar, Pro Vice-chancellor, University Of Hyderabad**

Prof. B. Raja Shekhar opened his speech by thanking Dr. Jayaprakash Narayan for his invaluable insights into the position of India's state of rule of law, vis-a-vis other developed and developing nations, as well as for providing a brief roadmap of how India could proceed with respect to much needed judicial reforms on this front. The speaker also remarked that the statistics highlighted in the Rule of Law advocacy paper indicate the urgent need to improve upon all facets of the justice system in India. The speaker further reiterated Dr. Jayaprakash Narayan's point regarding the need to find optimistic and pragmatic solutions. He stressed the need to focus on the practical aspects and restated the precept that impossible best is often the enemy of the possible good that can be done.

He further reiterated that we must be a part of the solution, and not a part of the problem. The speaker also pointed out that the statistics indicating the laggard nature of the Indian Justice System, are only on the basis of reported cases. Prof. Raja Shekhar pointed out that it is imperative that one must first look into if and why cases go ‘unreported’, and second, what the revised statistics that account for the unreported cases mean for the state of the Indian justice system. He also stated that the rule of law should prevent states from turning into an authoritarian regime. He pointed out that the aim of the rule of law must be to make governance more transparent and objective.

Prof. Raja Shekhar also observed that there is a scope for bringing metrics for service quality into rule of law aspects. As the justice system is essentially providing a service to the citizens, the use of such metrics may provide some valuable insights and could potentially lead to tangible solutions. More specifically, the speaker pointed out that the following metrics be used to measure performance - reliability, assurance to stakeholders, tangibles (infrastructure etc.), empathy, and responsiveness to the stakeholders. Such metrics encompass measurement of stakeholder satisfaction. He further pointed out that management concepts such as Failure Mode and Effects Analysis (FMEA) and Root-Cause Analysis may be key to identifying problem points in the justice system, and providing targeted solutions for the same.

Prof. Raja Shekhar also noted that migration and higher economic growth is often accompanied by a rise in the crime rate, and that such growth in the economy must not come at the cost of the economically and socially weaker sections of society. In his concluding remarks, Prof. B. Raja Shekar highlighted the scope of a collaboration between experienced people in service quality, management, public policy and law sectors to come together and bring more insights from their respective fields, to provide holistic solutions to the challenges faced by the Indian justice system. Moreover, he also reiterated the need for all stakeholders to come together to improve the state of the rule of law.

## **Inaugural Address By Shri Justice M.N. Venkatachaliah, Former Chief Justice Of India**

Shri Justice M.N. Venkatachaliah opened his address by stating human weakness is exaggerated by power, and that all kinds of power have the inherent tendency to run to excess. The primary concern of the rule of law therefore, is to civilize power and to ensure that no man is trusted with absolute power. He also noted that every case expands the definition of rule of law, and by extension the practical principles of the law, and management and punishment of crimes. He further remarked that the advocacy paper prepared by FDR shows the deficiencies in the Indian justice system, and that the measurement of the judges per million cases may be a more appropriate metric of performance.

Shri Justice M.N. Venkatachaliah commented that a large number of people have nothing to litigate about, and therefore do not take matters to court when avoidable. The speaker noted that there is therefore a docket exclusion, and not a docket explosion, as is widely believed. To reiterate this, the speaker states that in the United States of America, nearly 300 assertion of citizens' rights litigations take place per 1000 population. Conversely, in Singapore this number is 89 per 1000 population. According to the speaker, the main reason for this disparity is the nature of society, as the literacy levels in both countries are similar. America has an open society while Singapore has a closed one. In India itself, the number of citizen's rights litigations per 1000 population is 29 in Kerala and 4 in Jharkhand. These numbers indicate that even educated people, who have the means, are reluctant to go to courts when it is avoidable.

The speaker stated that in 1991, around 1,67,000 cases were pending at the Supreme Court. Over the next 8 years, on an average 40,000 to 45,000 cases were added per year. However, by the end of 1998, only 19,200 cases were pending at the Supreme Court, due to adoption of known and tested methods of case flow management by CJI Verma. The problem therefore, as the speaker states, is not in arrears in court, rather in a deeper malice that results in the miscarriage of justice. Shri Justice M.N. Venkatachaliah advocated for a criminal justice review system.

Shri Justice M.N. Venkatachaliah also pointed out that at the district level courts, 70% of the cases are criminal cases, while at the High Courts, 70% of the cases are civil cases. He laid emphasis on the need to examine why such a reversal happens, and on the need to examine where the defect is, and the cause of delay in fixing such a defect. The speaker also stated that there is dramatic power of state over individuals in a trial, and another facet of the rule of law that must be probed into, is how to protect the average citizen from the power of the state and the distortion it causes.

Shri Justice M.N. Venkatachaliah opined that there is mass cynicism and disillusionment among the citizens regarding the judiciary and authorities, which may be causing more harm than good. He also mentioned that the economic consequences of the lack of productivity of courts is immense. The speaker estimates that the loss of man hours if quantified, amounts to around Rs. 200 per head per day, or Rs. 2 lakh crore per year on an average. Additionally, there is increasing frustration and despondence among citizens as courts often have many cases, unable to know what the law is, or the relevant statutes the courts can apply. The speaker stated that this may be the cause of disillusionment with the justice system in India.

Shri Justice M.N. Venkatachaliah also spoke about the inadequacies of forensics labs in India. He further stated that the dismal state of forensics is a matter of great contemporary concern.

## **Keynote Address By Dr. Duvvuri Subbarao, Former Governor, Reserve Bank Of India**

Dr. Subbarao started off by congratulating the whole team of Foundation for Democratic Reforms, University of Hyderabad and Indian School of Business for their tremendous effort to bring out this year's theme Advocacy paper "Rule of Law" in the public discussion. He laid the context of how economic progress and Rule of law is interconnected and the former is only possible with the support of the later. He gave the example of how Singapore, Japan, Korea became prosperous in the last century. The speaker emphasizes that rule of law is a prerequisite for economic growth in any country. The speaker pointed out numerous incidents in which we encounter absence of rule of law. He elaborated that for any foreign investor who wants to do



business in India, has to go through various bureaucratic procedures which hampers the business climate in India. Any entrepreneur who comes in the market to advertise his products or services requires strong intellectual property rights to protect his invention and intellectual creation. For every enforcement of a contract the businessman needs to ask for permission from various authorities including the court which again frustrates the business climate in the country.

Dr Subbarao praised the present government for constantly making efforts in the direction of Ease of Doing Business which has resulted in improvement of rank of India in the index from nearly 140 to around 60 in just a span of 7 years. The speaker took us to the period of Industrial revolution which occurred in England in the 18th and 19<sup>th</sup> century. He elaborated that there were many reasons why this revolution happened only in England or largely in Europe which included Geography, Climate, literacy, resources, labor, better technology but he insisted that there was another important factor which prompted the rise of England in those times, a strong framework of property rights and patent rights which ensured robust Rule of Law. These property rights gave enough incentive to the people to invent and discover more which ultimately led to economic growth. The speaker recalled his earlier days when he used to work in the finance department of the central government and used to meet industrialists, businessmen from different states like kerala, Andhra Pradesh, Tamil Nadu etc. He used to ask them what the business community wanted from the government like reducing the taxes, permitting licensing, cheap labour. The industrialist simply wanted rule of law and that the local inspectors do not come every other day and harass the management of the industry for bribes and money.

Dr Subbarao gave the example of how Japan, a medieval power, became prosperous in just a period of 6-7 decades before the Second World War. He described how North Korea and South Korea despite having the same geographical area, coming from the same cultural background, having similar resources but starkly different today. South Korea is 10 times better than the North and the reason for this is South Korea adopted a democratic approach and built institutions which ensured accountability which ensured rule of all in the country while on the other hand North Korea adopted the Authoritative approach and it is one of the poorest countries today. He applauded the Chinese state which lifted millions out of poverty spectacularly after Deng

Xiaoping came in power after 1978. It ensured that it's small and medium scale enterprise got effective remedy. How did that happen? It happened because of the rule of law.

Dr Subbarao laid much emphasis on the business environment and argued that when supply chains started moving out of China not specifically due to pandemic but generally in the past 5 years, the expectation was that India would be at an advantage as it had the relevant market, cheap labor, available resources, strong democracy and information flow but in spite of this the investments moved somewhere else - Malaysia, Thailand, Philippines, Vietnam, Indonesia. We need to think why it happened? The reason is we don't have an effective Rule of Law in the country. It is not easy to do business in India. We need to create a happier and profitable environment in the country. We can get to a USD 5 trillion economy. The question to ask ourselves is how we get there. He emphasizes that we need to create institutions which can function independently without political bias. We need to speed up the justice delivery system to ensure that the parties get adequate remedies. He congratulated everyone for this conference and initiative which will give us the opportunity to come out with unique solutions for our myriad problems.

### **Vote Of Thanks By Prof. Ashwini Chhatre, Indian School Of Business**

Professor Chhatre started by congratulating FDR, University of Hyderabad and ISB for creating a common platform which will host more than 60 distinguished speakers over a period of week on the theme of "Rule of Law" in India. He thanked Justice Venkatachaliah and Dr. Subbarao for taking time in the weekend to address this conference and enlighten us with their thoughts. He also stated that despite the conference being held virtually, it didn't hold us back in terms of energy and enthusiasm to participate in this conference.

Prof Chhatre elaborated primarily on two points. The first being India as a liberal democracy has immense challenges to lift about 200 million who are above the poverty line today. He emphasized that we want to create a future where every individual gets adequate food with necessary nutrients, a reasonable source of living and security of life. He stressed that this can

only be achieved through rule of law. He added that absence of rule of law makes it difficult for the poor and vulnerable to have security of law and livelihood. Elaborating on the same he stated that India has to choose to decide a path where it can protect civil liberties of the individual, impart education to the poor, and give affordable health services to the society. To overcome all these challenges we need to equip the institutions to function effectively including the government which has the primary role to ensure smooth law and order in the state.

The second point Prof Chhatre emphasized is to give importance to property rights and its connection with Rule of Law. He stressed that we have to stop distinguishing white collar crimes from blue collar crimes, civil cases from criminal cases and instead should adopt a holistic approach to address this problem. The need for strong property rights which includes both tangible and intangible is the need of the hour. He added that every developed nation in the world had become developed for the one reason that it had adopted such a mechanism which addressed the problems of Rule of Law holistically and effectively.

Finally, he gave a vote of thanks to special guests i.e. Justice Venkatachaliah and Dr. Subbarao for their time and greeted everyone Best of Luck for the future sessions.