Indian Democracy at Work Series

RULE OF LAW

20th-28th February, 2021

Virtual Conference

Rapporteurs' Reports

INDIAN DEMOCRACY AT WORK

FDR FOUNDATION FOR DEMOCRATIC REFORMS

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INDIAN DEMOCRACY AT WORK

FDR FOUNDATION FOR DEMOCRATIC REFORMS

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 holistics 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 19th 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.

INDIAN DEMOCRACY AT WORK

FDR FOUNDATION FOR DEMOCRATIC REFORMS

SESSION 1A: ADDRESSING CHALLENGES OF MODERN POLICING

20 FEBRUARY | 11:00 AM - 1:30 PM

PANELISTS:

1. Smt. Maja Daruwala, Senior Advisor, Commonwealth Human Rights Initiative
2. Shri Kamal Kumar, Former Director, SVP National Police Academy
3. Shri Jacob Punnoose, Former Director General of Police, Kerala
4. Shri Vibhuti Narain Rai, Former Director General of Police, Uttar Pradesh
5. Mr. Raj S. Kohli, Chief Superintendent, Metropolitan Police, London

CHAIR: Shri K. Padmanabhaiah, Former Union Home Secretary

ABSTRACT:

The first session of the second edition of the Indian Democracy at Work Conference focused on addressing the challenges of modern policing. It witnessed fascinating and enlightening discussion on matters including enhancing the strength of the police, improving recruitment and training, and adopting community policing to improve police performance in the wake of growing challenges to rule of law. The issues of negative perceptions in the eyes of the public vis-à-vis the police, and the unenviable service conditions of our police personnel were also discussed at length by the esteemed panel, along with some possible solutions to address the same. By the end of the session, there was a broad consensus on the fact that police reforms are some of the most urgent reforms required in our country, and an effective and modern police force was a prerequisite for both the establishment of rule of law, and our country's democratic progression.

Opening remarks by Shri K. Padmanabhaiah, Former Union Home Secretary

Shri K. Padmanabhaiah began his address by stating that the police are the most visible, and the coercive arm of the state and perform a rather unenviable job. Police is entrusted with the responsibility of enforcing the Rule of Law. If it fails in its job, the State becomes a failed State. On the other hand, the use of excessive force and oppression turns a State into a police State.

Shri K. Padmanabhaiah stated that there are many problems in dealing with the police. One, there exist huge variations in the performance of the police from state to state and hence, it would not be advisable to generalise. Two, unlike other government departments, there are not many reports published annually which shed light on the performance of the police. Third, although two organisations, namely, National Crime Records Bureau (NCRB) and the Bureau of Police Research and Development (BPRD) publish data, it is highly aggregated and statistical. Thus, he opined, any assessment of the police is bound to be a complex task. Finally, Shri K. Padmanabhaiah cautioned that it would be rather unfair to expect the police to function with democratic ethos when that very ethos is lacking in the entire system.

Shri K. Padmanabhaiah elucidated that the term "modern policing" can differ from country to country, based on the country's level of development. He elaborated on the mandate, vision and ethos of a modern police force in India. According to him, a modern police force must uphold the rule of law, and the preamble of our Constitution. It must promote fraternity among all citizens and provide protection to the common citizen, treat them with dignity and without discrimination.

The chair explained that the college of policing in the UK describes that the job of a police officer is "to reduce crime and fear of crime, and to promote confidence amongst local people that the police understand and are prepared to deal with issues that matter most to them". In the

Indian context, Shri Padmanabhaiah opined that the police should also take note of the broader context of churning our society is witnessing, such as new claims by backward classes, new aspirations and tensions generated by shifts in economic policies, and challenging pre-existing hierarchies. Further, they must give significant importance to information technology and the internet and their impact on the changing profile of crime. He suggested that police forces in the country should re-shape themselves into people friendly police forces, and on this front, should look to the example of Kerala.

Shri Padmanabhaiah went on to give an overview of attempts at police reforms in India. He explained how the Indian Police Act was introduced in 1861, in the aftermath of the first war of independence in 1857. The purpose of such an act was only to maintain law and order by whichever means possible. This Police Act served the British in India for 86 years, and the same had been used in independent India for another 64 years, until 2011, when some states enacted a Modern Police Act. He opined that although the police is the coercive arm of Law, it is being used as a coercive arm of the government of the day and is perceived as such. He added that the crux of the reforms is to strike a balance between operational autonomy and accountability to the government and public. He opined that the Kerala Police Act, 2011 was the beginning of modern policing in India, along with other such acts passed in Uttarakhand and Himachal Pradesh.

The Chair recounted the various efforts made towards reform and modernisation of the police in India. The National Police Commission report was published in 1980, along with a proposed New Model Act. However, no action was taken towards its implementation. Much later, in 2006, due to the efforts of former Uttar Pradesh DGP Shri Prakash Singh, the Supreme Court's verdict mentioned seven reforms which could be implemented. They included the establishment of an Independent State Security Commissions, separation of investigation and law & order functions, constitution of a Police Establishment Board to decide on transfers, postings, promotions etc, constitution of an independent full time Police Complaints Authority at the district and state level to ensure accountability, and the Constitution of a National Security Commission to prepare a

panel for the selection of the heads of central police organisations, with a minimum tenure of 2 years. However, the Supreme Court added - "These directions will be operative till such time a new Model Police Act is prepared by the Central Government and/or the state governments pass the required legislation." As such, no concrete action was observed on the part of most state governments. Shri Padmanabhaiah noted that as of 2016, only Kerala had come close to implementing what the Model Police Act had suggested. He said that the political entity as well as senior leadership within the police share the blame for the lack of implementation of reform.

Shri Padmanabhaiah expressed great sympathy for the police force and their abysmal working conditions. The police is the only organization in the government where people are killed while discharging their duties. He presented information on officer injuries and fatalities to point to the gravity of the situation.

Speaking on the workload of a police officer, Shri Padmanabhaiah opined that Head Constables and Sub-Inspectors who constitute over 80% of the force and first level of investigators, should have vast knowledge including:

1. Indian Penal Code (IPC)
2. Criminal Procedure Code (CrPC)
3. Indian Evidence Act
4. Police Act of the State
5. Special Laws like the UAPA
6. Local laws
7. Scientific Aids for Investigation
8. Basics of IT

Noting that policing is a complex job, the chair listed that a good and effective officer must have the qualities of a sociologist and psychologist, have effective communication skills, have quick

decision making skills, be courageous, have a good moral fibre, have great comprehension skills, and have basic understanding of law.

Shri Padmanabhaiah expressed that current police recruitment and training practices present serious problems. He went on to compare the qualification levels for recruitment as constables in India and the UK. The entry qualification in India for a constable is completion of 12th grade of schooling and that for an SI is graduation, which is followed by 9 months of training. In contrast, in the UK, recruitment mostly only takes place at the constable level through 3 routes.

1. A three-year degree in professional policing offered by 34 universities based on a national curriculum for police constables. The degree does not guarantee recruitment, post the completion of the degree, one may be selected and placed on probation for two years.
2. Police Constable Degree Apprenticeship (PCDA) presents with a 3-year Level 6 degree apprenticeship which involves both on and off job training.
3. Any degree holder if selected has to undergo a 2 year work-based program and probation and is then given a Graduate Diploma in Professional Policing Practice.

Shri Padmanabhaiah also emphasised on some major areas of reform, including:

1. Recruitment - officers ought to be recruited at a younger age;
2. Training and subsequently retraining of the officers;
3. Rationalisation of police duties;
4. Improving police behaviour;
5. Improving police administration including manpower planning, with due consideration to the enhanced requirements of manpower for modern policing;
6. Improving infrastructure, particularly in forensics, information technology and communication, especially a special cadre of scientists as forensic specialists;
7. Stability of tenure for officers of all ranks;
8. Separation of functions and greater specialisation with regard to police investigation;

9. Improving prosecution, which had become the Achilles heel of the police. At the investigation stage, the police should use the advice of a trained prosecutor. Each district Superintendent of Police could have a dedicated prosecutor for such advice;
10. Institutionalising community policing, by studying successful community policing models elsewhere in the world such as the UK;
11. Building public trust, particularly among women and weaker sections of the society;
12. Tackling militancy and terrorism by enacting special laws and coordinated action;
13. Tackling organised crime, including kidnapping, contract killing, extortion rackets, land grabbing, cyber crimes, etc. The Maharashtra Control of Organised Crime Act 1999 could serve as an example;
14. Filling of vacancies aptly (20 percent of the sanctioned posts are vacant at the national level);
15. Utilising modernisation funds (52 percent of funds were not utilised in the previous year);
16. Reclassification of non-cognizable cases;
17. Improving investigation skills.

To conclude, Shri Padmanabhaiah noted that not all hope was lost, and in the last five years, considerable improvement had been observed with regard to the police in India.

Smt. Maja Daruwala, Senior Advisor, Commonwealth Human Rights Initiative

Smt. Maja Daruwala spoke on the perceptions of the police from the citizen's perspective and vice versa. She began her address by illustrating with data from various reports, wherein the average citizen views the police as something to fear, having too much authority and abusing it too often. She, however, added that most reports note that people are usually satisfied with the "performance" of the police, given their low expectations from them. She went on to explain the various reasons for this low level of expectations from the police, which include refusal to help/file a complaint, abusive behaviour, demanding a bribe, etc. Ms. Daruwala opined that

much of the aforementioned behaviour could be avoided through imparting better training at an earlier stage, and regular feedback on their performance during their working years. This would go a long way in altering the negative public image of the police.

Ms. Daruwala noted from the same studies that the public often does not feel comfortable visiting a police station, more so in the case of women and children. She also noted that only about 15 percent of our population had any actual interaction with the police. However, among these, the poor have a much less positive experience of policing, as compared to other segments of society, some of whom have even had a rather satisfactory experience.

Next, Ms. Daruwala elaborated on the issue of biases within the police, which was manifesting itself as selective policing, and this was very much perceived by the public. She also noted that women respondents in the studies observed a stark strain of patriarchy and paternalism in their dealings with the police.

Ms. Daruwala also proceeded to highlight the issue of police violence, which was unfortunately visible all around us. She opined that there should be no excuse for the use of excessive force. She also noted that about 1/5th of the respondents felt that the police themselves had violated the law. Nearly, 1/3rd of the respondents accepted that they had paid a bribe to the police. Ms. Daruwala noted that all of these responses highlight the issue that trust in the police was rather low.

Ms. Daruwala next elaborated on the perceptions held by the police themselves, regarding the public and their own work. Unfortunately, a number of policemen felt that upholding the Rule of Law was not a premier function of the police. They also viewed themselves as a force, rather than a service, and an authority over the citizen, rather than as a citizen bestowed with special powers to protect other citizens. Ms. Daruwala also highlighted with examples that most of the policemen acknowledge their own biases.

To conclude, she expressed that although a situation of poor policing continues, it can be improved with consistent public advocacy. .

Shri Kamal Kumar, Former Director, SVP National Police Academy

Shri Kamal Kumar spoke about the problems and constraints faced by the police force in India. He began his address by stressing that outside of police circles, not much was known regarding the problems faced by the police in India. He went on to highlight some essential prerequisites for a modern police service. The members of a modern police service ought to be:

1. Well trained and motivated
2. Well equipped and well resourced
3. Unquestionably fair and impartial
4. Functioning without fear or favour
5. Totally apolitical
6. Shunning abuse of power
7. Respectful to human rights
8. Well committed to ethical values

On the problems faced by the police, Shri Kamal Kumar went on to elaborate that the police in India have inherited most of their structure and powers from their colonial past, which was woefully out of sync with today's times. Meanwhile, in democratic India, a host of factors including overpopulation, rapid urbanisation, etc have also exacerbated the existing problems. To further understand the issue, he went on to explain the concept of Management Universe of the Police System, which explains how the quality of a police system was a function of the different elements that are part of this universe.

Shri Kamal Kumar noted that while problems were aplenty, a few required our most immediate attention. The first issue he highlighted was of human resources. He added there were acute

manpower shortages, and that the sanctioned strength is not estimated through scientific methods or studies. The huge number of vacancies further exacerbated the issue. The sanctioned police strength in India, of 152 policemen per 100,000 population, is far below the UN recommended standard of 222 per 100,000 people. Shri Kamal Kumar also noted the lack of diversity in the composition of the police force, with respect to gender, religion etc. He then highlighted the issue of training of police personnel, which suffers from inadequate infrastructure, paucity of proficient faculty, scant budgetary allocation, etc.

Shri Kamal Kumar also highlighted the abysmal working conditions of the police in India. Firstly, there is the issue of work overload, with the police performing a plethora of duties and functions, many of which could be outsourced. The long and arduous working hours is another cause for concern. Another pressing issue is the lack of even basic facilities such as telephones, stationary, petrol expenses, etc. at police stations. He also highlighted the issue of frequent transfers of police personnel, at the behest of their political masters. Meagre promotional prospects are another area of concern, particularly for officers at the lower levels. This, in turn, becomes a morale and motivational issue, particularly for deserving officers.

According to Shri Kamal Kumar, a huge cause for concern is the inadequate forensic science support available to the police. There is an acute shortage of laboratories, and the existing ones are ill-equipped and understaffed. The existing staff is scientifically under-trained as well. He also noted that there is a non-availability of investigation kits at police stations. Inadequate orientation training of police personnel in forensic science is another area of grave concern which requires immediate attention.

Shri Kamal Kumar spoke on the budgetary constraints faced by the police. Police budgets are marked by highly inadequate allocations for even essential expenditure such as for stationary, fuel, feeding expenses, investigation related expenditure, etc. According to 2020 BPRD data, the expenditure on policing accounted for only 3.26 percent of the total expenditure. According to him, the problem of defective budgeting lay in the top-down approach of budget formation.

Shri Kamal Kumar highlighted in detail the issue of extraneous interference in police functioning, which has become a serious problem. He noted that interference has been rampant in police transfers and postings, and often also in matters related to crime investigation and law enforcement. This causes a severe dent in the operational autonomy of police officers in the country. He also opined that there is a misinterpretation of the term "Superintendence of Police Acts" by the politician.

Finally, Shri Kamal Kumar elaborated on what needs to be done. The citizens have enormous stakes in good policing, and people's power is a potent weapon in a democracy, in goading the political masters into action. He noted there is a need to promote awareness on this issue, and also educate the political leaders on the significance of the matter, and the political stakes involved in good policing. He added that PILs could be of help in this regard. To conclude, Shri Kamal Kumar added that a concerted effort is required on the part of all the stakeholders to bring about the desired reforms.

Shri Jacob Punnoose, Former Director General of Police, Kerala

Shri Jacob Punnoose began his address by stating that 'fear based ferocious policing' is the reason for the disconnect between the police and the citizens. Therefore, meaningful police reform must address that cutting-edge problem at the police station, where people seek the help of the police. The speaker agreed with Smt. Maja Daruwala that women and children don't go to police stations, which keeps 75% of the population out of the police station. He stated that fear came to be the basis of law enforcement as it was believed that people need to be frightened to obey the law. Kerala's approach to police reform was based on the question, 'if not fear, what could be the basis of policing?' The answer was enshrined in Robert Peel's Principles of Law Enforcement of 1829. Cooperation with people is essential for police efficiency.

The premise for the Kerala Police reform, therefore, revolved around friendly policing. The speaker explained that 'friendliness', when first mentioned in the 1990s, revoked a smile because

friendliness was seen as soft-policing, and can't establish order. However, the Kerala Police believed that it is possible to have friendliness as the basis for policing because only less 1% of the population are criminals. This method would pay dividends only if the people are police friendly. The speaker opined that this presents the classic chicken and egg problem - should the people be friendly with the police first or should the police be friendly first? The reformers of Kerala police believed that the police must make a determined effort to become friendly with the people they serve, to gain the trust of the populace.

Shri Jacob Punnoose elaborated on the methodology adopted for advocating, actualising and implementing people friendly policing in Kerala, in which community policing played a critical role. This approach of people friendly policing was initially met with a lot of resistance and suspicion. Then Chief Minister A. K. Anthony ordered the politicians to not be involved in the workings of the police station, which led to a big debate on the quality of police performance. However, even after politicians stopped coming to the police station, police were as corrupt and ferocious as ever. Following this, a committee with high level officials and Justice KT Thomas was appointed to look into the performance of the police. Discussions happened with the fulcrum of the society and diverse opinions were heard, including those of political leaders, civil society, media, NGOs, cultural leaders, and religious leaders. Through the deliberations, a consensus was reached in Kerala's polity on the need for police reform, to improve police functioning and uphold rule of law.

Subsequently, the community policing system was designed to make the police more approachable and encourage communication with the people. Junior officers were encouraged to show initiative at the local level with different community policing initiatives based on the needs of the locality. The system aimed to improve the experience of policing for all stakeholders and the entire program was designed under the aegis of the government. It wasn't a partisan initiative, and it was openly discussed with the opposition.

This community policing model was initially adopted in 20 police stations in 2007-2008, covering just one percent of the population, and gradually grew to 100. The present Home Minister, after 12 years, extended the program to the entire state of Kerala. The laws of Kerala were changed to accommodate community policing, giving it statutory backing, which allowed the program to stand the test of time. The law was also brought into effect through an elaborate process of deliberations over a period of 4 years, from when it was drafted in 2007 to being enacted in 2011.

Shri Jacob Punnoose explained that getting the cooperation of the community in prevention of crime and instilling a sense of security was critical. The community police initiatives include fighting the fear of crime and crime, managing traffic safety, and addressing drug abuse problems, insecurity in school neighbourhoods, domestic violence and security of women. A second important factor is that the police must be known to the local community. Although this seems quite simple, Mr. Punnoose highlighted that in large parts of India, policemen are deliberately made strangers to the community. For example, in UP, policemen are not allowed to work in their own district. But in Kerala they are allowed to work in their own locality, including their place of residence. The speaker explained that in many major democracies such as the US and the UK, policemen are a part of the community they serve. This is crucial to ensure mutual knowledge and mutual trust among the police and the people. To this effect, the beat system in Kerala was modified from the existing practice of a different police officer patrolling the beat each day such that a dedicated police officer was assigned to the beat for a minimum period of 2 years. The beat officers were not only meant to patrol the streets, but also visit the homes of all the citizens in the beat area with the aim that in 6 months, the beat officer knows every family in the beat personally. This helped improve familiarity and build trust.

Shri Jacob Punnoose further elaborated on the scope of community policing activities. A community policing liaison committee including community members establishes the priorities of police activity in a particular community. Such identified activities are implemented by the community with the help of the police. The scope of these activities includes identification of

strangers and new residents, patrolling in crime prevalent areas, protection of elderly population, prevention of juvenile delinquency, counselling for family problems, alcoholism, road safety, awareness among women of their legal rights, disaster management, first aid, epidemic control, anti narcotic action plans, vigilance against cyber crimes, security plans like cameras, alert system, environment protection, and victim support. The speaker stated that harnessing technology for neighbourhood safety has also been prioritized in Kerala. Community policing has also encompassed cyber policing, because conventional policing methods are ineffective against many crimes that are now committed in cyberspace. Cyber law has been put in place allowing netizens to monitor and report the crimes they notice online for proactive and preventative policing in cyberspace.

According to Shri Jacob Punnoose, community policing has helped improve self-perception of the police and has a positive impact on their personality and professional abilities. It has resulted in greater self esteem, reduced stress and a lesser workload owing to cooperation of the community.

In addition to community policing, several additional initiatives have been taken up under the umbrella of people-friendly policing, which aimed at making police approachable and policing consultative and participative. For the first time in India, the rights of citizens in the police station were incorporated into the law via the Kerala Police Act, Section 6. The citizens have also been given rights such as the right to video or audio tape any police action and the right to know the reason for adverse action of the police. Since the beginning of the 21st century, women have been posted in every police station in Kerala to make the police stations more women and children friendly.

The panelist went on to elaborate on three more significant initiatives. First, a student police cadet scheme was created, which is a personality development scheme run by the police to improve the civic sense of students. Two lakh children enrolled are under this scheme in Kerala

and it has also been adopted nationally. Second, 5000 school protection groups have been created across Kerala to protect schools from narcotics, drugs, traffic safety, and obscenity, comprising community members around the school mobilized by the police. Moreover, police stations are being transformed into child friendly stations, 85 such police stations have been created in the last five years. Coastal security vigilance scheme led by fishermen was started in 2010, after which there have been no communal riots or anti-police riots along the coast of Kerala. Police also interact with the public on social media. Reception desks in every police station, and more than 50 percent of the police population are deployed in the police station. Police stations have also been equipped with IT including internet and cameras to prevent misconduct or use of third degree methods by the police. Also focuses on improving the quality of the personnel. To improve the dignity of contables, the designation has been changed to Civil Police Officers, including an 8-hour duty system, adequate pay, an assured promotion scheme where every constable can become a sub-inspector and better training including skills such as driving, swimming, and communication.

The speaker concluded by stating that all these measures were taken with the objective of enabling the policemen to be people friendly and evolving systems to ensure that this translates into the improvement of society. He mentioned that there are many deficiencies to be addressed and still a long way to go for the Kerala police. The chair Shri K Padmanabaiah suggested that the DGPs of all states must pay a visit to Kerala to witness and learn from their policing model.

Shri V. N. Rai, Former Director General of Police, Uttar Pradesh

Shri V.N. Rai started his presentation with the following questions, “Does police meet the challenges of the contemporary world successfully?” and “Do we recruit and train police for the modern times?”. The paneslist went on to state that while recruitment and training are two of the most important areas for policing, they are also the most neglected. Recruitment is dwindling and so is the allocation of resources to it. In many situations, it has become an avenue for

employment and patronage. If the recruitment process is unduly influenced by corruption and nepotism, it will clearly reflect on the quality of recruits and subsequently on the services they provide. Police recruitment should be based on the requirements of the organization. We should think of adopting the United Kingdom's model.

Shri V.N. Rai stated that the importance and stature of training is diminished when training institutes are relegated to last resort for senior officers or rehabilitation avenues for officers in disfavor of power dispensation. This leaves an improper impression. On another front, the Centre for the Study of Developing Societies (CSDS) report statistics show that raising only the required educational qualification is not enough and that the more educated policemen tend to be convinced that third degree methods are optimal. It is necessary to identify certain basic requirements for a good police officer. Most of the police institutions are a force created by the tools created by colonial owners in 1860's or 70s. They served the colonial purpose well, but should've been changed after the independence. The character of police pre-1947 and post 1947 hasn't changed much because of the lack of changes in training and recruitment. It seems the officers that are awarded and rewarded by the power dispensation are the ones who toe the line of political bosses and actively act against their opponents and adversaries.

The panelist added that the recent extra-judicial killing of the rapists in Hyderabad or elimination of other criminals in Uttar Pradesh is an unsightly issue, and to make matters worse, the officers involved are praised as heroes by the public. Thus seems to point to the overall failure of the justice system. Mr Rai expressed anguish that as a society we need to ask whether we want a civilised police. He concluded by stating that currently, police training is only physical and we must change that mindset so that mental, emotional and societal dimensions are also included in the training process.

Shri. Raj S. Kohli, Chief Superintendent, Metropolitan Police, London

Shri Raj S. Kohli started with an emphatic point, in agreement with Shri VN Rai, that the most important question to be asked is if the society in India wants a civil police service. He emphasized that it is critical to ask the community what they want from the police in order to reform police in India.

The panelist explained that while the Metropolitan Police in London is not perfect, community policing is embedded into the heart of the operations. Neighbourhood officers that are within their wards for a number of years and are a part of the community. People can access, understand them and seek their assistance in solving problems. This programme has been extended to the point where the community now helps recruit and select future police officers. It is really important that the public has a view as to who is going to be policing them. The speaker felt that although professionalising the police service through a degree is a fair idea, it is not good enough. This is because there is continual professional development in this field, and the United Kingdom is now working on updating and improving the qualification of the police officers during service.

Mr. Kohli went on to state that policing is not only about fighting crime. In the UK, two thirds of the police work is not crime, but includes missing persons, anti-social behavior, and so on. Police in the UK may better be described as crisis managers, of which crime is a crisis. Referring to the lack of investment and huge vacancies in the force highlighted by the other panelists, the speaker suggested that some research needs to be done to understand the demand on the police officers and potential to outsource some of that demand. For example, the local governments can tackle anti-social behavior through better parks, better street lighting, better CCTV coverage. Reverting to his point that people are not asked how they want to be policed, the speaker opined that policing in the UK is disproportionate in the sense that the working class are policed more than the middle class and posited that there may be a similar situation in India.

Further, the panelist stated that the UK has a programme in schools similar to the cadets in Kerala stated by Mr. Punnoose. There are police officers based in schools who engage with young people and understand the challenges, as young people are the future criminals or future people that might cause difficulties in society. He suggested that such a model of school offices may be considered in India.

Shri Raj S. Kohli summed up the discussion stating that there are two key areas of change - structural changes such as filling up vacancies and improving service conditions of the police, as well as a cultural change. It doesn't matter what the law or the policy says, it's the people who have to enact that policy that determines the outcomes. The speaker stated that representation of women in the police force is necessary and should be near 50%, considering that women constitute half of the citizenry the police serve. In the UK, the term police officer is preferred over policemen because 30% of the force is women. The speaker further explained that the UK is pursuing diversity, inclusivity and equality in the police force. Having cultural context enables officers to view challenges from a different perspective and therefore, helps solve problems of specific communities better.

Shri Raj S. Kohli concluded on a positive note stating that cultural change in 10 years is relatively quick and can happen as shown by Shri Jacob Punnosse's example of Kerala. He concurred with Shri K Padmanabaiah that the police leadership must visit Kerala as the values of policing stated by Shri Jacob Punnoose point the direction for modern policing in India.

QUESTION AND ANSWER SESSION

The question and answer session began with a question on prioritising the reforms to make their implementation free from resistance. On this, Shri K. Padmanabhaiah opined that a lot of changes could be brought in by the police leadership itself. However, for that to happen, a cultural shift within the department would be required. Shri Raj S. Kohli opined that each district

should have real and clear community oversight via an independent advisory group, that would sit with the police head to understand issues and give oversight.

The next question was on the issue of institutionalising a reward-based system. On this, Shri Raj S. Kohli expressed that recognition in the form of a medal, commendation, or a ceremony would work better than monetary recognition. Next, there was a question directed towards Shri Jacob Punnoose, on the successful attempt to generate political willpower to initiate police reforms in
Kerala. To this, he replied that it was an arduous task, and was viewed with great suspicion in the beginning. He added that police reforms were something that would benefit every stakeholder, and the Kerala Police were able to demonstrate as such. He stressed that the high literacy levels and media penetration in the state had led to the formation of a culture of great debate and discussion, which aided the discussion on police reforms. He also mentioned the importance of a group of officers committed to this cause.

The next question, addressed to Smt. Maja Daruwala, dealt with the deep-rooted biases with regard to the public's perception of the police and vice-versa. To this, she responded that the police ought to serve in a manner which is upholding the law and the Constitution of the country, and see themselves as members of a service. She opined that biases are greatly influenced by the way the officers are recruited, trained and promoted and that presently there exists a great disincentive to do the right thing. She also lauded the great work being done by the Kerala Police in countering inherent biases and delivering effective police, and opined that there should be no reason why the same could not be implemented elsewhere in the country, to ensure people get the police force they wish for. Ms. Daruwala opined that the police force must be trained in a way that members of the force do not continue to latch on to the biases prevalent in the wider society. She emphasised the importance of "Constitutional Education" for members of the police force. She noted that the role of the police was to "protect us from each other" through the constitutional route of rule of law. Ms. Daruwala

also added that while a percentage of policemen held some sort of bias against different populations, a far greater number did not,

unfortunately these officers did not have much of a say in the greater scheme of things. She also added that while structural deficiencies did hold back the police in some areas, not every issue could be blamed on that, and that the supervisory class must take responsibility. Shri K. Padmanabhaiah also added that during the training period of officers, there must be a greater emphasis on police behaviour and culture.

The next question was addressed to Shri V.N. Rai on how, in the absence of political will, the police leadership could try to bring about a change in policing. To this, he opined that no change
could be implemented even by the police leadership unless the citizens themselves wanted a better system of policing. He gave examples from throughout the country, which clearly illustrated that people were more than satisfied with the current methods of policing, which were often unconstitutional. He also shared anecdotes from his own career, recalling incidents which demonstrated a high degree of political interference in police functioning. Dr. Jayaprakash Narayan also added that during his own career as well, he bore witness to the appalling interference by the political masters in the functioning of the police, especially with regard to transfers.

The final set of questions were directed towards Shri Kamal Kumar. The first one dealt with the issue of police training institutes struggling to retain instructors. To this, Shri Kamal Kumar responded observing that in most services, the training job was viewed as an unattractive posting. He added that while there had been attempts to incentivise officers to take up such positions in the past, including offering a monetary allowance to training faculty, these did not succeed in making training positions attractive to officers. He opined that these positions were often viewed as a “stigma”, and a cultural overhaul was required to change this mindset. The second question dealt with extending the role of the police from crime investigators to broader “crisis managers”, and the kind of training and infrastructural

changes needed to make that possible. On this, Shri Kamal Kumar opined that it would be a rather long-drawn process, requiring multiple deliberations on the nature of training required for such an expansion. He added that while

skill-related training was relatively easy to impart, that was not the case when it came to attitudinal training. On a different note, Shri Kamal Kumar also pointed out that while a lot of police reform measures could be implemented by the police leadership, in a substantial number of areas, the hands of the police leadership were tied on matters including the filling of vacancies, transfers and postings, the underutilization of police modernisation funds, etc.

CONCLUSION

In his concluding remarks, Dr. Jayaprakash Narayan expressed that the session served as a grim reality check with regards to the challenges to policing in India. At the same time, he added that the experiences of states such as Kerala, as illustrated in the session by Shri Jacob Punnoose, served as a great inspiration that the rest of the country could look up to. He held the view that unless the citizens of the nation raise their voices collectively to come up with constructive and sensible solutions without any partisan intent and discuss, debate and be participants in the change, real, on-ground change would not be possible. Dr. Narayan expressed his sympathy for the members of the police force, who discharge their duties under tremendous pressure. He also noted that elected representatives genuinely fear that should the police be allowed to function in a lawful and constitutional manner, they would lose their control on the force, which in turn could jeopardise their political future. Dr. Narayan also opined that there was an urgent need to alter the perception of the police in the eyes of the public, referring to Smt. Maja Daruwala's remarks. Referring to Shri Raj S. Kohli's address, he also added that while India and the UK are miles apart at the moment when it comes to policing, he hoped that in the future, India could aspire to reach the same goals the UK is pursuing now. It is our collective duty to look into ways of solving the problems related to policing in a modern democracy like India.

SESSION 1B: ADDRESSING CHALLENGES OF MODERN POLICING
20 FEBRUARY 2021 | 5:00 PM TO 7:30 PM

PANELISTS:

1. Shri Mohit Rao (Journalist)
2. Dr. Gandhi P. C. Kaza (Founder Chairman, Truth Labs)
3. Dr. Vipul Mudgal (Director, Common Cause)
4. Shri M. Mahender Reddy (Director General of Police, Telangana)

CHAIR: Smt. Aruna Bahuguna (Former Director, SVP National Police Academy)

ABSTRACT

The session set the stage for a thought-provoking discussion on the extreme pressure faced by policemen to produce results and how technology and forensics can be used to address it. The session briefly touched upon the various lacunae that currently plague the modern policing system in India. Subsequently, the diverse set of eminent speakers provided holistic insights into the current state of modern policing in India, the challenges faced by the law enforcement officers, as well as what the public expects from law enforcement institutions. The panel further discussed the use of technology and forensics in law enforcement, the challenges and lacunae in the same, and pragmatic solutions to overcome these challenges. At large, the panel acknowledged that there is much room for improvement in the use of technology and forensics to make police work more efficiently. The speakers concurred that a framework must be developed such that the adoption of advanced technology and forensics no longer remain limited to urban jurisdictions. The speakers concurred that the widespread adoption of better technology and improved forensic methods could reduce the disproportionate pressure on the police to produce

results, reduce the use of extrajudicial measures and forced confessions, and as a result, restore public trust in the police.

Opening Remarks By Smt. Aruna Bahuguna, Former Director, SVP National Police Academy

Smt. Aruna Bahuguna opened her speech by remarking that events such as the IDAW conference provide a platform for open discussion about matters of national importance, and such events represent a feeling of optimism that India can advance further. The chair observed that while India has come a long way since Independence, there is still room for improvement. She emphasised on the need for the police to adopt advanced technology and forensics, as the days of using brute force to extract forced confessions are long gone. Further, the chair pointed out that the increased usage of technology in everyday life has rendered older policing methods inefficient.

Smt. Bahuguna pointed out that in the last decade, technology has paved the way for law enforcement changes, particularly in preventing crime. She further elaborated on two trends that have emerged: The Internet of Things (IoT) and Artificial Intelligence (AI). The chair also emphasised that the lack of evidence is no longer an excuse. To elaborate further on the aforementioned point, the chair highlighted the massive improvements in traffic law enforcement through the use of traffic cameras and surveillance. She also spoke about the trepidation surrounding constant online vigilance and she advocated for the safe usage of rapidly refreshing data in the online domain to prevent crime.

According to Smt. Bahuguna, India is not making the most of its existing resources. The chair noted that primitive practices of issuing summons and bailable warrants by constables still continue. She remarked that the internet can be harnessed and instead of delivering summons and warrants in-person, emails and couriers services must be effectively utilised. This can ease the burden on the existing force, which can then focus on more important issues. The chair also

pointed out that digital ways to file FIRs must be accommodated. Smt. Bahuguna further mentioned that Artificial Intelligence can enable law enforcement with ease. Facial recognition and surveillance through non-manual methods have helped efficient law enforcement in

countries such as the UK, especially during the pandemic. She also pointed out the effective use of robotics in bomb defusing and predictive policing.

The chair remarked that changing technology in law enforcement will ensure that the police can reach perpetrators without the use of brute force. Thus, increased use of technology may reduce the tendency to resort to extrajudicial methods, and subsequently, may reduce complaints and restore goodwill between law enforcement officials and the citizens. The chair further observed that data collection and analysis can potentially play a critical role in solving crimes.

Smt. Bahuguna concluded by speaking about the challenges faced by the police in crowd control, wherein she remarked that often, the police get caught in the crossfire of agitating citizens when they try to intervene. The chair hopes that advancements in technology can be used to explore different ways in which crowd control can be enforced without the use of excessive force.

Shri Mohit Rao, Journalist

Shri Mohit Rao stated that upon observing instances of both good policing and bad policing with reference to crowd control, the reaction of the police to any crowd is largely politically motivated. To further elaborate on his statement, the speaker mentioned that the Karnataka police showed incredible restraint during the Anganwadi worker protests, farmers' march and Kaveri riots. However, the speaker also observed that the police used asymmetric force during CAA protests or protests centred on caste-based issues. The speaker further opined that the technology used in policing and advancements in this area are very urban-centric. While the best applications of technology are being implemented in urban areas, such

technology often does not reach district-level law enforcement agencies. Further, adequate training of law enforcement

officers in the use of technology is not present either. In certain instances such as crimes related to Bitcoin fraud, the speaker stated that law enforcement officials find it difficult to trace evidence of the crime online, largely due to a lack of adequate technological training, and can only trace evidence of a crime once it is available offline.

Further, the speaker opined that the state of the use of technology in law enforcement at the district level is dismal and that the problem of scale may be responsible for the same. Shri Mohit Rao also added that the pace of getting forensics reports is often dictated by the media coverage the case in question gets. He further stated that the delay in receiving the forensics report may complicate issues in criminal recognition and convictions. The speaker stated that proper procedures are not being followed and that increased risk of contamination of crime scenes often aggravates the problem of wrongful conviction. The speaker did acknowledge that while law enforcement currently uses technology by using mobile towers and CDR for tracking, the investment in this infrastructure is still not done by budgetary allocation to the police. Rather, the telecom industry is responsible for this investment.

The speaker opined that in the Indian justice and law enforcement system, there is an asymmetric emphasis on crime detection and not conviction. Therefore, the first course of action by law enforcement is to get someone booked and thrown into prison, while due process may or may not be followed. He highlighted the fact that this issue is aggravated by the lack of accountability of the police and prosecution. In his concluding remarks, the speaker mentioned that the pendency of investigation is often a result of the speedy transfer of investigating officers, resulting in no attachment to the case and lesser continuity in the investigative process.

Dr. Gandhi P. C. Kaza, Founder Chairman, Truth Labs

Dr. Gandhi P. C. Kaza opened his presentation by recounting the experiences he had in his tenure as advisor to the forensics department of various states of India. He remarked that a

large volume of pending cases has always existed in forensics labs in India. However, quite often, he was able

to ensure the number of pending cases reduced drastically in a short span of time. On the basis of this statement, he observed that the pendency of cases in forensics labs was not resultant of the laggard nature of the appointed forensics scientists, but rather the lack of recruitment of enough scientists and the lack of adequate budgetary allocation and equipment. He opined that some state governments such as that of Telangana have a more progressive system and therefore, such states can benefit from better budgetary allocations to forensics.

Dr. Gandhi then highlighted the challenges currently faced by forensics in India. He noted that choosing the right leadership for forensics departments is key to efficiency. He stated that despite there being capable forensic scientists in India, in almost half of all states, forensic labs are manned by police officers. The speaker opined that there is a dearth in the recruitment of enough forensic scientists, which has led to the inefficiency of the departments. The speaker also noted that in most cases, the crime scene is not processed by a forensic scientist, but rather, by a police officer who functions as both a police officer as well as a technical services officer. From the 10,000 forensic scientists that exist in India, 2000 are police officers who are trained to perform crime scene processing. Most crime scene processing is therefore not happening through scientific teams. The speaker opined that while this approach may not be entirely wrong, it may give rise to issues such as a higher risk of contamination of the crime scene. Dr. Gandhi also mentioned that as opposed to the world average of 15% of cases being referred to the forensics labs, only 5% of all cases get referred to the forensics labs in India. He also pointed out that when appeals for an expedition of forensics reports come through, quality is not always at the fore. He suggested that to ensure both quality and expedition, the number of people working on the case must be substantially increased.

Dr. Gandhi further pointed out that training of the end-users of forensic reports is lacking. In doing so, he reiterated Shri Mohit Rao's observation, that the prosecution works in silos. The

judiciary, therefore, is largely unaware of the appropriate understanding and interpretation of forensic evidence. Dr. Gandhi opined that the low conviction rate in India can be associated with the lack of appreciation of the value of evidence provided by forensic labs. He added there is not

enough end-user training, evidence appreciation, interpretation and application. Dr. Gandhi emphasised the fact that India has had no research and development in the field of forensics. He stated that science does not progress until new developments happen and that a lack of R&D in forensics has led to a lack of discovery of newer methods that could make forensics labs more efficient. The speaker also expressed that there is little interdepartmental and intradepartmental coordination between and within forensics and the judiciary. Further, he also spoke about the lack of adaptability of the forensics system, as well as issues of lowering integrity among forensic scientists that are undesirable for this field.

In order to improve the state of forensics in India, Dr. Gandhi proposed that forensic sciences must be declared as critical national infrastructure and be treated as a priority. He stated that an independent regulatory system must be established to enforce and monitor standards and to ensure quality and integrity of forensic science. He also suggested that the right people with adequate qualifications must be chosen to head forensic science labs. To uphold the rule of law and to ensure both quality and speed, he emphasised on substantially increasing the number of forensic scientists. He highlighted the need for greater coordination between investigators and prosecutors and enhanced training of end-users to improve the interpretation and utilization of forensic evidence. Dr. Gandhi concluded by suggesting that there should be more public-private partnerships for the establishment of state-of-the-art forensic labs throughout the country.

Dr. Vipul Mudgal, Director, Common Cause

Dr. Vipul Mudgal shifted the focus of the conversation from technology to technology-democracy relationships. This meant looking at policing not only as involving the police but also the community. Dr. Mudgal recounted his recent experience in the US during

the protests around George Floyd's murder and how the police came in armoured vehicles clad with different types of weapons onto civilian streets and contrasted it with his experience in England, where the average policeman is not given any sort of weapon, not even a stick. They have created a system in which reinforcements will respond to a call for help in a very short time to

make up for it. These two contrasting situations were used to argue against the creation of a highly militarized police state in a democratic country such as India. Dr. Mudgal made an important observation as to how the recent trend is to promote the use of technology in policing in an extremely unaccountable manner. The lack of legislation in using technologies such as facial recognition, brings about problems of digital rights and privacy. The speaker opined how it was important to deliberate and discuss the pros and cons before calling for such measures.

Dr. Mudgal proceeded with his presentation which looked at the challenges of modern policing. Firstly, he pointed out that only 14% of the population surveyed had any sort of contact with the police and out of this, 67% contacted the police and 17% were contacted by the police. According to the data, the latter was constituted by SCs, STs, slum-dwellers and others from socio-economic and religiously marginalized communities. The speaker observed how the poor and vulnerable sections do not receive policing as a service, do not trust the police and are not treated in the same manner as an upper caste, rich citizen and contrasted it to the fact that the community that trusted the police the most were the upper-caste Hindus. It was also noticed that cases against women, children and those from poorer classes were less disposed of than normal, cognisable cases. Dr. Mudgal reaffirmed that this was not the fault of the police system but the effect of the depth of the inequalities that shape and structure our society. An important aspect of ensuring equality in treatment is to diversify the police personnel and it was pointed out that many states failed to recruit people from the oppressed communities yearly.

With regard to police adequacy, Dr. Mudgal pointed out that police in India work at just 77% of their sanctioned capacity. The data also alerted us to the appalling state of police stations,

their lack of resources, the working conditions of the personnel and almost little to no in-person training. In 58% of the cases, even the victims are unwilling to cooperate with crime investigation. Further data from the presentation revealed that many citizens were of the view that the police could resort to violence to get the truth and this attitude mirrored the perceptions of the police wherein many believed that extrajudicial punishments and killing were accepted

against criminals. The speaker expressed that such perceptions can create an environment of fear, violence and lack of accountability.

Dr. Mudgal concluded the presentation by highlighting the glaring fact that the police personnel receive little to no training in human rights, caste sensitisation and crowd control. While a Standard Operating Procedure exists for police response and crowd control, according to him, thi is followed only on paper.

Shri M. Mahender Reddy, Director General of Police, Telangana

Shri Mahender Reddy began by commenting on the importance of the Rule of Law, its impact on various institutions and the need to uphold it.

The speaker mainly focussed on the initiatives taken up by the government of Telangana at the lowest level of the police station, with the primary goal of increasing the trust of the citizens. Shri Mahender Reddy commented on the importance of government support in the success of such initiatives and praised the Telangana government for their proactiveness in this matter. He spoke about the five-fold approach being taken up by the police under his leadership, centering around the pillars of - People, Process, Technology, Leadership and Partnership at the lowest rungs of police administration.

Shri Mahender Reddy spoke about developing standard designs in police stations such as common receptions, operating procedures, equipping police stations with adequate resources and so on, to deliver a similar quality of service that is standardised and uniform, across the

state. He also pointed out that all the technologies implemented as a part of this initiative were done from the point of view of the field police personnel and to help them improve their efficiency and work ethic.

The need for community partnerships was also explored at length by the speaker. He emphasised the importance of such partnerships in trust-building. An example of such a partnership was the

establishment of CCTV cameras in local establishments and private properties, resulting in around 7.5 lakh cameras across the state. The speaker spoke about this development as a successful partnership wherein the surveillance footage belonged to the citizens who owned them and would be handed over to the police only for the purpose of an investigation. Along with such measures, vendors, rates and platforms were also standardised by the state, in order to make the technology accessible, widespread and trustworthy to the people.

Shri Reddy commented on other initiatives in the works, that are predominantly aimed at building competency, soft skills and professional skills among the people. He also opined on the importance of leadership training as every policeman, even the constable at the lowest rung of hierarchy, has to act as a community leader in many situations. He mentioned how maintaining peace and order is the responsibility of the entire community and can only succeed with constant and proactive engagement with the community, government departments and non-governmental organizations.

QUESTION & ANSWER SESSION

The interactive session began with a question from the audience drawing on the presentation by Dr. Mudgal. The audience implored about finding a correlation between trust and satisfaction among the people and favourable service conditions among the police as part of the data findings. Dr. Mudgal replied saying that a correlation was established in areas with reduced crime as it saw increased trust and satisfaction with the police force. Shri Mahender Reddy joined the discussion by pointing out that people would be satisfied if they knew that the police would reach quickly and behave in a reassuring and reliable manner. Dr. Mudgal

added that around 67% of the population is satisfied with the police but those dissatisfied disproportionately belong to the oppressed and marginal communities which again points out a systemic flaw that exists. His final recommendation was to insulate the police from the political executive and delink the writing of FIRs with the performance of personnel. Shri Reddy responded by agreeing that writing FIRs and thereby increasing crime statistics did prove to be a deterrent in lodging

complaints and that this can be avoided by dividing petty and serious crimes so that the former can be encouraged to report and disposed of quickly while the major crimes can be given more attention and deliberation.

The second question was posed by Shri Mohit Rao, a speaker. He asked Dr Gandhi as to how lucrative the forensic field is for the youth with no private options and lack of employment in the public sector. He also posed a question to Shri Reddy as to why the funds needed for modernisation, a meagre Rs. 6000 crores was not utilised by many states. Shri Mohit Rao also stressed upon the aspects of state surveillance systems and how the government plans to build trust by enforcing these systems without proper legislation that brings about accountability, prevents misuse and addresses concerns of privacy. Shri Reddy replied by saying that since no law has been passed with regard to facial recognition and the use of CCTVs, various checks and balances within the police force prevent the misuse of data such as the consent required from the citizens to access footage and the recording of access to data in a designated data centre and database for the sake of accountability.

The first part of the question was addressed by Dr. Gandhi who remarked that there were 25 or more postgraduate courses in India and that they produce up to 750 forensic specialists but only one-tenth of them are actually employed by the state. Owing to the lack of interest and apathy from the government to fill up vacancies, Dr Gandhi alerted the audience as to how the forensic officials are directly going to the court to seek directives for recruitment. The glaring statistic that around 12 lakh cases are being handled by 10,000 people was also brought to the forefront. Dr. Gandhi opined that the goal should be to make forensic science a critical national infrastructure and constitute a regulatory body to standardise and monitor its

actions. The speaker also pointed out that many states do not even issue tenders to utilise the budget for forensics and this becomes worse when added to the many institutional constraints that exist. Shri Reddy recommended that the approach of the police and political leadership should focus on budget allocation to improve service delivery at the lowest level. The need to decentralise, especially for police was discussed in detail along with the need for organisations to create

structural frameworks that will direct the country and its people towards institutional change and systemic renewal.

A few participant questions were taken up after this juncture. The first question was focussed on the filling up of vacancies in the Telangana police force where the civil police force is allowed a capacity of 42,000 but the actual strength is 30,000. Shri Reddy answered by saying that the timeline for filling up a vacancy, when it arises, is usually two to three years. He remarked that unless there is a legislative change that allows for recruitment and training prior to when a vacancy arises, a lag in appointments will continue and show such discrepancies.

A follow-up question related to recruitment and work division was asked wherein, out of the workforce, only 745 personnel are dedicated to crime investigation and whether there were any efforts to increase this so as to decrease the workload of these officers. Shri Reddy clarified that these officers are only contacted in the case of sensational, high-profile, economic offences and inter-state cases. Other crime investigations are usually dealt with by the Central Crime Station (CCS) which exist within districts. Even within police stations, there are two divisions; law and order and detective divisions and the latter is dedicated to crime investigation which makes an equal division of work.

A question that was raised by many members of the audience revolved around privacy concerns that accompany mass surveillance and technological advancements in crime-solving. Shri Mahender Reddy repeated the various checks and balances being followed by the police to prevent this to the maximum. However, he also added that adequate

legislation was necessary in order to fully enforce such measures and address the concerns of the public. Dr. Jayaprakash Narayan contributed to the discussion by pointing out that the right approach would be to give the necessary power to the police while subjecting them to institutional checks and accountability measures.

The last question was addressed to Shri Mohit Rao where it was enquired as to what expectations would a member of the civil society have from the police. He replied saying that instead of the force being seen as a paternal and disciplining body, it should be more compassionate and community-centred in its approach. His basic argument was that the police should inspire a sense

of security amongst the people and not fear. Shri Mahender Reddy interjected by saying that the police at the lowest level also need to be empowered in order to properly follow and enforce the law and this includes better pay, benefits and working conditions and only then will a collective maturity come about amongst the force and subsequently in the community.

Concluding Remarks By Smt. Aruna Bahuguna

In her concluding remarks Smt. Aruna Bahuguna remarked that the session quite aptly captured the expectations that the public has from law enforcement institutions as well as what the institutions can currently provide to the citizens. The chair also observed that India has inherited a flawed legacy of hatred and distrust towards the police and this has to change with institutional and systemic strides which prevent corruption, misuse of power and focus on accountability and empowerment. States such as Telangana have taken great strides in making law enforcement officials more approachable and in rebuilding public trust in the police. Smt. Bahuguna also remarked there is a need to have periodic discussions such as the kind that the session has provided, in order to continually build and improve upon policing methods. She also suggested that more lawmakers need to be a part of such discussions as they are key to bringing about long-term changes from the policy and law perspective. The speaker also opined that there is a need to incorporate technology in policing methods, but it

must be done within control and with adequate regulations and legislation. Lastly, Smt. Bahuguna mentioned that technology will help the police to move closer to the citizenry and that while the police need to take steps to do so, the citizenry must also understand and observe its fundamental duties. This will help harbour better understanding between the two parties.

SESSION 2: CRIME INVESTIGATION AND PROSECUTION
21 FEBRUARY 2021 | 9:00 AM TO 11:30 AM

PANELISTS:

1. Dr Jayaprakash Narayan, General Secretary, Foundation of Democratic Reforms
2. Shri C. Anjaneya Reddy, IPS, Retd.
3. Shri D.R. Kaarthikeyan, IPS, Retd.
4. Shri Justice M.L.Tahaliyani

CHAIR: Justice B.S. Chauhan, Chairman, 21st Law Commission of India.

ABSTRACT

This session focussed on the various issues that plague the process of crime investigation and prosecution. It was found out that a lack of resources and manpower greatly hinder this process of criminal justice and the panelists suggested various methods of reform for the same. The apathy on the part of the political executive to implement recommendations, the improper appointment of the public prosecutors and the mixing of investigation and general policing roles were identified as important problems by the panelists. The need to fix these issues and further prevent the politicisation of the police and judiciary was deemed as necessary for positive change.

Opening Remarks by Justice B.S. Chauhan, Chairman, 21st Law Commission

Justice B.S. Chauhan began his opening remarks by delving into the history of the Criminal Procedure Code, its purpose and evolution. He elaborated on the role played by the mutiny of 1857 in the constitution of various commissions for drafting laws. The Police Act was drafted keeping in mind its role as a paramilitary force and not as a body tasked with maintaining law and order. Justice Chauhan alerted us as to how the foundations of the colonial criminal justice system and subsequently that of independent India came to be rooted in doubt against the police. This was explained with various examples within the law such as S.157 of the CrPC which requires the police to immediately forward every FIR to the Magistrate concerned to prevent any manipulation of facts. Added to this is the fact that statements recorded by the police during investigation are inadmissible as evidence in a court of law.

The distrust against the police system has continued for many years and the panelist gave a few instances such as in 1902, when the first Police Commission Chairman Andrew Frazer commented that the police in India is meant only for oppression and suppression and in 1963, when the Allahabad High Court commented that the police was ‘the most organized gang of criminals’. The panelist remarked that there is a serious lack of will from the political executive to drive change. The government has failed to implement the recommendations made by multiple law commissions and committees towards addressing pressing concerns in the criminal justice system. Separation of crime investigation from regular law and order police at least in case of serious crimes is one such major recommendation. The Chair observed that such a reform is bound to remain unsuccessful in a situation where a large proportion of elected representatives across all states are facing one or more criminal proceedings.

Justice Chauhan proceeded to cite examples of the killings of former Bihar Chief Minister Lalith Narayan Mishra and Raja Man Singh of Bharatpur where it took 30 to 40 years for the investigation and trial to conclude. He spoke about problems that occur due to this slow pace of court proceedings including many of the accused not receiving a sentence in their lifetime and that some get default bail because the charge sheet is not filed in time. He opined that the vicious media trials interfere with the investigation, the court trials and affect the judgement and time taken.

According to the Chair, one of the most important challenges is associated with the appointment of public prosecutors. Most states have done away with the requirement of consultation with the Sessions Judge or High Court in appointment of public prosecutors as mandated under S.24 of the CrPC and as a result, persons with political patronage get the post, leading to inefficient and incompetent public prosecutors. The Chair pointed out that the Supreme Court had been, since 1991, suggesting various recommendations for the proper appointment of the public prosecutors but this has been ignored by the law-makers. S.25-A was inserted in the CrPC to provide for a regular cadre of prosecutors for the High Court and Sessions Courts through the establishment of a Directorate of Prosecution, headed by a Director of Prosecution. The eligibility criteria for appointment to the post of Director of Prosecution is the same as that of a High Court judge. The Chair noted that so far not a single state in the country has implemented this provision. He stressed that it therefore follows that improvements in crime investigation or prosecution necessitate suitable amendments in law on one hand and changes in the process of appointment to ensure competency on the other.

Lastly, in respect of the judiciary, the Chair stated that the vacancies in judicial positions is a perpetual problem, continually ranging between 35% to 40% of judicial strength. However, the mindless filling up of judicial vacancies on the basis of eligibility and reservation, and not suitability is not a solution. Justice Chauhan opined on the importance of appointing suitable officials from all sections but posed a doubt as to whether such a proposal would be accepted by the

present political leadership and the public. There is a need to improve the service conditions of both prosecutors and judicial officers in order to attract the best talent to these posts.

Shri Justice M.L. Tahaliyani, Former Bombay High Court Judge

Shri Justice Tahaliyani opened his remarks by replying to some of the issues raised by Justice Chauhan and reaffirmed the existence of the police-criminal nexus and the growing trust deficit of the public in the police. Justice Tahaliyani opined that people do not like to go to the police station and lodge complaints because of the distrust and fear in the system. He also pointed out that people who join the force get accustomed to the environment of the station and the behaviour of their superiors and they conform to low standards, contributing to the continued distrust in the police force.

Justice Tahaliyani spoke at length about the need for the separation of investigation and law and order in the police force. He explained the process by which police officers get assigned to various departments so as to point out the flaws in the system. Initially, police officers are sent to Local Arms departments that deal with law and order and after a few years, they get posted in a police station where they learn about the investigation process. The panelist pointed out that investigative training received during the period of recruitment is lost and prime years are spent working in the law and order wing. He suggested that the effective method would be to select and train officers separately for each of the Law and Order and Investigation departments. He also added that there should be some criteria, examination or interview for an officer who wants to switch from Law & Order to Investigation which will allow for deserving officers to work in the latter department. On the other hand, in case of Sub-Inspectors who are directly recruited, there are the twin challenges of lack of motivation to learn the particular skills required for crime investigation on the part of the recruits and deficient training on the part of the administration. To re emphasis, he stated that separation of crime investigation from regular law and order police is the need of the hour. A separate cadre of police officers must be set-up for

the independent crime investigation wing, with conditional transferability between the two wings. An officer may only be transferred to the crime

investigation wing upon either being specifically trained for it or upon clearing an examination conducted to test the suitability of the officers for crime investigation.

Justice Tahaliyani moved on to talk about the system of Public Prosecution. He clarified that a few states have established the office of Directorate of Prosecution. Presenting the example of Maharashtra, the panelist stated that prosecutors that appear in the courts of magistrates are appointed on a regular basis whereas those appearing in the Sessions Courts and High Courts are paid honorarium on an ad hoc basis. The Director of Prosecution has limited authority over those prosecutors that are appointed on a regular basis as they have no authority to hold them accountable. He said that sometimes, even police officers, with no training in prosecution are appointed to this post which reflects the extent to which the institution of prosecution is neglected. In addition to the problems of incompetency and political interference, prosecution faces a dire shortage of basic resources and infrastructure which severely inhibits the public prosecutors from effectively discharging their duties. He concluded by seeking for the enhancement of resources, pay scale and respect accorded to prosecutors along with structural changes in their appointment and accountability.

Dr. Jayaprakash Narayan, General Secretary, Foundation of Democratic Reforms

Dr Jayaprakash Narayan began his presentation by stating that the police have done a commendable job of maintaining public order in an extraordinarily diverse and fractious society like India with tremendous political polarization. He elaborated on two primary approaches to addressing justice delivery. The first, based on the mistrust of police, involves giving the police minimal power and expecting justice to be served using extrajudicial methods, which is dangerous. The second, and the democratic method, is to empower the police so that they can work independently but also hold them accountable using various checks and balances. The panelist further commented that the reason why the Prakash Singh verdict of the Supreme Court

did not work is because the complete separation of the police from the government is not feasible.

Dr Jayaprakash Narayan cited several examples of shoddy investigation, police inflicted torture, political control over investigation and extrajudicial killings including the Arushi Talwar murder,

Ashok Kumar and Gurugram schoolboy muder case, Hathras rape and muder, and the Disha case of Hyderabad. He proceeded to state statistics that point to alarming trends such as that India has the lowest conviction rates in the world, a comparatively low strength in investigating officers, the lowest public prosecutor - people ratio in the world. He added that not only are the number of prosecutors low, but they are under-resourced and not respected with little opportunity to grow, resulting in very perfunctory prosecution.

The panelist then presented a comparison between India and the US in the total number of serious crimes and unnatural deaths. While the total number of accidental deaths, suicides, homicides, deaths due to drug overdose, and rapes in 2018 was over 600,000 in India, it was over 400,000 in the US. This results in an enormous caseload of about 26 such cases per investigating officer and 68 cases per prosecutor in India every year! Officers in the US investigate about 4 such crimes per year and prosecutors handle 7-8 cases a year.

He reiterated the point raised by the earlier panelists that a major challenge is the undue political interference in crime investigation. However, he cautioned that law and order requires political oversight. Therefore, Dr Jayaprakash Narayan suggested the need to separate investigation of serious crimes above a certain threshold, say crimes punishable by more than 3 years of imprisonment, from other policing functions. He opined that this proposition may be more appealing to the political leaders. The purpose of a criminal investigation, under law, was to gather factual information and evidence against guilty persons, assure a conviction in such cases and be able to make a fair and objective determination of the situation, all of which is possible only with a clear separation in duties. As these are quasi judicial functions, the panelist called for the setting up of an independent Crime Investigation Wing. He recommended that minor

offences categorized as those receiving upto three years of imprisonment in punishment, which form 80% of the total crimes in a year, would continue to be handled by the law and order wing while the more serious

cases would come under the ambit of the investigative wing. In this regard, Dr. Narayan suggested that the CB-CID in states must be strengthened with adequate personnel and infrastructure and made more professional, with an automatic jurisdiction of all cases above the said threshold. This can be insulated from political vagaries by the creation of an independent Investigation and Prosecution Board similar to the Lokayukta, headed by a retired Supreme Court judge or Chief Justice of the High Court. The members of the Board, apart from some ex-officio members like the current DGP of the state, may be appointed for a fixed tenure by a high powered collegium including the Chief Minister, panelist of the Assembly and the leader of the opposition.

Similarly, Dr. Narayan proposed that, while making Section 25A of the CrPC mandatory, a judge of the High Court must be brought in as Chief of Prosecution with complete authority of prosecution in the state, appointed by the Board of Investigation and Prosecution. In addition, drawing on the existing practice of appointing officers from the judiciary as Law Secretaries in Andhra Pradesh, Dr Jayaprakash Narayan recommended the appointment of a District Attorney of the rank of the Sessions Judge for a period of 5 years, provided the number of judges in the district is also increased. Such a prosecutor would have complete control over the technical and managerial control of investigations and prosecutions in the district. These District Attorneys will be completely independent, under the Chief of Prosecutions of the state and supervised by the Board of Investigation and Prosecution, and go back to the judiciary after their tenure. The panelist emphasized that it is also necessary to increase the crime investigation capacity with an independent, empowered, and accountable CB-CID with forensic capability, and a strong cadre of prosecutors. He concluded his presentation by reiterating the need to reconcile the interests of all stakeholders, especially the elected legislature. The law and order police, 95% of the police force and 80% of criminal caseload will remain as they are with improvements as directed by the Supreme Court.

In his closing remarks, Dr. Narayan quoted Gladstone, “the purpose of a government to make it easy to do good and difficult to do evil” and emphasized that if the criminal justice system fails,

society will be in peril. This is especially so, as that societal and family controls and low crime rate will not last as urbanization increases. There is a desperate need to inject efficiency, transparency, and accountability with adequate empowerment for rigorous investigation and prosecution leading to higher conviction rates. Creating a formula that is workable, giving due consideration to the legitimate political concerns of the elected representative, to make change happen is the only way forward in a democracy.

Shri D.R. Kaarthikeyan, Former CBI Director

In his preliminary remarks, the panelist opened by stating that the entire criminal justice system is interconnected and one cannot separate investigation from prosecution. He stated that in the past 70 years, while crime rates have gone up, people’s trust in the judiciary has gone down. If people lose faith in the system then street justice and law of the jungle will prevail, and the very concept of democracy will erode. Shri D.R Kaarthikeyan opined that had the Supreme Court's directions on police reforms been implemented by all the states then the situation would have considerably improved by now.

The panelist listed that ineffective preventive actions, slow and inefficient investigation, slow and ineffective trials, outdated laws and procedures of investigation and trial, and lack of commitment and cooperation on the part of all concerned have led to the deterioration of the quality of justice system to an extent that commission of crime has become a low lisk and high profit business. These factors have created a permissive environment in which crime can flourish. He emphasized that investigation of ordinary crime is significant because ordinary crime that goes unchecked creates a fertile ground for organized crime and terrorism to thrive. An unjust acquittal is as bad for society as an unjust conviction, because it sets an example that anybody can get away from a crime that they have committed. He added that until and unless the deficiencies in the system are fulfilled, lawlessness will prevail.

Elaborating on the inefficiencies in the system, Shri D.R. Kaarthikeyan cited the example of Rajiv Gandhi Assassination case to explain the inefficiency of Section 16 of TADA (Terrorist and Disruptive Activities Prevention Act). Section 16 of TADA talks about protection of witnesses and collection of evidence. He added that any case based solely on Section 16 of TADA, is inevitably dismissed, and evidence collected under Section 16 is only viable as corroborative and secondary evidence.

In agreement with the other panelists, the panelist said that criminalisation of politics and politicisation of police are also serious problems. He opined that hierarchy, by and large, does not exist, and it's rare to spot someone who looks up to the system because their loyalty keeps shifting on the basis of who appointed them in the position of power. The speaked urged that hierarchy must be restored and police must be held accountable, provided they are allowed to exercise their authority. He opined that a transparent system should be adopted to appoint officials such as the DIG of police or the officers of CBI, similar to the United States of America, where a public evaluation is done and one's past integrity and competency is evaluated after which an officer is appointed.

The panelist further stated that given the state of the system and the conditions under which the police operate, they deserve empathy rather than harsh criticism. He emphasised the need for fundamental change in the system, and insisted on demonstrating the issue to the public at large to force those in power to act.

Speaking on the inefficient prosecution system that prevails in our country, the panelist stated that even if an officer conducts a very efficient investigation, justice is not delivered if the prosecution fails. As the bridge between the court and the investigation, prosecutors play a pivotal role in any case and hence must be competent people with utmost integrity. He stated the need to reform the appointment of prosecutors from the current politiciticized process, wherein a prosecutor is a member or sympathizer of a political party.

Shri D.R. Kaarthikeyan concluded by saying that any change in the justice system including speedy investigation and speedy trial can be brought about only if there is a demand from the public, and therefore, it is imperative to create a mass public movement for this cause.

Shri C. Anjaneya Reddy, IPS, Retd.

Shri Anjaneya Reddy began by stating that the problem in hand is how to make investigating agencies autonomous as well as accountable. Crime currently is investigated at different levels; at the police station level, district level and CB-CID level. He highlighted the fact that in order to strengthen investigation, it is important to categorise cases that are to be solely handled by the investigation agencies. There should be a strong and efficient investigating division even within the existing system with exclusive cadre of detectives. Once a detective joins that department, he/she should not be transferred to the law and order wing. Additionally, promotions must be given within this cadre. The panelist mentioned that CB-CID should be strengthened from the very top to the district level and even further below, if possible. CB-CID must be given automatic jurisdiction of certain cases. This will enable easy transfer of cases without any complications such as seeking permission or orders from DGP or any other officials.

He opined that earlier, most of the grave cases were that of murder. These days, there are a variety of cases such as anti-corruption cases, enforcement cases etc. Therefore, all investigating agencies that deal with different types of crimes should be brought under an autonomous body outside of the government. This body will be accountable to a neutral agency headed by a senior civil servant, a senior judge, a police officer or any other official deemed to be fit for the job. This neutral agency should be a collegium agreed upon by both the ruling party and the opposition party.

Pointing out the plight of the Telangana police officials, where every aspect of an investigation faces excessive interference by political parties, he strongly opined that

investigations that are a part of the police department must be separated from the main law and order keeping function.

The panelist also stated that the police are given uninhibited powers of arrest. Civilians do not want to approach any police station to meet investigating officers because they are scared of being arrested due to the arbitrary power that rests in the hands of police. According to him, this power must be taken away and the police should be able to investigate all cases and make arrests

only when necessary. The panelist observed that the number of encounters have significantly risen because people have lost faith in the criminal investigation system and are not sure if cases will end in conviction.

The panelist also called for an overhaul of our colonial criminal justice system and mentioned that the Indian Evidence Act, the Code of Criminal Procedure and the Indian Penal Code must be revised in order to bring about a significant change in the current scenario. To buttress his argument, he gave the example of how unnecessarily, certain offences punishable under IPC are classified as non-cognizable. He mentioned that there have been discussions about classifying cases under which the police should be allowed to make arrests and cases which they should only investigate without making any arrests. According to him, this differentiation should be a substitute for cognizable and non-cognizable offences. He stated that the distinction of cognizable and non-cognizable offences must be done away with.

The panelist further added that the Malimath committee is the only committee that examined the situation in its entirety. Justice Malimath clearly pinpointed what is wrong with the system and proposed various recommendations which have not been implemented till date. To conclude, Shri Anjaneya Reddy stated the following:

1. There must be a separation of investigating agencies from law and order police, overseen by an autonomous yet accountable board outside the government
2. There must be a panel of prosecutors at the district level from which the complainant can chose his preference

3. If the complainant believes that his or her case is not being given the required amount of attention then he or she must have the right to appoint a lawyer of their preference to assist the public prosecutor

QUESTION AND ANSWER SESSION

The question and answer session began with a question regarding the pros and cons of having a judge serve as a prosecutor, to which Justice B.S. Chauhan answered by stating the example of the system in Germany, wherein law teachers become public prosecutors in trial courts and are trained as judges. Judges are also interchangeable with public prosecutors and after having served as prosecutors, they can come back as judges. In Germany, 50% of judges are academicians. From the beginning, they work as public prosecutors from magistrate court to the high court. Hence, they possess practical knowledge about the working and functioning of the court system. He suggested that such a system may be introduced in India and further added that a prosecutor must be a person with utmost integrity and should not be under any political pressure. The prosecution must be an autonomous body supervised by a person appointed by a competent authority.

Justice M.L. Tahaliyani stated that there are certain benefits to having a district judge head prosecution in a district as he/she would have a good understanding of the ground realities. However, he added that there will be problems if local district judges are appointed as district attorneys in their native districts. Justice B.S. Chauhan asked if a Chief Judicial Magistrate or Chief Metropolitan Magistrate with 15 years of experience working in courts would agree to work as a prosecutor. He mentioned that if a district judge is transferred as a district attorney, a person of a junior rank will be the district judge there, which might cause embarrassment to the

district attorney. Justice M.L. Tahaliyani agreed and stated that we should come up with another method to strengthen prosecution in the country. The panelist emphasised that

prosecution can be strengthened by having a transparent method of appointing public prosecutors and government pleaders as district heads, managing all prosecutors that fall within their jurisdiction. Moreover, at the state level, the Director of Prosecution must be given more powers. Prosecutors should be trained properly and should be given adequate infrastructure and necessary amenities such as libraries. Just like training institutes for judges, there should be similar credible training institutes for prosecutors. According to the panelist, only the knowledge of law and impeccable integrity will make a competent prosecutor. Moreover, he stated that district prosecutors should be salaried and not paid on a 'per case' basis. He concluded by stating that having a district judge as a district attorney is not going to solve the problem. There should be a comprehensive plan to improve prosecution in the country.

Shri Anjaneya Reddy added to the discussion by stating that when the Directorate of Prosecution was started in Andhra Pradesh, the pay scales were put on par with judicial magistrates. The prosecutors could also be appointed as district judges. He emphasised that a judge's role is different from a prosecutor's role so seniority should not matter. He also gave an example of how in the Supreme Court, most of the lawyers are senior to judges on the bench.

Dr Jayaprakash Narayan added to the conversation by stating the 5 objectives that must be fulfilled: competence, stature of the prosecution, independence, public trust and coordination among all three agencies; the prosecutor, the investigator and the judiciary. As long as these 5 objectives are fulfilled, the methods do not matter. A follow up question was directed to Dr. Jayaprakash Narayan regarding the conflict of interest that might occur if such a system were to be adopted. He opined that there will be no conflict of interest as long as the functions are clearly separated and there is no political interference.

The next question was addressed to Shri D.R. Kaarthikeyan about how during the Rajiv Gandhi Assassination case, amidst such intense political pressure, he remained neutral and what

measures he took to ensure insulation of investigation from political interference. He stated that one must never seek a favour from anyone. According to him, there was more pressure defending the investigation trial from the political manipulation of political leaders than from the terrorists. He had to face two commissions of inquiry out of which one was manipulated by political personalities in order to forward their political interest. The political manipulations did not succeed because he had the courage to stand up for what was true and this principle should be followed by anyone and everyone.

The last question was for Shri Anjaneya Reddy regarding his proposition of an investigation agency with a separate cadre. The question inquired how he proposes the coordination between this investigation agency and the law and order police be maintained. The panelist stated that there is already a coordination with the CB-CID and that the CB-CID should not be answerable to the party in power. It should be autonomous and accountable to a committee outside the government. He further suggested that CB-CID could also be equipped to be independent like the CBI.

Shri D.R. Kaarthikeyan noted that in France, victims of crime are entitled to become parties to the proceedings from the stage of investigation itself, so that the investigator cannot manipulate proceedings nor can the prosecutor help the accused. The victims can conduct proceedings if the public prosecutor does not show diligence by supplementing evidence and putting forth their own arguments. Victim also has a right to be represented by an advocate of his choice and an advocate shall be provided by the state if the victim is unable to get a lawyer.

CONCLUSION

The panelists, with their wealth of experience, acknowledged various failures and drawbacks that are present in the criminal investigation and prosecution system and provided logical and insightful suggestions on how to bring about a change in the system by working from within the system.

Incompetence and lack of will can be found during an investigation as well and during the course of prosecution. Police-criminal nexus, the growing trust deficit of the public in the system,

criminalisation of politics and politicisation of police, lack of autonomy and accountability among investigating agencies, slow and inefficient investigation and trials, outdated colonial laws, and high crime rates are the main reasons why crime investigation and prosecution are in this plight.

The need for separation of force for investigation and law and order was suggested. Creation of a new body of prosecutors whose constitution would be done in a hierarchical manner was suggested with improvement of resources, pay scale and respect accorded to public prosecutors along with structural changes in their appointment and accountability.

Colonial and outdated nature of the criminal justice system was extensively iterated and it was opined that the core of the Evidence Act, the Code of Criminal Procedure and the Indian Penal Code must be changed in order to bring about a significant change in the current scenario.

It was perceptible in the entire course of discussion that upliftment of the spirit of democracy and gaining public trust was of utmost importance and our esteemed panelists were keen on bringing about a change is our system, a change that is not merely concerned about an alternative but identifying the mistakes within the current framework and rectify them as quickly and as efficiently possible.

SESSION 3: CRIMINAL PROCEDURAL REFORMS

21 FEBRUARY 2021 | 5PM-7PM

PANELISTS:

1. Shri G. Kishan Reddy, Minister of State for Home Affairs, Government of India (Keynote)
2. Dr. Ranbir Singh, Founder and former Vice-Chancellor, NALSAR Hyderabad and NLU Delhi
3. Dr. MR Ahmed, Former Inspector General of Prisons, Andhra Pradesh

CHAIR: Shri P. S. Ramamohan Rao, IPS (Retd.), Former Governor, Tamil Nadu

ABSTRACT

This webinar was the third leg of the "tripod" of Police, Prosecution and (Criminal) Procedure. There was a general agreement among the panelists that the Criminal Procedures in India are complex and cumbersome and lead to delayed justice, high number of undertrial prisoners, which lead to further problems such as overcrowding of prisons. It was also acknowledged that the treatment of prisoners reflects the ethos of our society. The rules and procedures in India were built on archaic colonial institutions and there is an urgent need for reform and changes to firmly establish the Rule of Law.

PRESENTATIONS BY THE PANELISTS

Shri P. S. Ramamohan Rao, IPS (Retd.), Former Governor, Tamil Nadu

Shri P.S. Ramamohan Rao began his address by noting that although India is about to become the 3rd largest economy in terms of GDP, it still remains a poor country. According to him, economic policy not conducive to growth is one of the main reasons for India's backwardness, this is further exacerbated by the absence of proper Rule of Law in the country. He noted that Rule of Law is essential for the survival and success of any society. Unfortunately, in India the position of Rule of Law has been deteriorating, being the main reason for the poor condition of the criminal justice system.

He further noted that the overarching structure for Rule of Law is the tripod of police, prosecution and judiciary. The Criminal Justice System is governed mainly by the Indian Police Act, Indian Penal Code, CrPC and Indian Evidence Act. In his opinion, The Indian Evidence Act and CrPC are the most important legislations in this regard. He further added that the society has enormously transformed in the last 200 years, in a lot of aspects such as physical mobility, health, economics and industrialisation but not much has been done to change criminal procedural legislations correspondingly. The existence of antiquated laws that have no relation to present day situations is one of the greatest challenges and further highlights the necessary changes that are imperative.

Shri Rao stated that the current legal system is based on complete distrust of the police and their ability to bring offenders to book. He suggested that Criminal procedure reforms should aim at eliminating:

1. Loopholes with regards to evidence
2. Arraigning innocents

He noted the absence of adequate reforms, more specifically, Criminal Procedure reform, threatens rule of law, peace and order in the society. He highlighted that while the Law Commissions have not paid much heed to criminal procedure reforms, surprisingly,

organisations other than the law commissions have played a much active role in that regard. He further noted that The Malimath Committee headed by Justice Malimath, in its 2003 report, suggested reforms that may not have been comprehensive but definitely presents a path to improve the system. However, the report has remained on the shelf for the last 18-19 years. He further stated that The Second Administrative Reforms Commission had also suggested significant reforms but the same have also remained on the shelf for long.

The Chair noted that the Indian Criminal Justice System is based on adversarial law, in which charges against offenders should be proved beyond all reasonable doubt, which raises the bar of standard of proof to an enormous level. He also stated that the responsibility to prove the guilt of the offender completely lies with the prosecution, and judges play little role. He stated that our system is a corollary to the principle, "it is better that a hundred guilty persons should escape than one innocent person suffer" given by Benjamin Franklin. He further shared from his own experience that seldom does an innocent person get implicated in a criminal case by the police. It is usually tremendous pressure and sentiment that results in deviant police officers implicating innocent people. However, he further elucidated that a preponderent number of guilty people have not escaped conviction. He also highlighted that cases in India are adjourned many times, just to ensure that all the accused were present for the trial. Many cases do not commence due to the absence of the accused, even when they are represented by lawyers and that further results in delays. He concluded by stating that all the above-mentioned reasons make the Indian criminal justice system dilatory which further defeats the very ends of justice.

Shri G. Kishan Reddy, Minister of State for Home Affairs

Shri G.Kishan Reddy started off by stating that the Home Ministry had constituted a 5-member committee for reforms in May 2020 to examine the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act. He stated that the need for reforms was mandated by the changing times and the changing nature of crimes. There is ample evidence that the existing criminal laws need reforms. Huge pendency of cases, lack of transparency, cumbersome procedures, lack of human resources, delayed delivery of justice were some of the major issues in this context. He further quoted one of the most fundamental legal maxims, "Justice delayed is justice denied". He also stated that there are more than 50%-70% pre-trial detainees in many countries including ours. He further suggested that timely investigation of crimes, robust deterrent mechanisms would be instrumental in reducing the crime rate in our country and on that note made a few recommendations:

1. The Malimath Committee recommended in 2003 to improve victim orientation, in the light of the same, victims must get adequate compensation in selected cases.
2. Requirement of more forensic labs in the country.
3. Significant role of government in protecting the evidence.
4. Police burdened with multiple responsibilities, specialised teams for investigation required.
5. Vacancies need to be filled, new posts should be identified, recruitment process for judges needs to be revamped so that bright and talented youth opt for judiciary.

He further shared Prime Minister Shri Narendra Modi's vision that bringing reforms in the criminal justice system needs to be a participatory exercise, and should not be restricted to formulating new laws but also repealing outdated and antiquated laws and should aim at making laws simple to comprehend. He highlighted that reforms for all components of the criminal

justice system were required. He further shared that the government was making full-fledged efforts for enhancing criminal justice infrastructure and the new structure of criminal laws would have the interests of citizens at its core. He highlighted that the Triple Talaq Act, POCSO Act, Cyber Security Laws, Forensic Science laws were some of the efforts that had

been made in order to take a step towards a better future of criminal justice in India. He also noted that the 5 member committee would incorporate opinions from all stakeholders, and the government aimed to organise seminars in law colleges and other institutions. He further opined that the consultative process required participation from experts and active citizens from all corners of the country. He concluded by stating that "the Prime Minister's dream of building an Atmanirbhar Bharat would only work if we move towards building a Crime Free Bharat."

Dr. M.R. Ahmed, Former Inspector General of Prisons, Andhra Pradesh

Dr. M.R. Ahmed began his address with a strong and insightful quote by Nelson Mandela, "*It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones*." and an eminent criminologist, "*If you want to see the culture and civilization of a country, go and peep inside the jail*". He also quoted Mahatma Gandhi, "*Hate the sin and not the sinner*" and "*Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care*.", to set the tone for his presentation.

The focus of Dr. Ahmed's address was undertrial prisoners. He enumerated the major issues with regard to undertrial prisoners in India, including prison overcrowding, prolonged detention, unsatisfactory living conditions, lack of treatment programs, indifferent and inhuman attitudes towards them, inadequate care for mental and physical health, staff shortage with poor training, non-availability of proper legal-aid, absence of rehabilitation and lack of oversight.

Dr. Ahmed further narrowed his focus onto prison overcrowding, which he identified as the most critical problem and its main causes are: unnecessary and indiscriminate arrests, criminalizing some abhorrent behaviour that can and should be addressed in the social domain, slow judicial process and the general lack of awareness regarding the process, prison

as the first choice rather than the last especially for minor offences and minimal use of other sentencing options.

To throw greater light on the issue, he provided some statistics regarding prisons in India. The actual capacity is about 4,78,000; the number of undertrials as of 31 December 2019 was 3,30,487 which makes up for about 69% of the total prisoners, which is considered very high. Dr. Ahmed noted prison overcrowding is not a recent challenge, rather a chronic issue in the country. Considering the composition of undertrial prisoners, 63.7% of them are involved in offences against the human body, 28.1% offenders are involved in property offences and the rest in minor offences.

In terms of the period of imprisonment, the break up is as follows:

Period of Stay	**Proportion (in %)**
< 1 year	74.08
< 3 months	36.99
> 5 years	1.52
3-5 years	4.25
2-3 years	7.69
1-2 years	13.5

Dr Ahmed elaborated that prison overcrowding further leads to many issues such as Human Right violations, and stress on the part of the prison staff and administration. One critical point raised by Dr. Ahmed was that even though India universally recognizes that prisons are institutions for reformation and rehabilitation, there is a lack of focus on the same due to the large population of the prisoners. Reformation and rehabilitation could be achieved only if incarceration motivates and prepares the offender for a law abiding and self-supporting life after the release.

After highlighting the problem of overcrowding, Dr. Ahmed suggested some possible solutions. The primary concentration must be on non-custodial measures, which has not been given much thought in India. Some alternate mechanisms exist at the pre-trial stage such as fines, diversion from judiciary, bail and release on personal bonds. An interesting solution proposed was House Arrest, which is practiced in many countries such as the US or the UK, using electronic monitoring technology, particularly for offenders who are not a threat to society.

The principal questions that need to be asked, according to Dr. Ahmed are, whether the person is a threat to society and if so, do they need to be imprisoned? He stressed on the fact that a prison can never be a good place. It damages and contaminates people. Jail is a place with negative vibes and not the place for reformation by taking the person out of a society. He quoted Justice Venkatachaliah, “an ordinary short-term offender enters a prison as an undergraduate and exits as a postgraduate”. The speaker lamented that there is no classification and segregation system being scientifically implemented in the prisons, inevitably leading to the contamination. While

concluding, Dr. Ahmed remarked that how we treat our own people is important and a prison must always be the last resort.

Dr. Ranbir Singh, Founder and former Vice-Chancellor, NALSAR Hyderabad and NLU Delhi

Before beginning his address, Dr. Ranbir Singh provided a disclaimer that his statements were a reflection of his own opinion and from his personal experience. Dr. Singh identified and elaborated fifteen major thrust areas when it comes to Criminal Procedural Reforms. They are as follows:

1. Reduce large-scale criminalization of society: Dr. Singh noted that our country has a multitude of laws that criminalize many acts and they are only increasing in number. 75 lakh people are arrested every year by the police and this further leads to problems such as prison overcrowding.
2. Need to rework on bail provisions: a major proportion of prisoners are undertrials, as noted by Dr. MR Ahmed.
3. Ensure that the procedures conform to Human Rights: when the laws such as the IPC were drafted, the Universal Declaration of Human Rights had not been guiding principles.
4. Ensure speedy justice by reclassifying offences and simplifying trials: >70% of crimes are petty in nature and do not require elaborate trial procedures.
5. Assimilate principles of Alternative Dispute Resolution wherever possible. Redesigning provisions related to compounding of offences and pleas bargaining are also possible solutions, as suggested by the Malimath Committee. There is a need to look into why principles of plea bargaining did not work in India while they do in other countries. There is a need to urgently adopt important recommendations from the Malimath Committee.
6. Facilitate and simplify reporting of crime: technology can be used to enhance transparency and accountability and speedy disposal of cases.

7. Need to relook at victim jurisprudence: inventing tools for complete justice to the victims, including short-term and long-term rehabilitation including victim compensation and security needs.
8. Ensure gender justice, remove gender inequality and remove bias from procedures and the law.
9. Introduce Witness Protection laws
10. Link number of criminal courts to the number of crimes reported.
11. The framework that allows for multiple appeals across the three tiers of courts needs to be revisited: the multiple system of appeals is being misused to prolong proceedings, and is leading to loss of fear of the law.
12. Training of investigators in the police force, as recommended in the Soli Sorabjee Committee report.
13. Reforms related to perjury are required: the public is not truthful before courts.
14. Need for deployment of scientific technology: especially to fight cyber crimes. These crimes also require separate police stations and specialized Investigating Officers from the field.
15. The Office of the Public Prosecutor in India is weak: The government needs to attract the best talent for the office.

To conclude, Dr. Singh mentioned that although it is pertinent that these reforms are undertaken, one must not be hasty about the process.

PANEL DISCUSSION

The Chair sought the views of Dr. Ranbir Singh on specific methods to expedite trials, to which Dr. Singh responded with the recommendation that there must be proper schedules that the courts, particularly the trial courts, must adhere to for speedy and timely delivery of justice and to clear the backlog of cases. The Chair noted that around 28-30% of under-trial

prisoners are those accused of committing offences against property. They are generally itinerant offenders without any permanent residence. Production of such offenders in the court would not be possible without their imprisonment as no one will give surety for them or they would escape upon release. But the same is not the case for offenders against the human body, solutions alternative to imprisonment can be explored for them. Dr. Singh then emphasised that quick attendance of the suspects and witnesses before the investigating officers and courts must be ensured for a speedy trial. The Chair added that production of witnesses before the courts is of more consequence than production before the police as investigation of any case irrespective of the complexity rarely exceeds one year as opposed to trials that last decades. Dr. Singh and the Chair reached a mutual agreement on the fact that there is a need to adopt certain elements of the inquisitorial system in the trial procedure such as a more proactive role for the presiding officer.
The Chair then questioned the necessity of appearance of the accused for commencement of the trial when he/ she is represented by a lawyer, especially in cases where the accused is wilfully defaulting in order to protract the trial proceedings. In this regard, he proposed that such a requirement can be dispensed with when the accused is represented by a lawyer. Dr. Singh responded that such a recommendation could be a potential solution. The Chair further highlighted that witnesses lose interest in the judicial procedure due to dilatory procedures and not just because of the lack of a protective framework for witnesses. Dr. Singh added that the treatment of witnesses in the courts is another cause for concern.

The Chair then sought the opinion of Dr. M.R. Ahmed on the feasibility of reverting to the old system of having a sub-jail for each Magistrate's Courts where under-trials can be kept in order

to simplify the process of production of accused in the court. Dr. M.R. Ahmed, however, pointed out that only a few sub-jails have been closed where the population of prisoners was very low, as low as 1-3 prisoners. These prisoners were shifted to the corresponding district jails and production can be ensured without considerable inconvenience. This was necessitated due to acute shortage of staff in the central and district jails. Additionally, Dr. Ahmed also stated that the advent of video linkages between prisons and courts has further

ensured that the court processes other than trial are conducted without the physical presence of the accused in the court.
The Chair then posed a question on separation and joinder of cases. He proposed, and Dr. Singh concurred with him, that the trial in a case with multiple accused may be concluded and a sentence be passed even in the absence of a few of the accused if they are wilfully defaulting from appearing in court.

In regard to plea-bargaining, Dr. Jayaprakash Narayan cautioned that while it is a needed practice certain safeguards are essential so as to avoid exploitation of the accused in the hands of the more powerful prosecution as seen in the American experience.

QUESTIONS AND COMMENTS

Dr. MR Ahmed, while replying to a question on Section 436A of CrPC as a way out to release under-trials who have served more than half of the maximum sentence that could be awarded to them and whether the provision has been utilised optimally, noted that Section 436A had not made much of a difference as far as prison authorities are concerned, the under-trials were continuously on the rise. He highlighted the need for other measures. He also mentioned that there are high level under-trial review committees at the state level which meet quarterly and look into cases of prisoners who have been in jail for more than 3 months and take appropriate action. However, section 436A is not applicable to under-trials accused of multiple offences or heinous crimes. He clarified that the figures on the proportion of under-trial prisoners are misleading as they do not reflect the continuous inflow and outflow of such prisoners. Further,

he stated that only about 5-6% of the undertrials have multiple cases against them, and the rest are being released by the courts if they have been imprisoned for about 3-4 months. He further noted that offenders against the human body are generally considered safe for release on bail as they are unlikely to commit the offence again, which is also the reason for the successful functioning of open prisons in the country.

Dr. Ranbir Singh while replying to a question on the required changes in bail provisions mentioned that the bail provision has been misused and this highlighted the need to look into the recommendations put forward by High courts and Supreme Courts. Shri Ramamohan Rao added that when an accused released on bail absconds from courts, it results in delays of trials and therefore suggested that if an accused is wilfully absent from the trial, the trial should still be completed based on the representation of his lawyer or amicus curiae.

Shri Ramamohan Rao while replying to a question on ADR and compounding commented that the ADR mechanisms are applicable to economic offences and not in cases against the body.

While replying to a question on striking the balance between protecting the rights of the accused and ensuring justice delivery in the light of the Malimath Committee recommendation of allowing confessions to police officers of the rank of superintendent of police and above, he mentioned that the balance is disturbed because there was a fundamental distrust of the police. He opined that distrust of the police was the reason why people were not ready to accept confessions before police officers. He argued that such mistrust is unreasonable especially since confessions recorded by Forest Officers and Railway Protection Force officers are admissible in court. He also highlighted that since confessions were now recorded in videos which can be made admissible as the preliminary measure. He also mentioned that the police officers were not given sufficient time for investigation due to which extra-legal methods were resorted to in exceptional cases, by the police. He further recommended that magistrates should investigate

murder cases as a part of their training so that they are able to comprehend the difficulties in investigation faced by the police.

While replying to a question related to alternatives to imprisonment, Dr. M.R. Ahmed gave the example of Indonesia's system of deterring drunk drivers by making such drivers undertake community service in trauma wards of hospitals where victims of accidents

resulting from drunk and careless driving were admitted. He also gave examples of alternatives developed by the Scandinavian countries - day fine systems, community attendance centres, probations and periodical imprisonment.

To a question on which reforms are to be prioritised, Shri Ramamohan Rao distinguished between incremental reforms and basic reforms. He opined that the recommendations pertaining to lowering the standard of proof for minor offences and those pertaining to summary trials must be implemented on priority. Case management, alignment of jurisdiction of courts and police stations, and other administrative reforms must also be considered as important systemic reforms.

Dr. Jayprakash Narayan added a concluding remark stating that the fundamental principle of democracy is to *"Empower, but hold them to account"*. Therefore, the police must be adequately empowered by making confessions recorded by police officers admissible in evidence but with appropriate safeguards in place. He cited the example of the intricate accountability mechanisms in place in the Australian state of New South Wales.

CONCLUSION

The current state of the criminal procedures in India are inhibitory to meeting the larger objective of serving justice. There are large procedural delays, sometimes deliberately by the accused by exploiting loopholes. Overcrowding of prisons is prevalent, particularly due to the large number

of undertrials and there is little focus on justice to the victim in more ways than just convicting a perpetrator. There is a large gap in the state capacity and one important solution to this is a certain degree of decriminalization and solving some issues within the social domain than the judicial.

The panel recognized that most Indian institutions are asynchronous with the present times and needs of the society. There is thus an imminent need for reform, and the panel suggested

many pragmatic solutions for the same. A word of caution was also provided by Dr. Singh that while there is an urgency for reform, haste must be avoided.

SESSION 4: CIVIL PROCEDURAL REFORMS
27 FEBRUARY 2021| 9 AM TO 11 AM

PANELISTS:

1. Dr. Sudhir Krishnaswamy, Vice-Chancellor, NLSIU, Bengaluru
2. Justice (Dr.) Shalini Phansalkar-Joshi, Former Judge, Bombay High Court
3. Mr. Hiram E. Chodosh, President, Claremont McKenna College, USA

CHAIR: Shri N. L. Rajah, Senior Advocate, Madras High Court

ABSTRACT:

The fourth session of the second edition of the Indian Democracy at Work Conference focussed on civil procedural reforms. The session bore witness to an enlightening discussion on several aspects of reform including institutionalizing case management in civil courts, mitigating challenges in the functioning of Commercial Courts, and updating pecuniary jurisdictions of civil courts. By the end of the session, there emerged a broad consensus among the members of the panel regarding certain steps that were of paramount importance towards achieving the larger goal of civil procedural reforms; at the same time, each speaker also put forward their own distinct possible solutions for the same.

Opening Remarks By Shri N.L. Rajah, Senior Advocate, Madras High Court

Shri N.L. Rajah, in his opening address, deliberated on ten changes which could be made to reform our civil procedural system, out of which five were structural in nature, and rest were non-structural reforms. According to him, the problems that required fixing at a structural level were:

1. In our country, we have a huge number of law commission reports which have not been translated into legislation. The speaker enumerated some prominent examples, including the 79th report on delay and arrears, 144th report on conflicting judicial decisions, 221st report on speedy disposal, 230th report on reforms in judiciary and 245th report on pendency, delay, arrears and backlog. This rich repository of information on reforms in the civil justice system must be translated into action.

2. There is a complete lack of availability of data on the causes of the problem. Countries like the USA and the UK have an equivalent to the Judicial Statistics Act, under which matters are properly docketed, tracked, classified, and segregated, making it easy to retrieve information on the status of the matter. In India, such detailed information is not available. To buttress his stance, the speaker illustrated that close to 40 lakh of the 2-3 crore cases pending before criminal courts are cheque bounce cases. These cases can be segregated and disposed off easily if granular data on the cases is available. The speaker called for passing a similar Judicial Statistics Act in India.

3. Expenditure on courts as a percentage of GDP is a meagre 0.09%, one of the lowest amounts on the judiciary compared to Germany - 0.39%, UK - 0.38 %, Australia - 0.37 % and France - 0.23%.

4. The judge-to-population ratio is rather abysmal too, with only 20 judges per 100,000 population. The UK has close to a 100, the USA close to 75, and Germany 35. Moreover, of the 20 sanctioned judges, one third of the posts are vacant.

5. Ideally, every litigation which is passed must be accompanied with a judicial impact assessment report, which would give governments an idea as to how much they should set aside financially for the reform to be implemented on the ground. However, this is not the case. The speaker explained his argument with the example of the Commercial Courts Act. Although the union government has passed the Commercial Courts Act, many state governments haven't been able to implement it in the manner it was intended. A PIL has been filed in the Supreme Court to look into the implementation of this Act.

Shri N.L. Rajah opined that apart from the aforementioned structural reforms, there were other reforms which could be undertaken immediately. They were:

1. The Commercial Courts Act calls for every High Court in the country to display information regarding these cases such as cases filed and disposed of on their website. However, according to a study by the Vidhi Centre for Legal Policy, only eight High Courts in the country have even started doing the same. Only the Delhi High Court has executed it with purpose and intent.
2. Another problem of civil justice according to the speaker is the non-segregation of minor matters from the more complicated and detailed ones. In this regard, the speaker opined that the Gram Nyayalayas Act, 2008 must be strengthened to ensure that all non-major disputes be resolved at the village level itself, instead of travelling all the way to the High Courts.
3. The Alternative Dispute Resolution Law, while in place for some time, needs to be translated into action on the ground and properly implemented.
4. The next problem stated by the speaker had to do with the Legal Services Authority Act. The speaker believes India has one of the finest legal aid systems on paper, with all women, members of ST SC, and all children being entitled to free legal services. However, the Legal Services Authority suffers from very scanty budgetary allocation. In

contrast, the speaker commented, in welfare societies, legal aid is given prime importance, citing the example of how the England Bar went on strike after there was a threat to cut down the budget of solicitors officers providing legal aid services.

5. Finally, the speaker called for a revolutionary system of paralegals to improve the quality of our civil justice delivery system. The paralegals currently are poorly equipped with adequate training. This reform has been set into motion as the Skill Development Council of India has accepted the proposal of the Palkhivala Foundation on establishing a system to train qualified paralegals who can contribute to the civil justice delivery in innumerable ways.

Dr. Sudhir Krishnaswamy, Vice-Chancellor, NLSIU, Bengaluru

Dr. Sudhir Krishnaswamy began his address by stressing the fact that Rule of Law was critical for India in the 21st century, and had not received adequate attention in the past. He opined that the debate on Rule of Law in India both, in the popular and academic sphere, has a strange fork - some suggest that the State is too strong, and feel that there is excessive police and regulatory power. On the other hand, there is another discourse that is strongly precommitted to state capacity building. Dr. Krishnaswamy went on to elaborate on some of the work done by Prof. Susan Rose-Ackerman at Yale University, on how building the Rule of Law in a developing society has this bipolar dimension. He then stressed on how in India, there was a lot of emphasis on the aspect of state capacity building, as opposed to controlling the state. He further noted that the concept of Rule of Law in the common law system emerged as a mode of negotiation between various bases of social power, specifically between the monarchy and the nobility in Britain. Identifying such bases of social power in the context of contemporary India would aid in recognising when it is time for a discourse that addresses the dichotomous demands of Rule of Law reform.

Dr. Krishnaswamy spoke on three themes of civil justice. Firstly, he explained the need for an empirical approach that combines with legal doctrine. He stressed that empirically grounded analysis was critical and we therefore need to bring large end empirical data to solving legal issues. He added that former Indian policy discourse has overly relied on doctrinal analysis, and only compounded historical failures in this field. Calling for a fundamental shift in approach to civil justice reform, he observed that the legal fraternity in India has not yet adopted the empirical approach at the scale and intensity required.

The second issue Dr. Krishnaswamy spoke on was static modelling. He opined that a lot of analysis on civil justice reform centred on what economists would call “supply side analysis”. In India, he noted, most of the policy reform had historically focused only on supply side analysis. He illustrated that with the example of the judge-to-population ratio, and how it was widely felt that an improved ratio would usher in a new era of civil justice. Dr. Krishnswamy opined that the problem with this approach was that it ignored the “demand” side. He stressed that any analysis of the demand would show us that it was a variable, and not a fixed number. However, in Indian policy discourse, demand is widely perceived to be static. He called for embracing the view that both the demand and supply side were variables. He defined the problem of civil justice reform as an optimization problem - which of the potential disputes can be reasonably addressed given the constraints of the GDP and the development status of the country. By simply increasing the supply, and increasing the strength of judges, we would only heap more cases on them rather than solving the problem, opined Dr. Krishnaswamy. He also illustrated how, interestingly, commercial dispute resolution in the Delhi High Court has slowed down since the passage of the Commercial Courts Act, and more so since the amendment made to the Act in 2018.

Thirdly, Dr. Krishnaswamy opined that we must look at the issue of incentives rather seriously. In our legal system, he elaborated, we have various players with their own separate interests. He added that any attempts at reform must be laser-focused on changing the incentives of the various actors to be able to succeed. He explained through the example of Singapore how

changing the incentive structure for settlement helped in the transformation of the Singaporean legal system.

Dr. Krishnaswamy opined that the preferred approach to legal system reform in India should be to conduct small, natural experiments, and then extract the learnings into the wider system. He called for an understanding of incentives and an almost randomized controlled trial type intervention, along with analysis of the results and later, scaling up the interventions.

To conclude, Dr. Krishnaswamy stated that the effectiveness of civil justice reform can be assured only if it is informed by such empirical methods and frameworks of analysis.

Justice (Dr.) Shalini Phansalkar-Joshi, Former Judge, Bombay High Court

Justice Shalini Joshi began her address by stating that Rule of Law is the bedrock of any democracy as well as the basic structure of the Constitution of India. She stated that Rule of Law means maintenance of public order, protection of rights, and fair and equitable enforcement of justice, including settlement of civil disputes between individuals and individuals and government. The speaker highlighted the differences between the criminal and civil justice system, the latter operating only on two pillars; the bar and bench. She also highlighted the common reasons for the delays in civil disputes resolution, which are:

1. Inadequate strength of judges
2. Huge number of cases
3. Inadequate infrastructure
4. Scanty budgetary allocation - less than 1 percent of our GDP

Next, Justice Joshi highlighted the various initiatives undertaken thus far to resolve some of the issues related to the matter. These include promoting and strengthening alternative dispute

resolution mechanisms, establishing Gram Nyayalayas, laying down timelines for submission of written statements, process re-engineering in the form of computerization and digitization, grouping of matters and the establishment of Commercial Courts. The speaker went on to elaborate the initiatives undertaken by other countries which could serve as models to look at in India. They include:

1. An emphasis on alternative dispute resolution, illustrated by the USA and Canada
2. An emphasis on arbitration, illustrated by Singapore
3. An emphasis on procedural reforms such as making litigation expensive, curtailment of adjournment by imposing heavy costs, track system and case management as illustrated by the UK and Australia

The speaker also explained the UK model in greater detail by referring to a report by Lord Woolf. The major recommendations made in the report that she quoted were:

1. A transfer in the responsibility for the management of civil litigation from litigants and their legal advisors to the courts
2. Management to be provided by a three-tier system; an increase in small claim jurisdiction, a new fast track for cases in the lower end of the scale, and a new multi-track for the rest
3. An enlarged jurisdiction to give summary judgements as incorporated in Commercial Courts Act
4. All cases where a defence is received to be examined by a procedural judge who will allocate the case to the appropriate track, giving scope for pre-trial resolution
5. In large courts, judges engaged with the management and trial of civil proceedings to work in turns
6. The fast track to have a set timetable of 20-30 weeks, limited discovery, a trial confined to less than 3 hours, no oral evidence from experts, fixed costs etc.

7. On the multi-track, case management to be provided by at least two interlocutory management hearings
8. The multi-track cases to proceed according to a fixed time-table

Justice Joshi next highlighted the elements of Australia's model, which included a shift from a laissez faire approach to an acceptance by the courts of the philosophical principle that it was their duty to take interest in cases from an early stage and manage them through a series of milestones. With respect to case management, the speaker opined that it involves exercising effective control, monitoring progress and processes, removing roadblocks, ensuring satisfaction, effective use of judicial resources, establishing trial standards, and monitoring caseloads towards swift, timely and satisfactory disposal of cases. It also entails judicial control over case progression, shifting the responsibility of conduct of litigation from litigants to the court, differentiating between different types of cases, prioritisation, and conducting pre-trial procedures to identify the contentious issues.

Justice Joshi added that M. Soloman and D. Somerflot had identified the following aspects of court and case management:

1. Judicial commitment and leadership
2. Court consultation with the legal profession
3. Court supervision of case progress
4. The case of standards and goals
5. A monitoring information system
6. Listing for credible dates
7. Strict control of adjournments

The speaker stated that despite having theoretical knowledge on case flow management, the challenge lies in effective implementation of the same. She noted that there were no specific rules for case management in the country. She added that while a Supreme Court appointed

Committee considered the suitability of case management systems, the suggested draft rules were not comprehensive. Based on the draft rules recommended by the Committee, certain high courts have drafted rules for trial courts, but there is no uniform system.

Justice Joshi also elaborated on the pecuniary jurisdiction of our civil courts. She noted that it was not uniform across the country and was determined by the Civil Courts Act of each state. While it is less in certain states such as Madhya Pradesh, it was considerably higher in some others including Maharashtra. She highlighted the positive impact of enhancing the pecuniary jurisdiction, which includes:

1. Making courts easily accessible by reducing costs and time
2. Speedy listing, hearing and disposal of cases
3. Reducing the burden on the High Courts
4. Faster disposal restores the people's faith in the judiciary

Justice Joshi concluded by stating that the pecuniary jurisdiction ought to be reviewed and revised periodically, ideally every three years, to respond to a dynamic economic system.

Mr. Hiram E. Chodosh, President, Claremont McKenna College, USA

Mr. Hiram E. Chodosh began by concurring with Dr. Sudhir Krishnaswamy that there is a rule of law paradox. According to him, the judiciary is the best institution to manage such a paradox but it is also the most neglected branch of government.
He went on to note that although an assessment and reimagination of the Indian civil justice process is necessary, recognition and critical reflection on the reasons for the failure of past well-meaning attempts at reform is essential.

Mr. Chodosh enumerated two underlying principles of his approach to civil justice reform through personal anecdotes. First, that any reform or intervention that is too little or too late will

not yield the desired outcomes. It must be timely and must also address the basic structural faults in the system. Second, reforms fail not because of one mistake or error in the reform but because the challenges are simply too great. In other words, a vision to overcome the resistance to change encountered in certain systems despite our best efforts is necessary.

He opined that any effort to reform the Indian civil justice system must tackle at least two structural impediments to change. First, the approach towards thinking about change and executing the same. There is a need to rethink and redo reform. The reform proposals often take the form of negative of the negative which does not address the root cause as to the reason why deficiency is on one side of the normative and not the other. Second, focusing on substantive methods of changing the structural impediments inherent in the system rather than merely adopting superficial proposals. He illustrated the need for a comprehensive outlook through the example of the dilatory Indian justice system. The common response is to develop rules with timelines and deadlines. Such a response by itself, unaccompanied by systems, incentives, and processes to alter the underlying structural dynamics, is inadequate.

He stated that a vision with a set of values that are reflexive is essential for effecting structural reform. According to him, reflexive values entail - committing to our own reform, approaching the challenge afresh every time, experimentation, and a political strategy.

Elaborating on the way to rethink reform, Mr. Chodosh focused on three problems that are commonly encountered in this respect and the thought-process of change. First, a lack of vision as to the intended outcomes from the system. Heeding Einstein's admonition that we tend to measure things that are easy to count but fail to count those that really matter, one must not overly emphasise on comparative statistics and ratios. A vision need not be abstract in nature but rather can be quite concrete, particularly in understanding the role of the judiciary in terms of what it must do, what is it that only it can do, and what it must not do.

Second, failure to confront countervailing structural incentives and values. Systems create vested interests and thereby behaviours which are internalised. The outcomes of a system cannot be altered without confronting the value system of the roles thus played by us in those systems. He then discussed the significance of incentives or values in any system, which foster competitive behaviour over limited resources. These values can either be negatively or positively implicit. Negative when the values are perverse to what people want and positive when they reflect the generally prevalent values. Some instances of such values and incentives are the remuneration and prestige attached to the roles in the system, the managerial role of the judge, and the ideals of authority in the judicial process, whether coordinate or hierarchical.

Third, lack of a coherent theory of change. For instance, a comparative analysis for the purpose of reform is premised on the assumptions that the element that we wish to adopt is in fact the cause of the outcomes that we desire and that it will produce the same results in our systems as well. Furthermore, we often lack an effective practical plan for implementation and also, a measure of success or failure. Mr. Chodosh concurred with Dr. Krishnaswamy on the need for pilot projects on a smaller scale to gain a better understanding of the suitability of a reform proposal.

Every reform is underpinned by a hypothesis of change that a certain intervention shall lead to a certain outcome. A mere change in the procedure or legislation, might not always have the desired effect. Such hypotheses therefore need to be substantiated through empirical analysis, with a clear understanding of the implications of the findings. As the traditional methods of measuring outcomes in the judicial process have been found to be wanting, new ways of measuring justice and holding systems accountable to the new measurements must be created.

Moving on to the practical aspects of bringing about change, Mr. Chodosh first emphasised on the significance of multi-stakeholder participation in the process. Second, beginning from a blank page, unburdened by past practices. Third, opposition to reform must be embraced

and the concerns must be addressed. Fourth, pilot projects and experimentation. Fifth, shrink the change

by breaking down the long term vision into small and achievable measures. Sixth, benchmark success by adopting empirical methods and creating a measurement tool. The role of good implementation planning, funding, human capital, and technology integration cannot be overlooked in the process.

Mr. Chodosh spoke about certain initiatives that can go a long way in stimulating further discussion on civil justice reform. A Declaration of Indian Legal Independence can be developed jointly by the intellectual and political classes, civic organisations, and other stakeholders from the grass-roots. This would entail everyone taking responsibility for the structure of the system, free from the colonial traditions. The Declaration can be followed by a national reform process involving vision, true participation, experimentation, measurement and outcomes, implementation plans and adequate support.

Mr. Chodosh then listed five measures to improve the Indian civil justice system -

1. Elimination of judicial rotation which is a product of British distrust. In addition, elimination of rotation of caseloads is also necessary to facilitate accountability of adjudication of a case from beginning to the end.
2. Vastly restrict the scope of appeals. Appellate rights fracture and disperse cases in a way that is uncontrollable resulting in discontinuous proceedings.
3. Move towards continuous proceedings.
4. Reduce jurisdiction across the three tiers of the judiciary.
5. Utilise mediation for disputes that have no serious normative value.

QUESTIONS AND COMMENTS

The first question was about Dr. Sudhir Krishnaswamy's demand-supply model, and asked for concrete suggestions on quantifying and analysing the demand and offering demand-based solutions. Dr. Krishnaswamy responded by saying that the primary incentive

of many litigants in India is to secure an interim order and protract the dispute to the extent possible. An exercise to

constrict such litigation by mandating mediation or other ADR proceedings before court trial has already been tried out. The speaker proposed that a simple method to discourage this litigation strategy would be to place a sunset clause on all interim orders, ranging from a week to a fortnight to a month based on the class of dispute. Parties could be forced to content by the end of the clause, and a way to prevent this from becoming a listing practice of sequential orders must be figured out. Another model to control the demand side suggested by the speaker was to require the party that sought an interim order of a particular magnitude to incur some costs. This would alter the calculus of the parties and the lawyers. The speaker cautioned that we should not take any rule prescription to yield a specific result, and pay careful attention to the interest of parties and that of the lawyers. That kind of thinking is likely to yield better results than the supply side model. Shri NL Rajah added a practitioner's point of view stating that the situation is more complex on ground as cases tend to fall off the list and often, one party is not ready on the date of hearing. Dr. Krishnaswamy described another practice that aligned incentives of all parties according to large studies called ‘outcome date certainty’. Outcome date certainty essentially means that a date of judgement of the court of first instance is fixed and there is no sideways movement despite any challenges along the way.

A follow up question was directed to Justice Joshi on problems faced by the judge in getting both the parties to travel in a path that is delineated and time bound in an efficient manner. Justice Joshi agreed with Dr. Krishnaswamy on placing a sunset clause or outcome date certainty on matters. However, she explained that due to the enormous caseload handled by the judges, even if all parties are incentivized to complete the trial process, it simply may not be possible for the judge to hear the matter on a particular day. In her experience, a High Court judge hears about 100 cases in a day and a District Court judge hears 30-40 cases. In order to make trial time bound and efficient, the supply end must also be strengthened with adequate judges and court administrators.

Mr. Chodosh added that it is necessary to turn this vicious cycle into a virtuous cycle. He opined that the reason there are 100 cases to be heard in a day is because each case is broken down into

fragments, stressing that consolidation is therefore critical. However, consolidation cannot happen unless systems for judicial accountability for a case are established. Referring to the 'outcome date certainty', he stated that in the early 80s and 90s, there were tremendous problems with delay in the California judicial system, and subsequently there was a huge alternate dispute resolution movement. However, research now indicates that the solution that reduced delay was not the alternative dispute resolution mechanism rather, a speedy trial Act, which required the judges to set the date of 'imminent jeopardy'. This date created the incentives for settlement. He stated that the Indian judicial process has become about interim relief, and a sunset clause on these orders may not work as a similar order may be passed on the expiry. He called for serious consideration of the responsibility of a judge for a caseload and a particular case from beginning to end. Dr. Krishnaswamy added that three features - no interim orders, no interlocutory appeals and outcome date certainty - are critical to the elimination of dockets all over the world in common law systems. He augmented his statement with a highly illustrative statistic; with a firm and resolute outcome date certainty, the natural rate of settlement, negotiated by parties and lawyers themselves, climbs from around 30 percent to as high as 70 percent, as per the date from across the common law world. He acknowledged that the politics of generating outcome date certainty is complex as there are many stakeholders and many different directions of push necessary to generate the outcome. However, if 'imminent jeopardy', as mentioned by Mr. Chodosh, is introduced into the Indian legal system, it will change the incentives of the parties and the lawyers

CONCLUSION:

The session witnessed an enriching discussion revolving around the civil justice system, and measures towards its reform. Shri N.L. Rajah noted that some great workable solutions had surfaced through the course of the conversation, and the time is ripe to turn the ideas into action on the ground. Dr. Jayaprakash Narayan noted that the fascinating discussion saw

broadly two broad streams of possible remedies for the civil justice system, with one focussing on the supply aspect and strengthening the existing system, while the other revolved around the demand side

and the altering of incentives. He added that while formulating any potential reforms on the matter, it was imperative to look at both the streams with detail.

SESSION 5: SPEEDY JUSTICE IN TRIAL COURTS

27 FEBRUARY 2021 | 5:00 P.M – 7:00 P.M

PANELISTS:

1. Dr. Jayaprakash Narayan, General Secretary, Foundation for Democratic Reforms
2. Shri Justice R.C. Chavan, Vice-Chairman, E-Committee of Supreme Court
3. Shri Atul Kaushik, Chief of Party, Asia Foundation

CHAIR: Justice G. Raghuram, Director, National Judicial Academy

ABSTRACT

The fifth session of the second edition of the Indian Democracy At Work Conference on Rule of Law, marking the beginning of the discussion on judicial reforms, revolved around ensuring speedy and efficient justice at the trial court level. The panelists highlighted the necessity of making the courts accessible to ordinary citizens and identified the various hurdles in the pursuit of that goal, such as deficient personnel and infrastructure, overburdened court dockets and certain practices of the Bar as well as the Bench. Further, several plausible reform measures were debated upon including the idea of Local Courts, adoption of technology, procedural changes, and judicial recruitment.

PRESENTATIONS BY THE PANELISTS

Dr. Jayaprakash Narayan, General Secretary, Foundation For Democratic Reforms

Referring to the remarks of Mr. Hiram E Chodosh during the session on Civil procedural Reform, Dr. Jayaprakash Narayan began his speech stating the need to look at judicial reform through the lens of institutionalizing a justice system in the country ab initio. In this context, Dr. Narayan focused his speech solely on the issue of justice delivery to ordinary citizens for simple, uncomplicated matters. The speaker listed out the problems plaguing the justice system, such as the huge pendency of cases across courts in India, a dilatory system with interminably long trials. Access to justice for the ordinary citizens is extremely limited due to remoteness in terms of distance, language barrier, cost of litigation, complex procedures, and perjury. The speaker stated that in this context local courts are an important part of the puzzle.

Dr. Narayan presented some statistics, such as the 34-36 million cases pending in courts, a desperately low judge to population ratio at 18 judges per million population. Dr. Narayan was amazed by the disposal rate per judge per year in India. The annual disposal of cases is as high as 824 cases per judge per year at the trial court level, and around 3500 cases per High Court judge per year. The speaker questioned the quality of justice with such a tremendous workload on the judges. Further, he highlighted that the expenditure on courts is too low. Although rule of law and justice are the most important functions of the government, as social controls take care of most of the issues and people are resigned to injustice, short term freebies have dominated the political contention. Therefore, justice administration has become a low priority for the governments.

The speaker reiterated the factors such as too few judges, remote location of courts, cost of litigation, perjury in courts, rigid and formal procedures etc. and the general perception that courts are biased towards those with means, due to which either people suffer or adopt extra-judicial methods to resolve their disputes.

Dr. Narayan spoke about local courts as an integral part of the justice system similar to the honorary Second Class Magistrate system that once existed in India. The speaker envisioned such local courts with simple and uncomplicated summary procedures, local cost of functioning for the State, low cost to the people and close proximity to them. His proposal was based on the US small claims courts with limited jurisdiction for small civil suits and minor violations of law and the UK Justices of Peace (JP). The speaker stated that there are about 1 JP per 4600 population who handle about 80-90% of criminal cases so that the formal trial courts are not burdened with excessive caseload, with a near perfect clearance rate. On the civil side, the system allots cases under £10,000 to a small claims track where the trial is completed in an hour. 60% of the cases go through this route, 33% to the fast track courts which take one day per case and the rest to the multi track system, for cases above £25000.

The speaker referred to the Gram Nyayalayas Act, 2008, stating that such a law is necessary for the entire country, even more so in urban areas where social controls are weakening and crime is on the rise. The speaker emphasized that the law is well-drafted and places these courts within the independent justice system with the administration including appointments, transfers, and removals of judges entirely under the High Courts. However, although it was proposed in the Act that there must be one court for every block in the country, which calls for around 6000 local courts, the government has only sanctioned 395 Gram Nyayalayas so far and only 221 are functional. Dr. Narayan advocated for extending these courts to urban areas.

He emphasized that these courts can be particularly effective for offences against women. It is important to create a culture of safety and security for women, which entails zero tolerance for minor offences against the women including day to day discrimination and abuse of women. The speaker opined that when a permissive climate of harassment of women with impunity goes unchecked, it paves way for more serious crimes against women over time. A summary trial and quick disposal of cases with other forms of punishment such as fines, probation, and permanent record of repeat offenders can be served by the local courts, particularly in urban areas where women's safety is a key political issue.

Further, Dr. Narayan presented some numbers on the clearance rate of trial courts, to state that assuming there is no inflow of new cases in the country, the current caseload including the backlog can be cleared in 2-3 years. Clearance rate of civil cases is about 90% considering the cases filed and disposed of in a given year, and 88% in the case of criminal cases. The speaker therefore stated that a few simple and practical steps can help tackle this seemingly complex problem causing extraordinary pain and suffering to ordinary people. Dr. Narayan proposed that of all the cases pending over a year, the bulk of it (about 80%) must be transferred to the local courts. He suggested that cases involving suits upto Rs. 500,000 and criminal cases punishable by a maximum of 3 years of imprisonment can be handled by these courts. However, the power to award punishment must be limited to 1 year imprisonment and the case may be transferred to a higher court if the judicial magistrate so warrants. While about 15,000-20,000 such courts tackle this caseload, the speaker proposed that fast track courts may be set up for a period of 2-3 years to clear the remaining backlog. The speaker believes this to be a measured approach that can dramatically improve justice delivery at low cost.

Dr. Narayan moved on to state that the trial courts are incredibly weakened in India. The trial court cannot ensure discipline on the spot in a summary manner to ensure justice is speedy and respected for any misconduct on part of the lawyers or witness in the presence of the judge. The speaker stated that contempt of court must be punishable instantly by the trial court judge in a speedy manner. Finally, the speaker also advocated for at least one highly competent judicial clerk to assist the District court so that the quality of justice can be improved. He stated that this is necessary especially given the enormous caseload of the judges, and as a means to train young lawyers.

Shri Justice R.C. Chavan, Vice-Chairman, E-Committee Of Supreme Court

Shri Justice Chavan opened his address by reiterating former CJI Ranjan Gogoi's remarks on the ramshackled state of Indian judiciary. He also agreed with Dr. Jayaprakash Narayan's suggestion on strengthening the judiciary. The speaker questioned if anybody has ever wondered upon the

quality of the adjudication that takes place in courts. In High Courts, most of the writ petitions, which contribute to the large caseload, are for directions to the executive to decide a matter which is before them. The speaker pointed out there is no audit mechanism in the judiciary, wherein the how, why and what of type of pendency is studied.

The speaker argued that the procedure codes, which are often blamed for the delays in the trial, in fact, provide for a speedy trial. The problem lies in the lack of implementation of the codes. If we decide to be more disciplined in obeying the law, no trial would extend beyond a year.

Shri Justice Chavan stated that in the trial courts, examination of plaintiffs and pleadings before ordering the issue of process is done, not by the judge, but by a court officer. The problem is that nobody looks at the pleadings, as a result of which they are quite verbose and cause several challenges at the trial stage. The speaker also pointed out that time limits for written statements have been imposed in law because adjournments are taken for granted, but the law is not followed and parties approach a higher court for an extension. Similarly, there is a provision for admissions and denials but the civil court does not insist on them to reduce the contest due to shortage of time. There is a mandatory provision for examination of parties by court, but in his experience, no judicial officer has ever claimed that they examined the parties. Day to day trials have become a thing of the past.

Shri Justice Chavan noted that the problem with criminal courts is even more grave. Due to political pressure, police file half-baked chargesheets and judicial magistrates mechanically pass an order of issuance of process. Shri Justice Chavan recounted the facts of the famous case of Ankush Shinde and others. In 2003, in Nasik district of Maharashtra, 6 men were arrested, convicted for the charges of rape and murder of a family in the Sessions Court and sentenced to death. When the case was examined by the High Court for confirmation of death penalty, a division bench confirmed death penatly for three of the convicts and converted the other three into life imprisonment. When appealed to the Supreme Court, upheld the verdict of the trial court and ordered all six to be hanged in 2009. In 2019, post a review petition, the

Supreme Court found that none of the men were guilty. The speaker opined that this is due to the low standards

for chargesheeting, and mechanical processes without application of mind. The standard for framing of charges ideally is that there must be enough material to lead to the presumption that the person may be convicted. This has been diluted by some Supreme Court judgments such as the Satish Sharma case which stated that 'if there is a certainty of acquittal, the accused must be discharged'. What happened in the Ashok Shinde case is not only unfortunate for the accused who lived in the shadow of a death sentence for 13 years, but also the victims for whom justice had not been served. The speaker reiterated that the poor state of affair is not due to faulty procedural laws, but the sheer neglect in implementing them from the magistrate to the Supreme Court level.

The speakers appealed to the audience to look into the kind of work the courts are actually dealing with. Even in the High Courts, because of the reluctance to say no and sometimes, writing an order rejecting a petition takes more time, the courts prefer to admit a petition and keep it pending. The courts allow the huge burden to be heaped upon them, which they lament about.

Shri Justice Chavan concurred with Dr. Narayan that many people don't choose to resolve their misery in court. Police are being increasingly involved in settling property disputes and the judiciary has become irrelevant. The courts currently only cater to wrongdoers who hijack the judicial process to perpetuate an unjust status quo or those innocent people who believe in rule of law, only to ultimately lose faith in the system. He agreed with Shri Justice Raghuram that interminable appeals and revisions is an issue, but the quality of justice at the trial court is a problem that must be addressed first. Therefore, it is necessary for everyone who is a part of the system to ensure that the system works, and this can only be done by following the procedure which has always been laid down consciously.

Shri Atul Kaushik, Chief Of Party, Asia Foundation

Shri Atul Kaushik started his address by congratulating Dr. Jayaprakash Narayan for conducting the conference and expressed hope for some of the recommendations made to be implemented by various state governments and the union government. Before delving into the issue at hand, he thanked Justice R.C. Chavan and Justice Madan B. Lokur for their involvement in the E-courts Committee in 2012, without which the E-Courts Mission Project would not have been successful.

He started by stating that the major problem that the judicial system is facing is too little investment as a percentage of GDP, which is currently only 0.09%. He stated that the government believes that areas such as education, roads, infrastructure, health etc. are more important to focus on, getting them votes and outcomes within 5 years. Strengthening rule of law and reforming the justice system is a much longer process, without immediate results. He opined that it is not the amount of money that is the problem, but rather the utilization of the money. The second problem he stated is that we focus more on innovative solutions for justice delivery. The speaker highlighted the fact that our judiciary is based on the principles of natural justice and therefore, cannot circumvent any of the rights or procedures that are necessary to ensure that these principles are adhered to. He pointed out that we have set up special criminal courts, fast track courts for women & children, POCSO courts, MP/MLA offences courts, commercial courts, local courts, lok adalats etc. but none of them work. These courts are suffering from the same problems i.e. lack of incentive, capacity and technology. He suggested that innovative solutions should be replaced with a more holistic approach to reform, involving all stakeholders such as litigants, lawyers, judges, the government.

The speaker acknowledged Mr. Chodosh's suggestions in adopting a 'theory of change' approach, identifying long term goals to address a particular problem. He reiterated that we have to clearly identify what we want to resolve, set long term goals and work backwards, identifying all the conditions or outcomes that must be in place in order to achieve the long term goals. Once

a clear vision is laid down, only then can resources, investment, manpower, case management, technology etc. be enhanced to solve the problem.

Shri Atul Kaushik advocated for five interventions that must be carried out to resolve the problems in the judicial system, the first being technology. He mentioned that with the help of vital information provided by technology, judicial officers can make better and quicker decisions and can track case outcomes, ensuring mistakes are not repeated. Technology also helps move from 'file system' to 'content management'. It also helps initiate 'customer relation management', which leads to a transparent, efficient and trustworthy justice system. He also mentioned the new 'JustIS App' of the E-courts Management Committee, which provides judges with all the necessary information required to dispense justice. The judicial officers can create a measurement tool for themselves on the application, not only to assess their own performance, but to also assess the feedback they get on their performance.

The second intervention he highlighted is 'process re-engineering', which the E-courts Management Committee has been working on. Process re-engineering has to take into consideration two components: case management and abandonment of legacy procedures. The speaker emphasised that these redundant procedures must be abolished.

The third intervention suggested by the speaker is adoption of Alternative Dispute Resolution, especially mediation. According to him, mediation can be a major tool to resolve matrimonial and family issues. It provides better and speedier justice by enabling parties to agree on issues together, saving the court's time.

The fourth and penultimate intervention suggested by the speaker is the adoption of a judicial performance evaluation system, where judges can evaluate each other on the basis of the quality of judgement rather than on the rate of disposal. He opined that out of the 824 cases that are disposed of by a single judge every year, hardly 24 cases are of quality, where complete justice is delivered.

In conclusion, the final intervention proposed by the speaker is to increase judicial capacity in terms of court managers and court clerks. Court managers have to ensure that case management guidelines are implemented and cases are disposed of in a timely manner. The court clerk should be an adjutant to the judge who decides process, service and adjournment issues so that the judge can work freely and devote time to delivery of judgement.

Address by the Chair, Justice G. Raghuram, Director, National Judicial Academy

Justice Raghuram briefly put forth certain observations based on his long acquaintance with the justice delivery system. He first highlighted the significance of the judiciary especially in a democracy where it plays the critical role of delivering justice to the ordinary citizen when all else fails. In the absence of an effective and timely discharge of this duty, citizens lose faith in democratic systems. Secondly, he observed that there are generally two types of litigants - those that come to the court and those that are brought before the courts. The former generally comprise the predators who intend to exploit the system to delay or manipulate outcomes, while the latter are the victims in the system. The third observation of the speaker was that there is a near total loss of public faith in the primary adjudicatory processes or courts of first instance.

He was of the view that it is time for radical suggestions of reform as nuancing of the current system will be a futile exercise. He opined that the extant issues find their origin in the education system. The problems are exacerbated owing to the obsolescent methods of recruitment at all levels. Various factors act as disincentives for the best minds to opt for judicial careers including delays and uncertainty surrounding selection and appointments.

Justice G. Raghuram expressed his substantial concurrence with Shri Atul Kaushik on almost all issues. Drawing from his vast experience, Justice Raghuram made two comments on the discourse on judicial reforms. First, he stated that the approach of exterminating all existing

litigation as a means of tackling delays is incorrect as it would be at the cost of justice delivery. The standards of efficiency of justice delivery particularly in a democracy must be based on social expectation and demands of social equilibrium rather than pragmatic considerations like current docket load, fiscal constraints, infrastructural deficit, judicial vacancies, delay in recruitment and the like which are susceptible to political explanations. Delays in justice delivery adversely affect law and order, control of crime, global perception about business prospects, cross-border commerce, economic growth, public faith in rule of law and in branches of the government, and human rights, among others. Second, he cautioned that although market economies prioritise competence over character, the same cannot be extended to the justice delivery system. There is a need to address the declining standards of character in society in general which will inevitably affect the judiciary as well.

Justice Raghuram then went on to list several of the contributing factors for delays in justice delivery.

1. Skewed judge-population or judge-litigation ratio accompanied with a very high average vacancy in sanctioned strength.
2. Delay in filling up vacancies even in the sanctioned strength in recruitments and promotions.
3. Weak and obsolescent recruitment protocols and deficits in focused training, duration, periodicity, curricula and assessment.
4. Absence of litigation impact analyses and insufficient budgetary and infrastructure provisions while enacting new legislation, with the amendment to the Negotiable Instruments Act being a well-known example.
   Justice Raghuram stated that one tool that the courts can employ in such a situation is to strike down the Act as being manifestly arbitrary in the absence of a Grant to account for potential litigation.
5. Mechanical transfers and postings with no consideration of specialisation and expertise.

6. Lack of clinical assessment of officers during training that has a bearing on seniority or career prospects.

7. Poor quality of legal education.
8. Judicial training institutes in need of overhaul in terms of quality, faculty, infrastructure, and intensity of training.
9. Need for performance evaluation of judicial officers, to be linked with promotional prospects.
10. A rigorous selection and training process for faculty of judicial academies.
11. Interminable appellate and revision avenues. Enhancement of quality of justice delivery at the trial court level followed by legislative measures to reduce appeals and revisions is the solution for this issue.
12. Gram Nyayalayas have been unsuccessful. Such courts call for large funding, non-standard outcomes, and add to the appellate and revisional caseload. A preferable alternative would lie in adequately strengthening the existing system of courts as discussed.
13. Large proportion of government litigation, which amounted to about 46% as of June 2017.
14. Need to recognise justice delivery as a State obligated and provisioned service. A periodical and neutral audit of judicial output, both quantitative and qualitative, must be introduced.
15. Multitude of functions performed by judges. Non-judicial and administrative functions can be entrusted to specialized units of the judiciary to foster administrative professionalism and optimal utilisation of judicial time.
16. Lack of recognition of justice delivery as a service coupled with inefficient lawyers, indolent judges, unaudited and unreformed systems means that judicial adjudication, substantially funded by the State, is a generic load on State revenue.
17. No operative consequences for making a false statement in a court.
18. No costs associated with frivolous adjournments and pleas.
19. No consequences for shoddy or motivated investigation or failed prosecution. No mechanism in place for audit of the investigation report to be certified as triable.
20. Lack of separation of law and order and crime investigation branches of the police department.

21. Absence of professionalism, neutrality, general and trained manpower deficits, sparse forensic support and casual approaches to criminal investigation contribute to inefficient criminal administration.
22. Toxic and unprofessional media trials add to the problem of public faith deficit in the vitality of the criminal justice delivery system.
23. Delays are broadly attributable to court-side inefficiencies and counsel-side inefficiencies. The former include excessive listing of cases per day, absence of judge, lack of infrastructural support, and preoccupation of the judge with non-judicial functions.
    The latter include unjustified adjournments, failure to adhere to timelines, lack of domain knowledge, and exorbitant legal fees.

A concerted and synergetic effort to address the various causes of delays is essential. Both the Union and the state governments must recognise the centrality of speedy, efficient, and quality driven justice delivery to a robust democracy and implement suitable solutions for each cause of delay.

He opined that while a radical transformation is required, integration of technology including artificial intelligence will address the issue to a certain extent.

QUESTIONS AND COMMENTS

The first question was addressed to Justice G. Raghuram about clearing the current backlog of cases and preventing a similar situation from arising in the future. Justice Raghuram responded to the same by saying it is not a stagnant goal, rather a work in progress. He stated that a number of reforms are required to clear the backlog. It will be difficult to do so with the existing resources and unless the reason for burgeoning state litigation is addressed. The speaker stated that when he was working in the Tax Tribunals, 92% of state appeals failed and this has been consistent over 3 decades. He opined that judges must not be made to perform extraneous

departmental duties for the government. He concluded by saying that a comprehensive solution is required to tackle this problem, not a prophylactic solution.

The second question, addressed to Dr. Jayaprakash Narayan, was about ensuring new courts function efficiently, given that even existing courts are not able to deliver justice. To this, he responded by stating that we should aim for more accessible courts, simpler procedures, speedy disposal and in particular for criminal cases, better coordination between police, prosecution and courts on a sustained basis. Moreover, there must be a greater bond with the community so that the rate of perjury decreases.

The third question, directed to Justice R.C. Chavan, was about lack of trust in the subordinate judiciary due to multiple avenues to revisit decisions of the lower courts. The speaker gave a two pronged argument. First, he stated that there is a lack of trust due to such courts being under-equipped and the judicial officers being under-trained. Second, he stated that this applies also to higher judiciary. The speaker mentioned that the inefficiency is brought to light by the Supreme Court reversing High Court judgments. Therefore, the process of appeals cannot be done away with without a serious reform in the system. Dr. Jayaprakash Narayan added that in both criminal and civil cases, the rich and the powerful take advantage of the system. The perception is impunity can be bought and procedural law can skew to the advantage of the powerful. Justice G. Raghuram concurred, stating that the definition of a very important person in India is the number of laws he can defy with impunity.

The fourth question addressed to Shri Atul Kaushik was about the adoption of technology in courts on a sustained basis, not just during the pandemic. The speaker responded by stating that e-courts were deployed before pandemic, however, aspects such as video conferencing and evidence recording were deployed more successfully during the pandemic. He stated that the only time video conferencing becomes relevant is when the witness or whoever has to record evidence is not physically available due to not being in the country or due to a physical disability.

The fifth question, addressed to Justice G. Raghuram, was about revamping judicial training to improve the quality of judges. The speaker started by emphasising the need to revamp the protocols for recruitment of judges. He stated that we should have unadulterated and rigorous standards of high metrics when recruiting judges. He also mentioned that recruitment is a professional domain by itself and the judges alone should not be responsible for this. A question bank can also be created for the district judiciary and below and during the recruitment process, questions from this repository can be picked. Additionally, he stated that a standardised, national judicial service can be introduced, provided the concerns of independence, dilution of federal structure and language are solved. Shri Atul Kaushik added that the All-India Judicial Service (AIJS) is a good idea that must be looked at more deeply. On evaluation of judges, he stated that the International Framework of Court Excellence, started by the judiciaries of Singapore and Australia and which is now emulated by 38 countries, developed key parameters such as court leadership, strategic work management, court workforce, court user engagement etc., to assess court performance.

Dr. Jayaprakash Narayan added to the discussion by noting the recommendations of Justice M.N. Venkatachaliah, Justice J.S. Verma and Justice V.R. Krishna Iyer in creating a National Judicial Appointments Commission. He stated that the 99th Amendment to the Constitution, which was struck down by the Supreme Court, is broadly based on their recommendations. On the point of AIJS, the speaker stated that there is glamour and intense competition attached to the All India Services. He also opined that the UPSC is a credible, non-partisan institution doing a remarkable job in recruitment. Therefore, if a body similar to the UPSC conducts recruitment, in consultation with the Supreme Court, it will ensure fairness. He also stated that a judge should be allowed to serve in his/her community or the same area for a long-period of time. Moreover, due to the constitutional limitations, the officers may be required to serve on a 5-year probation in courts below the district level and on confirmation, may serve at the district level as per the constitutional requirements and move further up the ranks. Justice G. Raghuram shared that the time has come to conceptually recognise the judiciary as a super speciality branch of democratic governance and treat it as such, not only judges at the highest level but also lower court judges.

The sixth and penultimate question was on court administration and the requirement of court administrators in India. Justice G. Raghuram shared that in the US, even the roster is prepared by court managers keeping in mind the specialisation of judges. In India, the system is very classist, and irrespective of the level of knowledge, the senior judges are given more prestigious cases.

The final question was about government funding for improving judicial infrastructure. A Vidhi report stated that in addition to the states' contribution, around 8000 crore rupees was granted by the union government since 1993 to build courtrooms and residential complexes. Despite a significant budgetary allocation, India is devoid of courtrooms and other critical judicial infrastructure. To this, Shri Atul Kaushik responded by stating that the money being spent is not enough for two reasons. First, the decision to give money for infrastructure in courts is not made on the basis of indices like judge population ratio or requirement of courts. A decision is taken collectively in consultation with concerned high courts and the state governments on how many judges can be sanctioned for each district. Based on that matrix, the number of courts and complexes are decided. Some of the courts complexes need renovation and some require new complexes. Therefore, each year, high courts and state governments send their requests and money is released accordingly. The speaker opined that since the priority of the political leadership is usually education, healthcare etc., every penny invested for the judiciary is not being delivered. He concluded by stating that state governments do not refuse when high courts ask for money and the reason for delay may be the procedures put in place for verification. Justice G. Raghuram stated that the judiciary is not adequately trained in financial management and administrative protocols and insisted that this must change by recruiting financial experts.

Dr. Jayaprakash Narayan added to the discussion stating that among 49 large economies in the world whose GDP is greater than $200 billion, a study conducted by FDR India shows that on every indicator (immunisation, nutrition, average lifespan, sanitation, roads newly constructed etc.), India stands in the bottom five. Using this, the speaker drove home the point that there are no outcomes visible even in areas that are given priority by the government. Dr. Jayaprakash

Narayan also discussed the theory of state. He stated that the state's primary tasks are the following:

1. Public order, justice and rule of law
2. Basic infrastructure and public amenities
3. Quality Education
4. Quality Healthcare

He emphasised that if these four baskets are not taken care of, the State does not have moral legitimacy.

CONCLUSION:

To conclude, Justice G. Raghuram and Dr. Jayaprakash Narayan discussed how to engineer change. Dr. Jayaprakash Narayan stated that the first step is for the society to be ready to absorb the reforms. The second step is to recognise the need to coincide politicians' ambitions and the country's needs. The third and most important step is to ascertain the best force of circumstance that will usher in positive changes. He concluded by stating that we, collectively, have to seize the context and it is this context that will determine progress.

SESSION 6: STRENGTHENING THE ROLE OF CONSTITUTIONAL COURTS

28 FEBRUARY 2021 | 9AM-11AM

PANELISTS:

1. Shri V. Sudhish Pai, Advocate and Author
2. Shri Alok Prassana Kumar, Co-Founder, Vidhi Legal Policy, Karnataka
3. Ms. Cathy Catterson, Former Clerk of Court of Appeals, Ninth Circuit, USA

CHAIR: Shri Justice Madan B. Lokur, Former Judge, Supreme Court of India

ABSTRACT

This session was the sixth leg of the "tripod" of Police, Prosecution and Procedure. There was an agreement among the panelists that the Constitutional Courts needed to be strengthened and all of them recommended diverse ways to move forward in that direction. The problem of an overwhelming caseload was noted, and the panelists recommended solutions to expedite and effectively dispose-of cases. These courts form the core of the Indian Judicial System, and therefore, in order to strengthen the Indian Judiciary, the Constitutional Courts need to be strengthened first.

PRESENTATIONS BY THE PANELISTS

Shri Justice Madan B. Lokur, Former Judge, Supreme Court of India

Justice Lokur began his address by mentioning two aspects of justice delivery, one pertaining to the judicial element and the other being the administrative aspect i.e. the registry. In respect of the former, Justice Lokur made two recommendations - first, the Supreme Court should be in the nature of a federal court, dealing solely with cases that have an all India impact. It therefore follows that the apex court does not adjudicate on matters relating to the interpretation or application of laws enacted under List II of the Seventh Schedule of the Constitution which must be left to the High Courts of the respective states. Such a restriction in the jurisdiction is a matter of self-restraint on the part of the court itself. Second, referring to the filtering process of cases, Justice Lokur called for increased use of the constitutional provisions that provide for grant of a certificate for the purpose of an appeal to the Supreme Court in lieu of Article 136. These provisions have fallen into disuse in recent times with such a certificate being granted in only 4 or 5 cases in the past 25-30 years. The joint operation of the two recommendations will lead to a drastic reduction in the caseload of the Supreme Court.

Moving on to the administrative aspect, Justice Lokur highlighted the need to strengthen the Supreme Court registry. He shared that the Registrar of the Canadian Supreme Court, appointed by the Canadian Parliament, is not answerable to the Chief Justice of Canada but solely to the Canadian Parliament which strengthens the administration of the courts ensuring independence and professionalism. He recommended that India too must adopt a hybrid system wherein the registry is not answerable to the Chief Justice for the day-to-day functioning of the court.

With regard to the High Courts, Justice Lokur emphasised on the need to fill in the vacancies but at the same time opined that the Indian judicial system is stuck in a vicious cycle of excessive caseload, increased judicial strength, and rising vacancies. Therefore, a mission-mode approach wherein the vacancies are filled within a year or two, is the need of

the hour, accompanied with stability in appointment. Second, the High Courts of the states should be the equivalent to the

Supreme Court of the State and should have the final word on the interpretation of the law for the states. Thirdly, Justice Lokur stated that administration of High Courts must be strengthened. Finally, he called for a clean-up exercise to clear the enormous backlog of cases in the High Court dockets.

Shri V. Sudhish Pai, Advocate and Author

Shri Sudish Pai began by stating that the *"role of the constitutional courts is not so much dispute resolution as developing law and jurisprudence."* As judicial exegesis becomes inevitable in expounding the Constitution, judges must perform a balancing act between not being influenced by their own prejudices and principles on one hand, and ensuring that the Constitution remains responsive to changing times. He expressed concern that the preeminent position of the Supreme Court has been diluted over the years due to various reasons. He concurred with Justice Lokur's suggestion regarding strengthening the High Courts. Expansive exercise of jurisdiction under Article 136 by the Supreme Court has undermined the position of the High Courts in the states. He commented that the Supreme Court has transformed into a general court of appeal by self-enlargement of its jurisdiction, which is further exacerbated by it being designated the first appellate court under several laws. Left with hardly any scope for constitutional matters, even two-judge benches end up deciding constitutional matters. He also raised a question regarding the ideal number of judges that the Indian Supreme Court ought to have as a smaller strength would result in a more coherent institution and mentioned that Justice Subbarao had considered the ideal strength to be eleven judges.

He further agreed with Justice Lokur's opinion that the Supreme Court should be a federal court, with pronouncements mostly being limited to the laws affecting the entire country. The Court must exercise self-restraint in dealing with matters under Article 136. He further cautioned that the distinctive constitutional role envisaged for the Supreme Court and the High Courts must not be sidelined in the effort to clear the backlog. He recommended that

there should at least be 1-2 permanent constitutional benches in the Supreme Court to deal with serious constitutional cases

and such benches may be constituted on a rotational basis. He also mentioned specialization of judges and how knowledge in a particular subject could help in the speedy disposal of cases.

He expressed that the appointment of ad-hoc judges in the High Courts is a good suggestion. Such judges can solely concentrate on the judicial work, unburdened with administrative matters. He however, expressed reservations on the efficacy of restricting revisional jurisdiction. In conclusion, he pointed out that strengthening of the High Courts would lead to reduced burden on the Supreme Courts. At the same time, we must ensure that the best people man the positions in the superior courts which in itself is a great challenge.

Shri Alok Prassana Kumar, Co-Founder, Vidhi Legal Policy, Karnataka

Shri Alok Kumar started off by stating that constitutional courts are not merely a synonym for the Supreme court and High courts, but they also include other courts such as the magistrate courts and district courts. Emphasising the importance of magistrates, he stated that a magistrate is given few of the most important powers under the purview of our constitution. He took the example of the Disha Ravi case and stated that when a magistrate does not perform his duties properly, then it becomes a matter of concern and even an incident of injustice.

The speaker opined that the following are the major problems existing in the functioning of High courts:

1) Bureaucratic intransigence towards court orders, prompting the repeated filing of contempt petitions.

2) High courts are too concentrated in the major cities of a state rather than a state as a whole. Giving the example of the state of Karnataka, he said that 50% of the writ

petition cases come from the city of Bangalore, pointing towards some imbalance in the system. The speaker added that parts of Karnataka that need such a bench do not get one, hence

furthering the status of imbalance. The plight in Madhya Pradesh, Uttar Pradesh, Rajasthan and West Bengal are similar to Karnataka.

3) Criminal appeals are slowing down the High Court system because criminal cases are not disposed of as quickly as they should be.

4) Unnecessary filing of bail cases in high courts because sessions judges refuse to deal with it. He quoted Justice Atul Shridharan's (Judge, Madhya Pradesh High Court) words as follows: *"There is an immediate reaction of judges to deny bail as they don't want to take responsibility or the consequences of granting a bail and hence the easiest option is to deny bail".*

5) The High Court appoints judges from the bar rather than from the subordinate courts. The reason for this prejudice is because of the common stereotype that the judges from the subordinate courts are not competent enough to perform their duties.

Pointing out flaws in the Supreme Court, he opined that on an average, a judge spends three and a half years in the Supreme Court, which is too little time. Out of that, two years are spent as a puisne judge. Due to this, the potential of highly experienced judicial officials is wasted and they are unable to leave behind a legacy in their expertise.

Shri Alok Prassana suggested short term, medium term and long term suggestions which are as follows -

1. **Short term suggestions:**

- Prioritise about 3 lakh+ cases which are pending for more than 10 years. This can be done through setting up dedicated benches, clearing out the processes, getting lawyers to cooperate, getting registry to cooperate etc.

2. **Medium term suggestions:**

- The ratio of members of the Bar appointed as High Court judges relative to the subordinate court judges who are so appointed must be at least 50:50. It gives signal to judges in subordinate judiciary that if they perform well, they can be elevated to higher judiciary.
- Many of the judges who get elevated to the higher judiciary are writ practitioners and civil side practitioners. Since a lot of subordinate judges have in-depth knowledge of criminal cases, they should be given priority or be given promotions to practice as judges in the High Court.

3. **Long term suggestions:**

- To use artificial intelligence to deal with the volume of the cases that are in front of the court, which will in turn reduce the amount of manual labor and save valuable time of the judiciary.

Finally, the speaker concluded by suggesting that Supreme Court carries out 3 major functions which are as follows:

1) It's the apex criminal court.
2) It's the apex civil court.
3) It's the apex constitutional court.

He opined that one body does not need to do all these three functions. According to him, it is time that a separate institution is set up for all three functions, therefore lifting the burden off the supreme court. This disaggregation into three different entities will help in each developing their own jurisprudence and procedures. He emphasised that doing this would lead to each institution doing justice to the functions given to them under the constitution.

Ms. Cathy Catterson, Former Clerk of Court of Appeals, Ninth Circuit, USA

Ms. Cathy Catterson started off by suggesting a few efficient case management methods that are followed in the United States of America. She stated that the time of the judge is of utmost importance and hence all the necessary things needed by the judge to pronounce a judgment must be in front of them so the judge is able to dispose of cases in a speedy but not hasty manner. She further added that it is the duty of various establishments such as the registry, the clerk's office, supporting staff, etc. to make this possible.

The speaker mentioned that once the cases are filed in the court, it must be in the court's control, not in the control of lawyers or the parties. The court must be responsible for setting the rules, the timelines and deadlines to make sure that the case follows the rules and regulations of the court in a timely manner. Although this is not well received by the Bar, it helps the court function better and expedite the decision.

Ms. Cathy Catterson elaborated on the practices followed by the 9th circuit, which deals with 10,000-12,000 cases a year, to eliminate cases before they move to trial. When the appeal is filed, the Staff Attorneys go through the case immediately and their role is to figure out whether the court has the jurisdiction or not. Many of the cases are not under the jurisdiction of the 9th circuit and hence are dismissed at a very preliminary level without wasting the time of the court. Further, she stated that the role of mediators or mediation as a process is very necessary to dispose of cases, hence minimising the burden on the court. The 9th circuit has 10 mediators who work with the court directly. Parties fill out a brief questionnaire to see if the case is appropriate for mediation or settlement. Mediators resolve about 1000 cases a year.

The speaker moved on to explain the methods used to improve efficiency during the court process. Cases that are not resolved through the lack of jurisdiction or settlement move forward and the parties have fairly strict deadlines to file their briefs. There is also a limit on the number of words or pages for the written briefs. The office of Staff Attorneys then picks

up the case and their role is to figure out the issues that are being raised in the appeal, and group cases by issues as far as possible. Cases belonging to a particular group, for example prisoner civil rights cases,

are assigned to a panel. A couple of lead cases are first sent to the panel and the rest are held, until the panel decides the legal issue at hand. All the cases are loaded in a case management computer so they can be tracked and followed whenever necessary.

Staff Attorneys also weigh cases in terms of difficulty and how much time of the judge a particular case might take. The speaker further briefed about the weighting system that has been followed in the United States of America in which the cases are categorised a 1, 3, 5, 7 or 10 weight, wherein 1 being a case that takes the minimum amount of time and 10 taking a longer time of the judge to resolve the case. The 1 weight cases are shuttled off quickly without the entire appellate process, and are decided on the briefs by a standing panel of judges who are assigned on a monthly basis to deal with the simple matters. The other cases go through the traditional route of the oral argument panel.

Ms. Catterson emphasized the role of the staff as one of being professional with adequate experience and proper training. She suggested that paralegals should be appointed on a contractual basis instead of attorneys because they are efficient with administrative duties and the system is more economical.

PANEL DISCUSSION

The first question was posed by Justice Madan Lokur to Shri Sudhish Pai regarding tribunals, such as the Central Administrative Tribunal, which have made the Supreme Court the first appellate court, adding to their workload. Shri Sudhish Pai suggested that the High Courts must be made the court of first appeal in order to reduce the number of cases that go to the Supreme Court. Justice Madan Lokur commented that this would require the number of judges in the High Court to be increased. He added that when the appointment of ad hoc judges was considered by the Delhi High Court, there was tremendous resistance from the Bar.

Justice Lokur went on to comment on Shri Pai's suggestion of setting up permanent constitutional benches in the Supreme Court. He illustrated that the Chief Justice of India is wary

of setting up a bench of 5 judges to decide on a single matter due to the enormous caseload handled by the court. Shri Pai responded that the pendency is because of a large number of leaves being granted and petitions converting into appeals. He prescribed that filtration must occur at jurisdiction stage for admission under Article 136. Although restrictions cannot be imposed through legislation, the court can exercise better self-restraint. The mechanism of certificate of fitness being granted by the High Courts has fallen out of use and must be brought back into practice to curtail some of the caseload of the Supreme Court. Furthermore, he added that the process of arriving at a decision on constitutional matters could be better, with judges having adequate time to ruminate and discuss serious issues. Constitutional benches may be a solution to this.

Justice Lokur seeked clarification from Shri Kumar on having four or five High Court benches in a state, if that would create confusion and more conflicting interpretations of the same statutes. Shri Kumar responded that while he cannot dispute that there may be some contrary rulings, since there would be a common pool of judges with an experience of 10 years on average rotating between the different circuit benches, this would ensure a certain level of uniformity in judgements. Moreover, in exceptional cases the Chief Justice of the High Court may use his/her discretion to bring such cases to a single bench. This is a worthwhile experiment as it would address both access and improve the court's own functioning. Justice Lokur noted that while the High Court of Guwahati served the people of seven states, people from states like Mizoram and Arunachal Pradesh prefer to attend court in Guwahati in Assam rather than a division bench within their own state, despite senior judges being on rotation. He postulated that this may have been due to better quality of lawyers in Guwahati and cautioned that the preference of the litigants must be studied further.

Justice Lokur pointed out the dangers of specialization in response to Shri Sudhish Pai's proposal - there have been cases of Supreme Court judges with inherent biases towards one party, say for example, towards the government in matters of tax evasion, which upsets the system. He added that "specialization" is the basis for the creation of various tribunals such as the tax tribunals, the

experience with this hasn't been very successful. The speakers agreed that the idea must be thought through further. They noted that five tribunals have now been abolished and cases reverted to the High Court.

Justice Lokur inquired about the system of filtration of cases at the registry and the role of law clerks in the 9th circuit. Ms Cathy Catterson explained that the Clerk's Office consists of law clerks as well as 80-90 attorneys who work for the court, rather than a judge, and prepare the cases for the judges including classification, motions practice before the case is submitted to a panel of judges for decision. Attorneys generally have a tenure of 5-7 years and report to supervisory attorneys and the chief judge of the circuit. Some attorneys specialize in certain areas of law, such as immmigration, sentencing law, and so on. The speaker added that there is no specialization of judges due to the same reasons discussed by the panel. However, there is a 'issue identification' system wherein a panel (that gets the issue first) decides on the issue on a consistent basis. Justice Lokur seeked clarification that this is a part of the case management system to which Ms Catterson replied in the affirmative. Justice Lokur also added that with the help of a case management system, Judge Fogel of the 9th circuit managed to bring his docket caseload of 3000 cases to 300 cases in a span of 3 years. Further, he noted that the preparation of cases in India is handled by the registry, which is not composed of many lawyers, and adopting such a system of attorney's to assist the court might improve professionalism and efficiency.

Justice Lokur also commented on Shri Kumar's idea of multiple Supreme Courts, that Germany has a similar model. However, he pointed out the same challenges discussed in respect of specialization of judges make him apprehensive of this proposal as well. He also noted that utilization of Artificial Intelligence will prove dangerous if any bias is injected in

the algorithm. Shri Alok Kumar elaborated that the decision at the end of the day is with the judge and the role of AI is to merely assist the judge in putting together the facts of the case, evidence presented, and identify correlations and errors before hearing the arguments. This would save time for the judge as well as the lawyers. One way to prevent bias in the algorithm is to use a wide range of training data, without any bias in that data, such as all criminal judgments passed in the country.

QUESTIONS AND COMMENTS

A question from the participants was then taken up which inquired about the reasons behind heavy caseload on High Courts and why there's still no solution to it even after 70 years. Justice Madan Lokur replied that no effort had been made but it could be tackled if we made an effort, perhaps on a mission mode. A follow-up question asked whether this heavy caseload was due to structural problems rather than resources, to which Justice Lokur replied that outdated rules were a matter of concern and a solid effort should be made to streamline processes using case management.

The next question was directed to Shri Alok Prasanna asking the reason why criminal appeals take a long time to be disposed of. To this, the speaker replied that there are 3 major reasons as to why this situation prevails. One, these cases require specialised criminal lawyers who have the ability to read through indefinite case files, coalesce them into a coherent argument. Second, transmission of records from the trial courts to the High court takes up a lot of time and sometimes are sent incorrectly, further delaying the disposal of the case. Records are still sent manually while there is scope for digitization and efficiency. Third, competency of the judges to in depth deal with criminal appeals also matters; if a judge is incapable of reading evidence, pouring through documents, then it hampers the course of judgement. Judges experienced in criminal matters would work more efficiently. He added that although Allahabad High Court has a reputation for long standing criminal appeals, every High Court grapples with this challenge.

Third question asked Ms. Cathy Catterson how the circuit courts limit their jurisdiction, if there are any rules or conventions employed. Ms Catterson replied that appeals to the 9th

circuit court are by right, and the court does not select which cases to be taken up unlike the US Supreme Court. However, there are a lot of statutory provisions that set forth the jurisdiction. They must be final appealable orders that can be heard by the District Circuit. Further, case laws also help in determining whether an order is appealable or not, and what cases can be heard by the circuit

court. The role of staff attorney is to look into these laws and determine if the court has jurisdiction.

Next question was directed towards Shri V. Sudhish Pai which inquired the reason why the Supreme Court repeatedly rejected the recommendations for setting up permanent constitutional benches. Shri Pai replied that there are certain inhibitions that Chief Justices hold and they must be quashed in order to set up constitutional benches. He stated that the primary job of the superior court is to be a constitutional court not an SLP court, and the court must exercise self restraint in restricting their SLP jurisdiction to devote more time to constitutional matters. Shri Alok Prasanna Kumar added that the time taken up by the Supreme Court judges can be limited by enforcing strict timelines to the counsels for presenting their arguments. These timelines must be strictly adhered to so as to save the time of the court, as sensible time management is important. Shri Pai added that at the end of the hearing, the judges must have a meaningful conference before proceeding to judgement.

A question sought the opinion of the panel on the wide range of recommendations for restructuring the Supreme Court, from establishing permanent benches, disaggregating functions into different courts, or creating an intermediary court of appeals. Justice Madan Lokur opined that before looking for alternatives, we must strengthen the existing systems and utilize existing resources to their full capacity. In order to strengthen the judiciary, we must improve the system from within. This was agreed upon by Shri V. Sudhish Pai, that within the existing framework a lot of things could be achieved. A focused and dedicated effort is necessary to improve the system. Shri Alok Prasanna Kumar held a different point of view. He held that large scale institutional reform in our judiciary is needed, even above the

structural level. Although strengthening our judiciary is needed, we must acknowledge that they (judicial system) will also hit a limit of their efficiency. There is only so much they will be able to do even if we make them function as best as they possibly can. If we start the conversation for such institutional reform now, we will be in a position to implement those reforms in, say 20 years down the line, when they are needed. Ms Catterson concurred with Justice Lokur and Shri Pai.

Dr. Jayaprakash Narayan enquired the panel about ways of improving quality of judges. Justice Madan Prasad Lokur replied that it is difficult to comment on the merits or demerits of the Indian Judicial Service without the details of the proposal by the government. He pointed out that there are two problems in the appointment of judges –

1) Salary of judges is too low. Many lawyers earn more in a day than what a judge earns in a month, hence good lawyers are not interested in becoming judges.
2) Prestige of the office must be restored. The number of judges is too high, they are transferred easily and not trusted, diminishing the prestige of the office.

Only when the prestige is restored and the judges are paid well, people of competence, character and integrity will come forth. Shri V. Sudhish Pai stated that as judges come from the same society, and no office in a republic is as important as that of being a citizen; if citizens are good then subsequently the judges and lawyers will be good. Therefore, there must be sustained efforts for general rise in standards of society as a whole. Shri Alok Prasanna Kumar stated that quality travels downwards up and the only way to ensure that every judge is of quality is to ensure quality within the pool of eligible candidates. It is necessary to retain talented young professionals in the field long enough and constantly upskill them after entering the judiciary, and conduct assessments on quality, with prospects of a steady career.

The final question by Dr. Jayaprakash Narayan to Ms. Cathy Cartterson, pondered whether the predictability of various judgements of superior courts in the United States of America on grand matters of policy and constitutionality is a matter of concern. Ms Catterson replied that

the system works fairly well for the most part. Owing to the fact that the federal judges are appointed for life, it gives them the independence to not be worried about their next job. She added that the federal bench being smaller than the state court bench is very competitive and federal judges achieved a pay raise in the past few years, which originated from the same issue of lawyers being paid much more than the judges. The prestige of the federal judiciary is still remarkably high.

CONCLUSION

The Supreme Court and the High Courts have been overburdened with appellate cases, limiting the time and resources available to address the more pressing issues of constitutional interpretation. As a result, constitutional issues account for only a small portion of their annual caseload. Furthermore, constitutional benches are created on an ad-hoc basis. As a result, there are inconsistencies in the decisions of different benches.

The panelists suggested that the criteria for admitting cases to the Supreme Court and High Courts must be tightened, and the number of appeals must be reduced. To reach the sanctioned strength of judges, the vacant positions in these courts must be filled as soon as possible. To clear the backlog, Article 224A of the Constitution, which allows for the recruitment of retired High Court judges, should be used. Permanent constitutional benches must be established in the High Courts and the Supreme Court in order to cement their roles as the final authority on constitutional issues in India.

INDIAN DEMOCRACY AT WORK

FOUNDATION FOR DEMOCRATIC REFORMS

SESSION 7: JUDICIAL STANDARDS AND ACCOUNTABILITY

28TH FEBRUARY, 2021 | 12 PM - 2PM

PANELISTS:

1. Shri Justice Jasti Chelameswar, Former Judge, Supreme Court of India
2. Dr. G. Mohan Gopal, Former Director, National Judicial Academy
3. Shri Harish Narasappa, Co-founder, Daksh

CHAIR: - Shri Justice B.N Srikrishna, Former Judge, Supreme Court of India

ABSTRACT

This session witnessed a thought-provoking discussion on Judicial Standards and Accountability. With over 37 million cases pending in the District and Taluka Courts and 5.6 million cases pending in High Courts, it has come to be very crucial that the discussion around Judicial Standards and Accountability take the centre-stage. The discussions were centred not only around the mere lack of number of judges but also the quality of the judges. The session also set the stage for discussion on Article 312 and the call for instituting an All-India Judicial Services. The discussion also touched upon various complexities in the judicial system such as the language problem, the lack of periodic review of judges, insufficient knowledge of the Judges' when it comes to technical cases, the tedious process of justice delivery and so on. Suggestions of adopting the western systems of rigorous process in the legal and judicial system were also heard. The panel pointed out their discontent over the lapse of Judicial Standards and Accountability Bill, 2010. The panelists agreed that a democratic judiciary is required for a democratic country and preservation of public trust in the rule of law.

Opening Remarks By Justice B.N. Srikrishna (Former Judge, Supreme Court of India)

Justice B.N. Srikrishna opened the discussion by calling for an acceptance of issues as they are in the current state, and remarked that the Indian judiciary is limping. The Chair attributed this to two main reasons:

1. The existing vacancies at all levels in the judiciary are not being filled.

2. The projected number of personnel required is very high.

The Chair made the point that people of merit should be enrolled into the judicial services, right from the bottom level to the highest level, and a broad horizontal level test in order to find such meritorious people would be ideal. Having done this, ensuring accountability is also crucial. The Chair said that these issues are heavily interlocked, and a resolution made in one will affect the other and vice versa.

The Chair questioned if the All-India Judicial Services was to ever come into existence on lines with the Indian Civil Services, should it or will it be subject to executive authority? Pushing further, he asked if the judiciary is made answerable to the executive, then what will happen to the holy cow of judicial independence.

Justice Jasti Chelameshwar, Former Judge, Supreme Court of India

Justice Chelameshwar began his address by stating that there is a problem of efficiency and integrity in the judicial system. The speaker mentioned that the facts and figures have already been stated, and that he would not dwell on it further. The speaker mainly had two points pertaining to this discussion on Judicial Accountability. The first was in relation to the All-India Judicial Services. While he mentioned that it can be experimented, he doubted that it will ever

come into existence. The speaker noted that in almost every successive Chief Justice conference, according to the best of his knowledge, the All-India Judicial Services figures as an item on the agenda only to be formally read and ceremoniously rejected. He also stated that changes are ultimately brought by the lawmakers.

Second, Justice Chelameshwar spoke in detail of the recruitment process of District Judges, as stated in the Constitution. One of the requirements for seeking appointment as a District Judge is that the person should have been an advocate for seven years, prior to the cut off date. The speaker stated that a person who is enrolled as an advocate but did not fight a single case in the court in those seven years is also qualified for the role.

Justice Chelameshwar expressed that if seven years of not attending the court or arguing a single case was valued more than three or four years in the judicial services, then he could not comprehend the point of constituting an All-India Judicial Services.

Justice Chelmeswar opined that filling all the vacancies will not help and it is also not possible to meet those numbers. He took the case of the Allahabad High Court to support this argument, wherein the sanctioned number of judges was 160 as on the date he retired. However, the number of judges in the High Court never crossed 105. He said that only numbers will not help the situation and that quality and efficiency matters too. The speaker also advanced that the Judicial Standard and Accountability Bill, 2010 visualised all the problems that plague the judiciary and expressed his discontent about it lapsing.

Justice Chelameswar observed that there is a Supreme Court judgement that mentions that at the age of 50, 55 or 58, the judges at the lower courts have to be scrutinised and reviewed and if the situation calls for it, removed from the service. He questioned why this is not being applied to the higher courts and emphasised the need for periodic review of the judges in the higher

judiciary. The speaker concluded by stating that reform has to take place from the top, not from the bottom.

Dr. G. Mohan Gopal, Former Director, National Judicial Academy

Dr. G. Mohan Gopal remarked that it is the absence of measurable performance standards that distinguishes the Indian judiciary from the judiciaries of other large countries where there is an abundance of performance standards which are measurable and judges are held accountable independently.

The speaker mentioned that today we have an extensive body of global norms and practises on the issue of judicial standards and accountability. The question now, according to the speaker, is why the standards are not being imported and applied to India. He observed that the entire legal profession, including lawyers and the legal academia is insulating itself from accountability and performance standards by not adopting rigorous processes and standards.

The speaker referred to the Rankin Committee (1924) which was setup in response to the searing and scathing attack on the judiciary by Mahatma Gandhi in the 1922 sedition trial speech. Gandhi's essential point was that the judicial system and the railway system were failing because of political reasons and not due to techno-managerial failures. The State is a political institution, which means that a Judge occupies a political position and cannot be more independent and neutral than the State. The speaker further explained that the response to Mahatma Gandhi's critique by the British was the Rankin Committee. The Committee looked into the resource constraints of the judiciary and produced techno-managerial recommendations; the same things which are being pondered upon even 100 years later.

Dr. Gopal stated what we are dealing with is a social and political issue. He hypothesised that the real function of the legal and judicial system today is to counter the constitutional project of social change and social revolution. The courts have exercised their power to limit reservation without legal basis, and to limit the power of the Parliament to amend the Constitution, contrary

to the intention of the makers of the Constitution. Ambedkar said that the Parliament should have complete freedom to amend the Constitution, and this went uncontested at that time. Quoting Oliver Holmes, Dr. Mohan Gopal said, “If the people of the United States want to go to Hell, I will help them to do that. That’s my job as a judge, it’s not my job to second guess them.” The speaker asserted that freedom can only be balanced against freedom and nothing else, with reference to the United States, where the First Amendment states that Congress shall make no law to curb the freedom of speech and expression or the press. However, in the Indian context, we have expanded the grounds on which freedom can be constrained, and compromised equality.

Dr. Gopal postulated that the legal and judicial system is dominated by a very small social oligarchy, representing a very small proportion of the population. Article 38(1) of the Constitution mentions the 'project of the Constitution’ which is to create a new social order, in which justice - social, economic and political, shall inform all institutions of national life. He explained that the people of India resolved to reconstitute India from what existed pre 1950 into a sovereign, socialist, secular, democratic republic. This is a project to transfer power from an oligarchy to the common people, and democratise the country. The speaker drew that the country has refused to see the link between democratisation and efficiency of the judiciary.

In contrast, the speaker highlighted, the judiciary of the USA is highly democratic. It comprises an independent police, an independent prosecutor, a jury which decides on questions of fact and questions of law, and a judge, whose role is limited to laying down the principles of law and conducting the proceedings according to those principles. India has enormously concentrated power over framing charges, investigation, prosecution, finding facts, determining guilt and punishing in the judiciary, with minimal standards. The speaker commented that the way in which pre-sentencing hearing is handled in India is disgraceful, and there is very little mental application of mind to sentencing. He recalled Justice Krishna Iyer’s statement, “The mission of sentencing is humanising the crime-doer.” Once the conviction happens, the Judge must see the offender as a human being and deal with him in a rational manner. Democratize the project from punishing the crime-doer to humanizing him. Democratisation is very crucial, it is a goal not a

process, wherein the power will be put in the hands of the common people, including that of the legal and judicial system. Dr. Gopal asserted that we cannot have a democratic country without a democratic judiciary. Standards and accountability flow from larger goals and vision, such as that of democratizing our society.

With his call for the democratisation of the society and judiciary, Dr. Gopal put forward an example of Docket Exclusion. In Bihar and Jharkhand, 3 cases are filed per thousand population, whereas in the United States 330 cases are filed per thousand population; 2000 in Europe, 100 in Singapore, about 45-50 cases per thousand population in Kerala; and in India as a whole, it's about 15-20 new cases per thousand population. This not because of less crime or violation of rights in Bihar, Jharkhand but because their docket is excluded. The speaker ascertained that the country needs more cases in order to protect all of its people equally.

Dr. Gopal further suggested that one should look at is not the judge-population ratio, rather than the case-judge ratio. The judge-population has distorted the allocation of judges. For example, Kerala's population is half the population of states like Karnataka and Tamil Nadu and consequently, half the number of judges. However, the case filing rate in Kerala is as high as that of the other two states. The speaker stated that the NCMS (National Court Management Systems) has evolved a scientific approach to calculate the number of judges required by a court but it hasn't been implemented.

The speaker concluded by restating his hypothesis that in order to improve the performance of the judicial system, we must understand the social and political context of the judicial standards and accountability. We must understand that the judiciary is a part of the State, which is a political institution, and the right political goals such as those defined in Part 3 and 4 of the Constitution must be set to improve judicial standards and accountability.

Shri Harish Narasappa, Co-Founder, Daksh

Shri Harish Narasappa began by expressing his concurrence with Dr. Mohan Gopal that the Judge-Population ratio is not a relevant metric to determine the number of judges required, which was rejected by the National Court Management Systems Committee (NCMS) as well. Instead it is the judge-case ratio that is relevant for such a purpose.

The speaker then spoke about efficiency in the judicial system, stating that currently the courts seem to function without any sense of time. Not merely the litigant's time or the lawyer's time but also judicial time. He was of the view that accountability is incompatible with the current system where a judge being an independent statutory or constitutional authority, is accountable only for the substantive aspect of his functions; in other words, his/ her adjudicatory functions. The larger problem according to the speaker is that nobody has a sense of ownership for the system as a whole resulting in lack of accountability.

Shri Narasappa noted that contrary to popular perception, the ownership for the working of the judicial system lies with the Chief Justices of the High Courts and not the Chief Justice of India. The Office of the Chief Justice of a High Court is, unfortunately, a very transitory office. The High Court Chief Justices hardly get the time to comprehend the needs of the particular state as they hail from a different state and their tenure is generally of one year. Hesitation to take actions, lest it endangers the prospects of being elevated to the apex court, is not uncommon. Therefore, there is no sense of ownership for the institution or the goals of the institution. In the absence of such a sense of ownership, accountability cannot be developed within the judicial system.

The speaker then addressed the argument of judicial independence. He concurred with Justice Srikrishna that it has now become a 'holy cow.' While its necessity cannot be disputed, the contours of judicial independence must be clearly understood. It ceases to apply in areas where the judges have no special expertise such as administrative matters. The speaker noted that even the British legal system had created a separate institution to deal with the administrative side of

the judiciary. He expressed concern that new ideas of administration are not being encouraged. Unless innovation is brought about on the administrative side that adequately addresses the several factors that prevent judges at various levels from taking ownership for the performance of the judicial system, standards to evaluate the performance of the judges and accountability cannot be developed.

The speaker further highlighted that the focus of judicial accountability must primarily be on the accountability that is assured to the litigant or the ordinary citizen rather than the misbehaviour of a few judges of the constitutional courts. While the latter must not be dismissed, the former is a much larger problem. In light of the inordinate delay in adjudication, the accountability of the judiciary towards the litigant is absolutely zero. Shri Narasappa concluded by stating that judges jump in very quickly to protect their own, but are not doing enough to protect the citizens.

PANEL DISCUSSION

Justice B.N. Srikrishna stated that the All-India Judicial Services is probably the most hated reform being discussed in the country, while concurring with the opinion of Justice Chelameshwar that the introduction of such a service may not be feasible. Referring to the federal structure, the speaker stated that each state having to administer justice in its own language has only added to the problems. This, in his opinion, makes it difficult for many judges who are posted in another state to write a judgement in that particular state's language. The counter argument to this is that IAS officials also write file notes in other languages when posted to other states. The Chair strongly asserted that writing a judgement is different from writing a file note and that one cannot write a judgement in the manner a file note is written.

He also opined that any man who comes as Chief Justice will take some time to imbibe the local culture, language, local thinking and local measures. He cited the various terms used in land measurements in states as an example.

The Chair tried to draw a comparison between a bureaucratic office and a private office, and mentioned how in a private setting the employer would set deadlines for employees which if not met, would result in their sacking. On the contrary, if they finish work efficiently, they will be offered bonuses. Whereas, in a government office, just marking their presence for 30 days in office would fetch them their salary. The speaker further went on to ask who the judges are accountable to if they leave the pending judgements in the courts and move around from court to court like "fluttering butterflies." He proposed that there should be an institution that the judge should be accountable to. Citing an example from England, all the prosecution officers are responsible to answer to the Director of Prosecution. Even in Germany, France and other European countries, an officer is deliberately assigned to look over such issues. In line with this, the Chair questioned why there cannot be a judge or a collegium of judges monitoring all the matters in the higher courts. This way, judicial accountability will not be compromised, since standards will be maintained and governed by the judge's brethren. The Chair also opined that if a judge is found to be at fault, then he/she should unconditionally quit. He suggested that this should be implemented through public opinion.

The Chair expressed his view that as a judge, he would not like to answer to a bureaucrat but to the public. He also agreed with the other panelists that the judge to population ratio is not relevant. More than the numbers, the speaker felt that the issue of personnel management is important, and seems to be neglected in courts. He expressed that there should be a qualified person in the required field to manage personnel.

Dr. Jayaprakash Narayan joined the discussion and elaborated that the larger idea behind the advocacy for the IJS is to attract the best talent in the country to the judiciary. Secondly, he stated that the extant distinction between the insider and outsider must be done away with even in the current All India Services. Thirdly, he clarified that the judges recruited under the IJS shall remain accountable to the High Court vide the operation of Article 235.

In response to the Chair's request for a comment, Justice Jasti Chelameswar accentuated the importance of transparency as an essential element for fixing accountability. Citing the example

of the use of local language in certain High Courts in the country and the inconsistent stand of the Supreme Court regarding the same, Justice Chelameswar highlighted that ad hoc decision making and the underlying lack of transparency are major problems. Shri Harish Narasappa noted that the judicial process that takes place in an open court is the most transparent out of the three organs of the State. However, such transparency is lost once the judge goes to his/ her chamber, especially on the administrative side when it comes to Chief justice being the master of roster. Shri Narasappa further observed that Constitutional Courts guide other branches of the government but they refrain from laying down administrative guidelines for themselves.

The Chair then commented that in addition to the administrative power of the Chief Justice, the other important consideration is appointment of judges. On that front, Dr. Narayan agreed that the National Judicial Appointments Commission is a democratic necessity but it is not the time to push for the same. He, therefore, emphasised on enacting a law to ensure judicial standards and accountability that operate after the judges are appointed. Shri Narsappa, however, observed that it is the judicial and legal fraternity that must take the lead for setting standards as well as accountability mechanisms since a parliamentary enactment to that effect is unlikely as it does not seem to be in the interest of the executive.

Shri Pradeep S. Mehta joined the discussion to pose a question on how to ensure accountability in the decisions of the lower judiciary citing the example of several instances where bail has not been granted to detenues. He further proposed that a possible solution could be the High Court taking up a few such cases and making an example out of them for the subordinate judiciary. The Chair responded that penalising a judge for a wrong decision is not possible in light of the Judges (Protection) Act. Moreover, the purpose of having a system of appeals is to provide for such aberrations.

Dr. G. Mohan Gopal then clarified that the administrative power structure of the High Courts is vested in the full court, whereas a similar provision for the Supreme Court does not exist. Justice Chelameshwar added that the reason for the same is that the Constitution, unlike in the case of

High Courts, did not vest any power of superintendence in the Supreme Court. Dr. Gopal then highlighted that there is a Registrar (Judicial) in every High Court who is responsible for looking into complaints against judicial officers. He stated that the District Judiciary judges are in reality subject to stringent systems of accountability. He opined that delays in trial proceedings are often due to the strategy of the litigants for which the judges cannot be blamed.

Drawing from his experience across the country, Dr. Gopal observed that the Courts are a mirror of society and they cannot be better than the society that they serve. He contrasted the state of trial court proceedings in Kerala and Maharashtra with that of states like Madhya Pradesh. He opined that a few legislations cannot result in judicial reform. It is the level of democratisation of the society that determines the culture and by extension, the court system. Judicial accountability, standards, timeliness and the like are all facets of a democratic society.

Dr. Narayan then sought clarification from Dr. G. Mohan Gopal as to the means of reining in the excesses of democratisation that can lead to abuse of power while simultaneously protecting democratic ideals. Responding to Dr. Narayan's concerns about majoritarianism, Dr. Gopal alluded to the principles of jus cogens or peremptory norms under international law. He was of the view that since no State can act in violation of such norms they act as a check on demagogic tendencies. He said that institutionalization of governance, including the judiciary, is necessary. Quoting Douglass North who defines institutions as 'rules and the way they are enforced', he elaborated that the arbitrariness in exercise of power can be removed when government functioning is circumspect by democratic norms. He emphasised that the focus must be on making courts a catalyst of democratisation, and not a system that functions in a non-democratic manner and blocks democratisation due to excessive concentration of

power and arbitrariness. We must be governed by fidelity to institutions and to reason, which in turn facilitates accountability.

QUESTIONS AND COMMENTS

The first question was regarding the means of improving the quality and integrity of the subordinate judiciary, if not for the All India Judicial Services (AIJS). Justice Chelameshwar responded that there are two elements to ensuring efficiency and integrity - one, the recruitment process, and two, the periodic audit of judges. In respect of the latter, he put forth the idea of entrusting the assessment to a neutral third party. Dr. Gopal commented that an AIJS is counter-democratic. Noting that none of the OECD countries have an equivalent of the AIJS, he stated that it is unsuitable for India which is of a massive size. Additionally, 87% of the judges in the USA are elected. He stated that AIJS will not result in an efficient and democratic system, and we need to move towards greater localisation in the judiciary, including the use of local language in courts in consonance with federal values. Dr. Jayaprakash Narayan responded that the focus should be on creating mechanisms to attract the finest minds to the judiciary. He suggested that the highly successful recruitment practices of the UPSC can be suitably adopted. In response, Dr. Gopal commented that the recruitment process of the UPSC is weak and in comparison, the judicial inquiry committee procedure is better. However, there is a lack of political will to constitute judicial inquiry committees. He suggested that we must put pressure on the political class to hold the judiciary accountable. He noted that the recently developed in-house mechanism by the Supreme Court is a step in the right direction though not a perfect one. The Chair, however, pointed out that in case of the impeachment process of Justice Ramaswamy, the political class used the power for the contrary purpose.

Shri Narasappa emphasized that accountability is a nuanced topic and impeachment cannot be the only means of enforcing it. He illustrated the same with an example of the public

admission of a former Chief Justice of the Karnataka High Court of being offered a bribe by a party. The focus should be on bringing about change incrementally within the existing system. Dr. Gopal concurred with Shri Narasappa that there is no ownership of the problem. However, he pointed out that impeachment is the only means of enforcing accountability in cases of judicial misconduct across the world. He noted that imposition of any soft mechanisms for accountability

runs the risk of impeding the independence of the judge. Focus must be on the quality of disposition and not simply on disposal.

The next question was about structuring and laying down criteria of evaluation for periodic audits. Dr. Gopal stated that it is not the individual judge but the court as an institution that must be evaluated. Besides the presiding officer, a court has multiple duty-holders such as the Bar, the ministerial staff, and the departments of forensics, jails and investigation whose performance must also be evaluated in the process. The exact cause of the problem can be identified and then rectified based on such multi-faceted evaluations. He elaborated that the independence of judges is paramount and must only be subject to the impeachment process at the highest level. He proposed that judicial promotions must be done away with and various judicial positions must be looked at as specialisations. He further noted the progress made by the Indian judiciary wherein judicial academies have become an integral part of the system, and formulation of performance standards by the NCMS which are being referred to by several High Courts. He opined that the judiciary is moving in the right direction in respect of institutionalising accountability mechanisms.

CONCLUSION

Before drawing the curtain on the discussions, Dr. Jayaprakash Narayan expressed heartfelt gratitude towards all the panelists. He averred on the need to make conscious efforts to build institutional mechanisms instead of waiting for an automatic democratisation of the society. He called for an institution building that does not cause damage to the existing system. He

ended on a positive note, wherein he stated that the legal community, legislature and all the stakeholders can push for the changes together. Lastly, he deliberated upon the fact that problems should be seen in perspective and practical solutions should be brought to the fore for the same where esteemed panelists will guide us towards such a goal.

INDIAN DEMOCRACY AT WORK

FOUNDATION FOR DEMOCRATIC REFORMS

RULE OF LAW AND ECONOMIC GROWTH

26 FEBRUARY 2021 | 5:30 PM-7:30 PM

SPEAKERS:

1. Shri Montek Singh Ahluwalia, Former Deputy Chairman, Planning Commission of India
2. Dr. Arvind Virmani, Chairman, Foundation for Economic Growth and Welfare
3. Shri Pradeep S Mehta, Founder Secretary General, Consumer Unit and Trust Society

CHAIR: Shri R. N. Bhaskar, Senior Growth Journalist

ABSTRACT:

On the seventh day of the Indian democracy at work conference, esteemed panelists held a discussion which primarily highlighted the importance of a robust rule of law for economic growth of the country. In a rapidly emerging economy like India, fair and efficient settlements of disputes is critical for building mutual trust especially because lack of confidence restricts investments which ultimately jeopardises India's economic growth. This session called attention to the fact that Rule of Law and economic growth are strongly intertwined and mutually reinforcing. The session mentioned various elements which help to strengthen the judiciary such as protection of individual property rights, fair and equitable contract enforcement, enforcement of just labour laws and more. The speakers pointed out the need for equitable access of opportunity to all sections of the society so that an enabling environment for business and commerce can be created. The conversation on Rule of law and Economic growth raised the need for immediate attention to enhance the 'ease of doing business' by adjusting judicial requirements.

PRESENTATIONS BY THE PANELISTS

Shri R. N. Bhaskar, Senior Growth Journalist

Shri R.N. Bhaskar, as the chair of the session, commenced by stressing the importance of the subject at hand. He stated that without law one cannot have an organised society, or trade and business or economic growth. He lamented that although the judiciary is the cornerstone of any society, Indian judicial system is currently bogged down by about 25-40 percent of vacancy at every level of decision making in law enforcement. He noted that there is an element of design to this shortcoming since it is not an isolated occurrence but a recurring issue. When functionaries operate at such low strength, things inevitably slow down. Flagging India's low judge-to-population ratio at sanctioned strength, he opined that the functioning of the judiciary at a fraction of its strength is a major chokepoint.

Shri Bhaskar then moved on to narrate a story from which he began his pursuit of judiciary and law and order, one of the lessons that encouraged him to delve deeper into law, judiciary and economics together was that "Evidence cannot live beyond a fortnight". He asserted that it was interesting to him that the first lawyers who were appointed in Rome ensured speedy adjudication and dispensation of justice. The next anecdote that he shared was when he met a German documentary maker who told Shri Bhaskar that India had too much poverty, too many people and too little education and thus it was sitting on explosive material and for this we needed strong institutions or else there would be organised crime. Shri Bhaskar said that if we look at the last 20 years, organised crime is what India had allowed to take place. He then concluded reemphasizing on the relationship between growth of nations, economics, law and rule of law and invited the panelists one by one to share their views.

Shri Montek Singh Ahluwalia, Former Deputy Chairman, Planning Commission of India

Shri Ahluwalia began his address by noting that the deficiencies in the legal system on the economic side are effectively preventing reforms from the government and that no economic growth can take place without the preservation of life and liberty by the law. In smaller societies, transactions may happen based on social trust but as an economy becomes more sophisticated, this trust weakens. While accepting the fact Indians are proud of the independence of the judicial system, it is also highly dysfunctional and arbitrary in nature, which is deterring foreign investments into the country.

Shri Ahluwalia shared an anecdote which involved his lawyer friend. The lawyer friend said that the judicial system is often criticized but it is important to note that the courts merely interpret the law. If the law has been drafted badly, then the judiciary does not deserve to be the sole system to be blamed. If a law is bad, it must be replaced with a better one.

He noted that the remedy to the problems lies in several different areas. Firstly, the capacity of the judicial system is weak and the judiciary is particularly understaffed, as also noted by Shri Bhaskar. It is furthermore important to attract the best talent to the judgeship. Shri Ahluwalia stated that it was a simple economic problem. The best lawyers join corporates because they are remunerated well while the only incentive to join the bench is the prestige that comes along with it; therefore, better incentives need to be provided. Additionally, he questioned why the retirement age of judges is low while in the USA they can serve until the end of their lifetime. Every government is and has been conscious about these but they have done nothing, and one possible reason that he stated was that nobody in the government knows who should bring reforms for the judiciary. The assumption is that the reform would have to come from within the judiciary.

Shri Ahluwalia also questioned the judiciary's own interpretation of its powers. While the legislature may pass laws and bring policies that are bad, these need to be challenged by civil

society and be addressed in the legislature. With the advent of PILs (Public Interest Litigation), these are now challenged in courts, It is not the role of the judiciary to determine whether or not a policy/law is good, but whether it is constitutional. Shri Ahluwalia provided the example of the Telecom scam and the 2G scam where the judiciary overturned over a 100 executive decisions as "unfair" and inconsistent with the "natural law". The investors may have gotten licenses in good faith, but when the court decision led to their cancellation, there was no recourse for the investors. Shri Ahluwalia further pointed out that investors would not want to invest in a country where they are subjected to such high uncertainty and judicial resolution can take decades.

Dr. Arvind Virmani, Chairman, Foundation for Economic Growth and Welfare

Dr. Arvind Virmani began his address by emphasising how it is important to understand the relation between economics and law, for the general public. He started with explaining how Douglas North, who won an economics Nobel prize for his work on institutions, defined institutions as "the formal and informal laws and rules of the society." This according to Dr. Virmani was a very interesting formulation as people tend to think of institutions as a physical organisation rather than in terms of laws and rules. In his opinion, this was particularly important to understand as laws and rules are fundamental to competitive markets. He then gave two examples to elaborate on his argument, first was of the guild system in the Medieval times which was a way to trade across geographies, one had to trade among people who were the part of the guild and thus there was a barrier. Dr. Virmani said that this was essentially an oligopoly where one couldn't have competitive markets and there was a difficulty to trade. Therefore, the fundamental aspect of modern economy came in by the existence of formal contract laws. Second example he gave was of joint stock companies, he stated that earlier one could only depend on their family to raise capital, the fundamental changes that came about were the laws

that started the joint stock companies. The law then protected people and the company could raise money through various sources. Another point that Dr. Virmani brought up was regarding regulations, for which he explained as to how law has to mediate between legal and illegal activities and the dichotomy between the two. The two grey areas dealt in by regulations are - one, the traditional area which has to do with positive and negative externalities. The second is modern regulation that has to deal with asymmetric information and moral hazard. Emphasising on the grey areas, Dr. Virmani mentioned that a regulator is particularly needed in three sectors, namely, the financial sector, education and health. He also added how social media today has two aspects that are network externality and information control, so need of the hour is sophisticated regulators who know how to keep actions in check.

Shri Pradeep S Mehta, Founder Secretary General, Consumer Unit and Trust Society

Shri Pradeep Mehta began by describing the objective of CUTS as an organization that looks not at how decisions have been arrived at by the judiciary in some cases but what would have been the best alternative that would not inflict damage onto the economy. Taking the example of the cases noted by Shri Ahluwalia, Shri Mehta noted that they had spillover effects on the economy and on international relations.

Shri Mehta differed with the main diagnosis of the judicial system as being understaffed, but in his opinion, the biggest problems are the high amount of adjournment of cases and that there was no proper case-management rule. He also pointed out that Indian courts follow the archaic system of holidays like winter holidays which are not followed even in the UK.

Responding to the point regarding the quality of judges raised by Shri Ahluwalia, Shri Mehta quoted Late Shri Arun Jaitley’s statement in the Parliament that with liberalization, good lawyers are attracted by the high earnings from working for the corporate sector and have little incentive

to be a part of the 'bench'. He further noted that there is quite some friction between the government and the judiciary. One instance is where the Supreme Court struck down the National Judicial Appointment Commission Act which he opined was good and would have brought more transparency into the system of appointment of Judiciary than the present collegium system. On Dr. Virmani's point about institutions, Shri Mehta shared that even Chanakya had commented on the Guild issue saying that people of the same trade should not be travelling together. He referred to the chapter authored by Madhav Khosla and Anath Padmanabhan on "The Supreme Court and India's Judicial System" in the book "Rethinking Public Institutions in India". With regard to the judicial system, he said that the infrastructure needs to be improved and better technology needs to be adopted, which the recent pandemic has led to, with hearing cases online.

Shri Mehta pointed out that in terms of Contract Enforcement on the Ease of Doing Business framework of the World Bank, India performs very badly. He noted that the Government or the executive do not have any real powers to change this. Government is only 'nudging' the judges, which works only upto a certain extent.

To address the problem of delays, the Government of India amended the Specific Relief Act in order to allow setting up of expert committees in the event that the judges aren't able to arrive at a decision. There is a provision in the civil procedure court as well but it has not been looked at.

He concluded by saying that the judges should be conscious about the economic implications of their judgements and not be oblivious to them.

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

Referring to the report by CUTS on the economic impact of the Supreme Court's decision on liquor and the argument made therein that the Supreme Court should have consulted the expert committee, Dr. Jayaprakash Narayan asserted that the judiciary has no business deciding on

policies. Saying that the judiciary's technical expertise would suffice for making decisions would be a tragic thing for both democracy and the economy. On the 2G Spectrum case and the Coal scam that was referred to by Shri Ahluwalia, Dr. Narayan opined that the two cases are fundamentally different. While the 2G Spectrum case involved arbitrary and illegitimate exercise of power, in the coal case, there were serious possible consequences such as bank defaults. Referring to the 99th amendment issue raised by Shri Mehta, Dr. Narayan said that he had worked extensively on the National Judicial Appointment Commission with Justice Venkatachaliah, Justice JS Verma and Justice Krishna Iyer but said that they would have to live with the court's judgement for at least another decade. This was because the public opinion is that the judiciary is wonderful, politicians are bad and the bureaucrats are worse.

PANEL DISCUSSION AND COMMENTS

The panel discussion started with Shri Ahluwalia responding to Dr. Narayan's agreement with him on the role of judiciary being limited to the interpretation of the law and pronounce decisions based on constitutionality. He said that the term constitutionality was very broad. The courts also make decisions based on "fairness" and the natural law. The question, he said, was how to make the courts' decision making process faster and less disruptive.

Taking forward the panel discussion, Shri Bhaskar raised the question as to why our country was facing such a situation? He agreed with the argument that the number of judges is low and speedy judgement is not being dispensed, however, he wanted the panelists to analyse why this happens and a solution for this. He then added a hypothetical anecdote as to if you were staying in the slum and your daughter was teased by some people and you go tell them that this is not the right thing to do so they laugh at you, what would you do, would you go to the police or the local messiah of the area? It is in that decision, in his opinion, you realise that your answers for constitutionality come up. According to him, 90 percent of chances are that the people of the slum will go to the local messiah, as he dispenses justice immediately. He opined that in this case the merit of police or illegality becomes irrelevant because the more the messiah protects them

the more obliged they are to him and thus, one votes for the same person despite the number of cases against him. The only way to prevent this is to move the police and judiciary faster. According to him, India has created small protection pockets for policemen, bureaucrats and for judiciary and most importantly the politicians, as a result of which the system had become dysfunctional, the legal became unimportant and illegal became relevant. "One cannot drive out criminalisation from politics if he/she is asked to vote for his/her protector and the problem with the judiciary begins here."

Responding to the issue raised by Shri Bhaskar, Dr. Virmani said that everyone agrees that one of the basic roles is constitutionality of laws and rules made by the system but in his view there are two others, when lawmakers are corrupt it is the role of judiciary to intervene but only for corruption not for making economic and social decisions in our country and second is the reform of the criminal justice system. He raised the question as to "why is it that our courts are more interested in reforming the economic reforms than reforming the criminal justice system at whose head they sit?" He opined that if institutions don't focus on the system it will always be a "free for all" kind of situation. One has to go to the root of it and reform the rules and procedure.

On Dr. Narayan's comment about the CUTS report's argument, Shri Mehta clarified that the report was referring to the expert committee that was already put in place but the judiciary did not even consider it. He further said that you cannot stop the drunken driving problem ex-ante and enforceability was the problem, since the drivers could use other intoxicants too. He said that most disputes are ubiquitously settled by the strongman in the community and even the police sometimes act as arbitrators and adjudicators. Shri Mehta then briefly commented on the examples cited by fellow panelists during the course of the session. He mentioned that in the case of drunken driving, Article 21 of preservation of life and liberty was fundamental to the court's decision. When it came to the 2G scam, the remedy, in his opinion, was to impose harsher penalties, as was done in the Sahara case against Subrata Roy.

Another pressing issue raised by the Chair was related to the adjudication and dispute resolution mechanism for foreign investors. On the comment by Shri Bhaskar on the cancellation of

Bilateral Investment Treaties (BIT) by India, Shri Ahluwalia said that the case for the rule of law should not be based on foreign investment, but equally so for domestic investors. Foregn investors have extra protection through things such as the BITs, which the domestic investors lack. If the government says that whatever happens, it will not accept a ruling against it, then that gives a very bad impression to both domestic and foreign investors. Shri Mehta added to the discussion that the first dispute vis-a-vis BITs was raised by Australia on the Whitefield case. The 2012 decision by the Supreme Court led to the churning of the government. He said that the existing BITs such as the Netherlands and Singapore ones are still valid since they are non-cancellable. He said that India can attract investment without BITs since we have a large demand market. The Specific Relief Act was amended only to tackle the issue we are facing with respect to the Doing Business ranking. Article 142(1) allows courts to set up special benches. Dr. Virmani added another dimension to the argument and mentioned that many of the disputes arise because our laws are too exhaustive and many disputes can be solved if areas of law can be rationalised and simplified.

On Dr. Virmani's comments about technical redorsm, Shri Ahluwalia said, especially in the case of tax reforms, the reports made in consultation with experts need to be publicized, the process must be made more transparent and that the people need to be made involved in the process. He said that any decision would be controversial but dialogue with the public is always good. He welcomed the faceless assessment system, but he said that a lot more is needed when it comes to tax reform (indirect, direct and customs) - both in case of tax rates and administration. He gave the example of the UK where he said that tax rate does not emerge from the revenue department of the authority but from the administration. He said that secrecy is the worst thing in a country and that transparency and 'sunlight' and hearing comments is necessary. On the GST issue, Shri Ahluwalia said that sometimes the government has to make certain compromises to push through some things but once the law has been passed, the government can make attempts to make the other things right too. Dr. Narayan agreed with Shri Ahluwalia about the need for publicization of reports and need for discussion. He said that public involvement and dialogue are very

important. The recent farm laws is a classic example, where due to the absence of prior discussion, there are now issues.

Replying to an audience question on ensuring justice in rural areas, Shri Mehta said that the government has installed Lok Adalats and has made provisions for Gram Panchayat Nyayalays. The need of the hour is to make these courts functional so that petty disputes including land titles could be resolved quickly. Shri Ahluwalia cautioned that here we must not idealize the Panchayat System for decision making for "justice" since the panchayat system is also very political and caste-issues are quite prevalent. Dr. Narayan endorsed Shri Ahluwalia's point about local courts in rural areas. He said independence is integral to the judicial system. He spoke about the 2009 law that provided for courts to be set up in rural areas, but of the 5-6000 that should have been set up, only 350 have been notified and only 221 are operating. He gave the example of the justice system in Britain where the capacity is quite high and there are small claims courts to fast-track justice. They handle 80-85% cases, and quite fast. He said that the rule is available to do this in India, and it needs to be expanded to urban areas. The only laws that he said are working are ones where markets and thus stakeholders are involved.

Shri Bhaskar later raised three pertinent challenges related to poor justice delivery and mafia taking over to keep the businesses running. Those are: 1) The quality of judges being poor. 2) Corruption because of pockets of protection 3) Money being taken and work not being done. Dr. Virmani drawing from his experience in economic policy reform said that we need to chart clear, consistent and rational goals in the area of legal reform. Shri Mehta added to the discussion citing GST as an example which was drafted through a careful and consultative process. But there are large problems with implementation and also there's the issue of multiple slabs and the arbitrariness. With regard to the Motor Vehicles Act again he pointed out that it was brought out through a consultative process with the states, and it is an important subject since India loses 3% of GDP to road accidents. With regard to the Farm Laws he said that the government is missing the psychology behind the protests, where the farmers are concerned about "corporatization".

Dr. Virmani clarified that we need to understand GST in two parts, one was the constitutional amendment which according to him was revolutionary. However, he said that the problem was that by combining 17 laws into one law and GST Council that was set up for arbitrating the problems, the issues of legacy were carried over to the new structure because the decision was made that it would be based on consensus of the GST council. In his opinion, GST had a structural issue and not an issue of implementation wherein the structure itself was flawed. Shri Bhaskar added that big companies are satisfied with the GST and the small businessmen are not. The need to register in every state impacts the growth of small businesses; whereas, big companies are registered everywhere. This, according to the speaker, is a pain point for MSME's which are one-man empires registered in only one state, he raised a fundamental question as to why can't there be one single number or registration ID in the age of computerisation.

Shri Mehta further raised the issue of environment and economy. He said that he was involved in the drafting of the Consumer Protection Act and they inserted clauses related to having a time limit on judgements of 90 days and 120 days if testing is involved but none of these are followed. He added that people are afraid to go to courts and in terms of higher judiciary, they need to have knowledge of the economic impacts of their decisions, and he cited the examples of the adverse effects in case of 2G scam, Coal scam and the Sterlite Copper Case.

In his final remarks, Dr. Virmani made a point with respect to regulation and his understanding of regulation. He said that India has one of the most oppressive control systems which the Western Nations cannot imagine, thus he asserted that the control and regulation he spoke about is different in its nature. To this he added that the objective of regulators is to mediate between the two parties and not favour the consumers but to have orderly development of industry all throughout the country. He also shared that today the bureaucrats that are retiring are being given the jobs of regulators which isn't in tune with modern regulation, according to him what needs to be done with modern regulation is bring in higher professionality.

CONCLUSION:

Dr. Narayan succinctly listed the main points brought forward in the discussion:

1. There is a need to limit the court's jurisdiction and to take away unnecessary load.
2. Infrastructure and Capacity of courts needs to be improved and technology needs to be adopted.
3. There is a need to attract good talent into the judiciary and systems like commercial courts must be set up.

INDIAN DEMOCRACY AT WORK

FDR FOUNDATION FOR DEMOCRATIC REFORMS

CONCLUDING CEREMONY: RULE OF LAW FOR THE 21st CENTURY

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 grassroot 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 28th 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 97th 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.

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