

RULE OF LAW FOR THE 21ST CENTURY

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PANELISTS:

1. Dr. Jayaprakash Narayan (General Secretary, Foundation for Democratic Reforms)
2. Shri Kamal Kumar (Former Director, SVP National Police Academy)
3. Shri K.Padmanabhaiah (Former Union Home Secretary)
4. Justice Jasti Chelameswar (Former Judge, Supreme Court of India)

ABSTRACT

The webinar was a curtain-raiser for the ‘Indian Democracy at Work’ conference and set the stage for a thought-provoking discussion on the rule of law. The session touched upon the various ways in which pragmatic reforms could be brought in the functioning of the institutions like the police, prosecution, and judiciary in order to strengthen the rule of law in India. The panel pointed out the need for institutions to have functional autonomy that is not divorced from accountability to function fearlessly in a free and fair manner. By enabling the people to understand the link between the rule of law and their lives, a public opinion can be shaped to build pressure on the political leadership and bring

about change. Reforms are necessary not only for upholding the basic rights of individuals and ensuring social stability but also for invigorating the economic growth of the country, especially in its cities.

INTRODUCTION BY DR JAYAPRAKASH NARAYAN

Opening his speech with a quote by William Gladstone, “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 opined that the most important purpose of a government is ensuring effective justice delivery in civil and criminal matters, the two limbs of rule of law. He observed that governments, today, forsake rule of law in their clamour to be populist for short term gains. He briefly enumerated the elements of rule of law such as due process of law, equality before law, and equitable enforcement of law.

The speaker went on to highlight the three serious rule of law challenges that India faces, relative to other major democracies. Firstly, a large pendency and inordinately long delays are characteristic of the Indian judiciary. There are a staggering 35 million cases pending in our trial courts, with around 9.9 million being civil cases and around 26.6 million being criminal cases. Dr Jayaprakash Narayan further pointed out that the High Courts are burdened with about 5 million pending cases. Besides the pendency, the long delays are a cause for

concern as well. Secondly, the criminal caseload far outweighs civil caseload, with the number of criminal cases pending being more than twice the number of such civil cases. This, according to the speaker, is an anomalous situation which portrays that people are avoiding approaching the courts for resolution of civil disputes. Further bolstering this argument, Dr Jayaprakash Narayan made the case that the crime rate in India per unit population is in fact much lower when compared to other countries. Third, India has the lowest conviction in the world which notionally comes around to a figure of 50.4%. According to the speaker, however, the actual conviction rate would be close to 10-15% if convictions resulting from confessions made under coercion are disregarded. He also pointed out that it takes 1445 days on an average to enforce a contract in India as opposed to about 400 days in other countries.

Dr Jayaprakash Narayan also spoke about the rise in instances of serious crimes like abduction, rape, murder etc. in metros like Mumbai and Delhi. While historically India’s traditional systems of family values and social controls have been able to keep the incidence of crime comparatively low, the checks are on the verge of disintegration

due to growing urbanization. The speaker cautioned that Indian cities may soon reach the level of lawlessness witnessed in crime prone cities like Johannesburg and Mexico City, if concrete steps are not taken to address deficiencies in our system. The speaker noted that cities account for most of the job creation in the Indian economy and further are estimated to contribute nearly 70% of the GDP by 2030. Increasing urbanization and economic growth will invariably result in a greater number of crimes and civil disputes. A failure to adequately address these developments will ultimately undermine economic growth by either inducing people to suffer injustice in silence or resulting in a rise in corruption, violence and organized crime. In that backdrop, Dr Jayaprakash Narayan expressed hope that the economic necessity of rule of law for the future of these urban centres, rather than a moral or a normative one, might persuade the governments to respond adequately to these challenges.

Dr Jayaprakash Narayan went on to highlight the challenges faced by the policing authorities in the present times. There are only 152 police personnel per 100,000 persons in the country much below the rest of the world, an indication of the

extent of shortage in personnel. This is further compounded by a woefully inadequate forensic infrastructure. He stated that there are a mere 37 forensic labs in the country and amongst them, most are not fully equipped. India's capacity for testing DNA samples currently stands at 20,000 samples per annum, compared to the US which tested 1,200,000 samples in 2014. He further stressed that if typically six DNA samples are required to be tested for each case, DNA analysis can be conducted for only about 3000 cases in a year, when Delhi alone saw more than 11,000 violent crimes in 2019. He proceeded to cite the example of Sunanda Pushkar and how it took a year before her DNA samples were analysed, in spite of it being a rather high profile case.

Dr Jayaprakash Narayan then spoke about the weak state of prosecution. Mentioning that there are not as many prosecutors in the country as there are judges, he highlighted the low prosecution strength both in terms of unit population as well as caseload per prosecutor. The speaker next brought to the fore the low strength of investigating officers in the CB CIDs departments of states, majority of whom belong to the rank of a constable. The speaker went on to reiterate and further build on some of the

reforms already suggested by various committees in the past. For instance, he advocated for the creation of a specialised and independent crime investigation agency which will investigate crimes above a certain threshold, say offences punishable with a maximum sentence of 3 years. The speaker was of the opinion that it is neither feasible nor desirable to make the entire police force autonomous from political control in one stroke in the Indian milieu. The independent crime investigation agency or the CB CIDs must be sufficiently strengthened in respect of personnel, infrastructure, technology, mobility and resources, but should be held accountable through appropriate mechanisms. Such an agency shall be entrusted with investigation of only 20% of the total crimes committed, those which are relatively more serious. The remaining 80% of the cases shall continue to be dealt with by the regular local police, the underlying consideration being that the politician continues to exercise control over a predominant segment of the police.

Dr Jayaprakash Narayan moved on to the recommendations in respect of the prosecution wing. In his opinion, investigative and prosecutorial functions, being quasi-judicial in nature, must not be

partisan affairs, but independent and autonomous. In order to effectuate greater coordination between the judiciary and the prosecution, the speaker suggested the appointment of a District Judge as a District Attorney for a period of 5 years on a deputation basis. The said District Attorney shall head the prosecution at the district level. He further stated that such an appointment of a District Judge is not unusual in light of the practice of many such judges being appointed as law secretaries in state governments. The prosecution body must also be made accountable to the Investigation and Prosecution Board, along with the independent crime investigation agency.

Next, Dr Jayaprakash Narayan highlighted the issues that plague our judiciary. Firstly, as per the notional strength of the Indian judiciary, there are only 21 judges per million population, indicating an abysmal judge to population ratio. Moreover, there is an inexplicably high proportion of vacancies in judicial positions. Secondly, the speaker bemoaned the appallingly poor state of judicial infrastructure. Citing the illustration of the insufficient number of courtrooms to meet the needs of sanctioned strength of judges in the subordinate judiciary, he stated

that such a situation cannot arise in a society earnestly committed to rule of law. In addition, the annual expenditure on the judiciary is less than 1% of the budgetary expenditure, signifying the importance accorded to this branch of governance by various elected governments. Dr. Jayaprakash Narayan stressed the importance of pressure from the public and the business community in improving the situation.

Noting that rule of law is not eroded overnight, but is gradually whittled away due to a culture of lawlessness in the society, Dr Jayaprakash Narayan advocated for the establishment of local courts as one of the pragmatic steps to strengthen rule of law at the grassroots level. The speaker highlighted the UK example of Magistrates Courts (Justices of the Peace) for criminal matters and the small tracks court for civil matters. He noted that the Justices of the Peace constitute nearly 83% of the total judiciary and deal with 93% of the criminal caseload, dispensing speedy justice. On the civil side, he added, the small claims system accounts for nearly 73% of the total trials conducted in civil courts. He further mentioned that although a similar law for gram nyayalayas is in place, the administrative apathy and

callousness have hindered these courts from being fully operationalised. The speaker strongly emphasised the need to persuade the public, the government and the civil society to bring these courts into effect.

The speaker gave a brief overview of recommendations to strengthen rule of law and stressed on the importance of working in congruence with legislative members. The recommendations advocated for a restructuring of the police force to improve professionalism and efficient functioning. A separate crime investigation agency with 15% of the police force would investigate 20% of the total criminal caseload, under the control of an independent Crime Investigation and Prosecution Board. The Board would oversee crime investigation and prosecution in the country. It's composition includes members of the elected legislature, the executive and the judiciary. The crime investigation police would work in harmony with the law and order police, comprising 85% of the workforce and handling 80% of the caseload. The Prosecution wing would take charge of the investigation and provide legal counsel to the crime investigation agency. With District Judges as head of prosecutions in districts, the trial courts, crime

investigation police and prosecution will function in consonance.

He concluded by reiterating the significance of rule of law for the Indian democracy. The purpose of reform is not to overhaul the existing system but to work in harmony with the elected officials to improve it. The speaker emphasised that reforms cannot be unreasonable and drastic and can't be implemented by dissatisfying our politicians. Dr Narayan also spoke about the need to rectify institutional inadequacies and stressed on how the short term economic burden of his recommendations will serve the society in the long haul, in terms of lasting public order and economic growth.

PRESENTATIONS BY THE PANELISTS

Shri Kamal Kumar, Former Director, SVP National Police Academy

Shri Kamal Kumar began his address by elucidating the essential elements of rule of law, which, in simple words, is the principle that no one is above the law. He quoted the five basic elements of rule of law as

identified by noted jurist A.V. Dicey, which are:

1. Supremacy of law
2. Equality under law
3. Accountability to law
4. Clear and fair processes for law enforcement
5. Total absence of arbitrariness in law enforcement

He emphasised that the cardinal concept of rule of law is that the state is governed by law, and law alone. He added that the rule of law is a fundamental feature of the Constitution of India. All the powers of the State had to be derived from, and exercised in accordance with, the Law. He emphasised that apart from an efficient and independent judiciary, the rule of law also requires an efficient, fearless, accountable, impartial and committed police force. The basic human rights granted to all citizens of the country cannot be upheld without a police force that is law abiding and fair. The speaker noted that our Constitution and the laws have set very good normative standards for promoting and upholding the rule of law in our country. However, he added, the ground situation is rather dismal. There is a common perception that money, muscle and

influence hold a great sway in the entire justice process.

Shri Kamal Kumar noted that political and bureaucratic interference in police functioning is rampant in India, which results in the denial of justice in many cases. This results in high degree of popular dissatisfaction with the justice delivery system and the police, which is rather dangerous for the survival of democracy itself. He again emphasised that in a democracy like ours, it is imperative for the police to be impartial, and fair, under all circumstances, and any extraneous interference with their statutory duties must be effectively shunned by them. The discretion to detain, arrest, or to chargesheet an individual has been given to the police by the law, to be exercised within the tenets of law, and only on professional considerations. Even the Chief Minister, or minister in-charge of the police, is not vested with the power to direct the police on how they should exercise their duties and discretion. No political executive or anyone else has any authority to subvert the rule of law.

Shri Kamal Kumar then spoke about the fear of transfer, due to which the police are under

great pressure to please their political masters; thus any police action taken is often after calculating its political impact, ultimately undermining the rule of law. He noted that to forestall any political interference in the discharge of police duties and to afford due protection to upright police officers against victimisation, institutional safeguards are necessary.

Shri Kamal Kumar spoke in detail about the saga of police reforms in India, which has been an endless endeavour with numerous committees and commissions appointed by both the Government of India and states to study the infirmities and inadequacies of the police system. Eleven states, starting with Kerala in 1959, had appointed their own police commissions to study the need and means of police reforms. The Union Government also appointed numerous commissions and committees, most notably the National Police Commission (1977). This was followed by the Ribeiro Committee on Police Reforms, the Padmanabhaiah Committee, the Malimath Committee, and the Soli Sorabjee Committee, which formed to draft a Model Police Act, 2006. These committees studied the problems painstakingly, and made elaborate recommendations. However, a

sincere attempt to implement these reforms are lacking, with only token measures taken from time to time. It fell on a retired police officer, Mr. Prakash Singh, to file a PIL in 1996 in the Supreme Court (SC), seeking directions of the SC to the Central and state governments to implement the National Police Commission recommendations. The SC, in a landmark verdict delivered on the 22nd of September 2006, issued 6 directives to the State governments and one to the Central government to create certain institutional mechanisms to insulate police functioning from external influences, give it due functional autonomy, and ensure accountability to the law. These included:

1. The constitution of a State Security Commission, headed by the Chief Minister or Home Minister, and having among its members the leader of the Opposition in the State Assembly, a retired High Court judge, and a few members of the civil society, having an established reputation for merit and integrity.
2. The selection process of state DGPs - the DGP must be selected from among the three senior most police officers in the state, who have been empanelled for the post by the Union

Public Service Commission. The officer so selected must be given a minimum tenure of 2 years.

3. The fixing of a minimum tenure of 2 years for all police officers holding operational posts, from SHOs upto the level of zonal IG.
4. The separation of crime investigation and law and order functions of the police.
5. The constitution of a Police Establishment Board in states, with its members being the DGP and 4 other senior police officers of the state, to decide on all transfers, postings and other departmental matters for officers of and below the rank of DSP.
6. The constitution of independent Police Complaint Authorities, one at the level of each state and one each, at the level of all the districts, to look into the complaints of misconduct against police officers.

The SC fixed the date of 31st December 2006, as the deadline for reporting compliance in letter and spirit by the states. However, till this day, the implementation of the measures has remained a pipedream.

Shri Kamal Kumar added that in 2008, the Supreme Court appointed the Justice KT Thomas led Monitoring Committee to review the ground level compliance of the directions by the states. The Committee, in its final report, expressed ‘dismay over the total indifference displayed by the states’ in implementing the reforms. Till date, no state has complied with all the Supreme Court’s directives in letter and spirit. Mr. Prakash Singh and his co-petitioners are still pursuing the matter in the Supreme Court. With that background, Shri Kamal Kumar emphasised the need to look for achievable strategies. He noted that for the success of any reform process, the contribution of its various stakeholders is necessary, which, in this case, would mainly be an informed citizenry and the political leadership.

To conclude, Shri Kamal Kumar noted that good policing, a key ingredient of the rule of law, was crucial in the interest of healthy socio-economic growth of a society. He also emphasised that while professional autonomy to the police, duly tempered with effective accountability mechanisms, is a key requirement of rule of law, the idea should not be to promote a complete divorce between policing and the political leadership. He added that an effective rule of

law regime with regard to police functioning is required, which can be summed up as:

1. Full functional autonomy to the police, particularly in their crime investigation functions, to act as per the law, and law alone;
2. Upgradation of the training of the police and provisioning of the needed resources;
3. Putting in place strict and effective accountability mechanisms for both misconduct as well as performance;
4. Strengthening of the prosecution system;
5. A systematic campaign to generate public opinion for the promotion of rule of law in the society, and police reforms;
6. A well structured effort to enlighten the political leadership on the dire need and significance of rule of law, and police reforms, for a healthy democracy and its sustainable socio-economic growth.

**Shri K. Padmanabhaiah, Former
Union Home Secretary**

Shri K. Padmanabhaiah started off with the statement that while a failed State is a State that is unable to control law and order, a police State is a State that uses repression as an instrument of control. India cannot be called either as in the last few years, it has been hovering between the two. The speaker acknowledged how very little has been done with regard to the implementation of the recommendations put forth by various committees to revamp the four wings of the rule of law that usually govern the entire statehood of citizens and their deeds, these being, police, prosecution, judiciary, and jails. The speaker pointed out that while the government stayed away from overhauling the judiciary owing to the notion of separation of powers, it ignored prosecution and prisons as they are not enticing enough to capture votes.

Shri. K. Padmanabhaiah highlighted the dismal position of India in the global rule of law ranking in the World Justice Report. Ranked at 69/128, India's performance is lower than countries like Brazil, South Africa, and Nepal. The report also enunciates that India's performance in the civil justice category is far worse than the criminal one. Furthermore, he pointed out the varied performance of the police in

different states despite being governed by the same acts as the Police Act, by citing the number of cases charge-sheeted from the NCRB report. While the number of cases charge-sheeted in Cochin was 98%, in Delhi the number was a mere 16.2%. The speaker remarked that the proximity of the police establishment to the seat of power seemed to be inversely proportional to their efficacy! The speaker stressed that a comprehensive annual report on the performance of the police and its statistics is not released in the public domain. Such a report is necessary to understand and evaluate the performance of the police and to know what changes are needed to make the system better.

Shri K Padmanabaiah stated that though the salaries of the police have relatively improved after the 7th Pay Commission, there are a plethora of pressing issues still besetting the police department. One such issue is that of a mismatch between the recruitment and training procedure and the onerous responsibilities thrust upon the police. Elaborating on the burdensome workload on the police, the speaker mentioned that the police are expected to be well-versed with a massive number of union and state laws including the IPC, the CrPC, and 66 special laws of the Union and several

other local laws of the states. Additionally, the police are designated as the investigating officers under numerous special statutes. The existing training system does not adequately prepare the police to tackle all of these cases, both in terms of the sheer volume as well as the complexity. He cited the example of police training in Andhra Pradesh where the candidates are trained for 9 months in the college, 2 months in the Greyhounds and 1 month with the Armed Police, out of which only the initial 9-month training strictly relates to policing. The strength in numbers as well the competency of the police personnel must be increased. Reiterating the recommendation made in the Padmanabhaiah Committee Report, the speaker suggested the recruitment of cadets immediately following school education, where the cadets must finish a 3 years course in police training, earning a degree at the end of the course. Following an additional specialised training of about 6 months if required, the cadets can be posted to various positions.

The speaker averred that the attitude and the performance of the police force is shaped essentially by five factors -

1. The police leadership,

2. Political ethos in the states,
3. Proper recruitment process - to be conducted at regular intervals, and not arbitrarily,
4. Need-based training - based on the main components of policing; one, maintenance of law and order, two, investigation, and three, internal security, four, intelligence gathering and five, residuary activities like traffic management, cyber-crime, and the like. Training of the personnel must also necessarily entail the re-training of the existing police force, so that they are able to adopt the latest technology and practices.
5. Interaction with and support of the public - To reduce the trust deficit between the police and the public, the police must be entrusted with certain positive functions in addition to the traditional functions such as arresting, investigating and so on, that are largely negative in nature. Community policing is a great example of a positive function where the community is given a role by the authorities to define and guide the performance of the police in that

particular locality. Through the process of decentralisation, significant powers must be devolved to the local police officers who must try to build a rapport and trust with the community during his/her stint. According to Shri. K. Padmanabhaiah, community policing is a philosophy, not a standalone programme and must be imbibed in that spirit.

Shri. K. Padmanabhaiah went on to elaborate on police training. He suggested that similar to the system in the Army, promotions must be linked to specialised training of the officers. In respect of the elements of the training imparted to the police forces, he stated that it must be of two types, namely -

1. Motivational and behavioural training - communication skills, personality development and the like.
2. Domain-specific knowledge training.

Joint training programmes for the police, prosecutors, and the judges must be conducted to enhance the coordination between these three branches and minimise the discord.

Crime prevention, which is more important than crime detection, must be given a place in our police systems. Acknowledging the onerous burden on the police, the speaker made numerous recommendations to reduce the load on them. He suggested that the government must create a State Security Force to provide escort services rather than assigning escort duties to the policemen. He also recommended that the prosecution of cases under certain acts like the Wildlife Protection Act, Forest Conservation Act, Copyright Act, and Motor Vehicles Act must be handled by the respective departmental officers, and the cases under social legislations like Child Marriages Act must be handled by the executive magistrates (in line with the provisions of section 202 of CrPC and the Bonded Labour System (Abolition) Act, 1976), who are better equipped to deal with them than the police. These mechanisms will help reduce the burden on the police force.

Shri K Padmanabhaiah went on to explain that currently, out of the 372 offences listed under the CrPC, 250 are cognizable and 122 are non-cognizable offences. Most of these non-cognizable cases are white-collar crimes like forging of documents that are becoming rampant of late. Hence, a reclassification of

these non-cognizable offences is the need of the hour. Additionally, all police stations must be mandated to maintain a separate register for non-cognizable cases. These non-cognizable cases must be investigated either by the local courts or by the executive magistrates to reduce the workload on the police. Similarly, the local courts or executive magistrates can also be authorised to deal with cases under the Gambling Act, Prohibition Act, UP Goonda Act and the like where the charges are not very grave but have implications on the rule of law.

Speaking of forensic science laboratories, Shri. K. Padmanabhaiah called for the constitution of an Indian Forensic Science Service with class I officers and above, similar to other central services.

On the issue of prosecution, Shri. K. Padmanabhaiah noted that there are two patterns followed across the states when it comes to the Directorate of Public Prosecution. One, it is constituted under the Home Ministry, or two, under the Law Ministry. The speaker opined that it must be placed under the aegis of the Home Ministry. If the Director of Prosecution is a police officer, then s/he should not use the powers of the police while holding the

office. The speaker cited that such a model has been successful in the state of Tamil Nadu. He also suggested a slew of measures like avoiding the delays in the appointment of the Director of Prosecution, introducing a system of cadre-based prosecutors which covers all the courts at least up to the District Courts and posting an assistant public prosecutor as a Station House Officer for at least 6 months so that he understands the system better to improve the prosecution wing. The prosecution, apart from conducting the trial, must also assist the police officers during the process of investigation in order to address all the legal issues appropriately. For this to materialise, the speaker suggested appointing a prosecution advisor for every District Superintendent of Police, in agreement with Dr Jayaprakash Narayan's proposal of creating a District Attorney system.

Regarding the pendency of cases in courts, the speaker stated that the real test of pendency is the number of years required to dispose of the existing caseload at the current rate of disposal of cases. Citing the performance of consumer forums across the country, he highlighted that the constitution of new courts does not help in clearing caseload unless all the other suggested

reforms are carried out in tandem. The speaker further pointed out that the rate of pendency for IPC cases is 89%, whereas it is marginally better in case of SLL (Special and Local Laws) cases at 83%.

The speaker shed some light on the chargesheeting rate of the police which stood at 67%. He stated that if the rate is calculated as a proportion of the total cases handled by the police and not just the closed cases, there will be a significant drop in the rate. Notwithstanding this caveat, the speaker stated that 33% is in itself a very high proportion of cases to be closed without charges being filed. He further felt that an increased use of the perjury clause by the magistrates could help in reducing the number of cases where the victims or witnesses turn hostile, undermining the trial process.

Justice Jasti Chelameswar, Former Judge, Supreme Court of India

Justice Chelameswar started off by stating that although we have normative rule of law, it is not respected by the Indian society in reality. The establishment of the High Court of Andhra Pradesh sans a legislative backing

was cited by him as a case in point. Rule of law means that every action taken by the State must be supported by a law created by a competent legislature. According to the Constitution of India, the establishment of a High Court must be backed by a statute created by the Parliament, indicating the date of establishment, number of judges to be appointed, the location and so on. In the case of Andhra Pradesh, it was established by a Presidential Order without any mention of the date. The speaker observed that an oversight of this magnitude is an indication of the disregard towards the doctrine of rule of law. Reiterating the opinion of preceding speakers, he stressed on the importance of recognizing rule of law as a way of life.

Speaking on the criminal justice system, the speaker highlighted the lack of sincerity of all the functionaries in the system, including the investing agency, the prosecuting agency and the judicial bodies. He substantiated his argument with the example of an appellate matter in the Supreme Court where he was the presiding judge. Although the postmortem report of one of the three deceased in the case was not presented before the trial court, the accused were convicted for the murder of all three victims. The fact that the accused were convicted

despite the absence of this document, which is crucial for determining the cause of death, highlights the sheer negligence of the investigating officer, public prosecutor and the sessions judge. The speaker emphasized that political interference in police functioning was not the problem in this case, rather just the sheer inefficiency of the system. He suggested that the absence of a periodic audit of the process has contributed to this inefficiency and allows such lapses to occur without any consequences.

Justice Chelameshwar concurred with the suggestion made by the rest of the panelists on having a separate crime investigation wing to investigate crimes of a serious nature. However, he was uncertain about the willingness of the state governments towards implementing this reform. Reforming the justice system is a low priority for the elected representative; no leader has ever promised to establish a new court in his constituency if re-elected. The speaker noted that the lack of improvement in the resources - number of courts or police officers, as well as inadequate investment in training of the functionaries is a result of the little attention paid to the justice system by the elected government.

In order to counter the problems, the speaker suggested two necessary solutions. Firstly, he proposed that police must receive specialized education specific to their functions similar to other disciplines like law and medicine. There must be an assessment of the number of personnel required at every level and every state, similar to the process of determination of the cadre strengths of the IPS and IAS. Projections for the number of officers required for the next 10 years must be made and recruitment and training programs must be created meticulously, instead of the ad hoc manner of recruitment followed currently. Sharing a personal experience during his tenure as the Chief Justice of the Gauhati High Court, the speaker reiterated that the investigating officers do not have an adequate understanding of the law due to lapses in training, and a specialized course must be created to be taken up after high school to pursue a career in policing.

Secondly, Justice Chelameshwar observed that the role of public prosecutors needs to change. During the British era, public prosecutors actively monitored the investigation and advised the investigating officers. This traditional practice did not have any specific regime created in law and

it eventually fell into disuse, with neither police seeking guidance from the prosecutor, nor the prosecutor volunteering to provide counsel. Therefore, an appropriate legal structure must be created giving the public prosecutor the authority to supervise the investigation. By doing so, the public prosecutor can be held responsible for any lapses in the investigation, thereby increasing the efficiency of the investigation. Lastly, the speaker commented that the current recruitment of public prosecutors is driven by political loyalty rather than the prosecutor's ability or knowledge of law. In agreement with Shri K Padmanabhaiah, he added that promotions must be based on careful assessment of performance.

Dr. Japarakash Narayan concurred with Justice Chelameshwar, stating that the real issue is the lack of seriousness of purpose rather than design or intent. He added that so far, India has been running a semi-feudal system in the constitutional guise where might is right, with rule of law being cast aside. However, it is time to recognise that there are potential economic and social dangers with political consequences if we persist in the current state, unless we accept a low level of equilibrium in terms of

economic growth, social stability, and political evolution. Quoting Lincoln, Dr Narayan said public opinion is everything. Without it, nothing can be done and with it, nothing will fail. So far, people have not been enabled to understand the link between rule of law and their lives. As a result, rule of law has become an esoteric and constitutional concept divorced from people's lives. It is, therefore, imperative to create awareness among the public about the profound consequences of the failure of rule of law on their personal lives.

QUESTIONS AND COMMENTS

The question and answer session began with a question on the increasing number of vacancies and the gap between actual and sanctioned figures of personnel in the police and the courts. Shri K. Padmanabhaiah stated that it was primarily due to the lack of leadership and effort among the police authorities. He added that the party in power often uses the services of the police to satisfy their self-interests and for political gain, and lacks serious interest in improving the functioning of the force. He further commented that the High Courts have

shown little interest in either documenting or reforming the operations of the lower courts, citing the example of how the High Courts, for many years, failed to maintain the pendency records of the District Courts. Justice Chelameshwar added to the discussion stating that Shri K Padmanabhaiah's observation on the role of High Courts may not be true for most of the prominent High Courts, however, the problem does exist in a few. According to him, the current political process and vested interests are the reasons why vacancies are not filled. Moreover, many talented people are not opting for the judicial service. The speaker recounted that during his tenure as the Chief Justice of the Guwahati High Court, he proposed that High Court judges make suggestions and identify competent people who will serve well as District Judges for a fixed tenure of 5 years. However, this petition was rejected on the grounds of nepotism. Furthermore, citing examples of Andhra Pradesh, where post bifurcation, the recruitment process was halted after protests erupted regarding the timing of the recruitment process, and Bihar, where outrage over an Act passed by the legislature concerning the creation of reservations in judicial recruitment stalled

the process, the speaker made the point that such unwarranted litigation has also served as a hurdle towards creating a standardized and consistent recruitment process for personnel in the judiciary.

The second question was related to the extrajudicial killings of suspects by police officers in order to please the public and what needs to be done to tackle this. To this question, Shri Kamal Kumar cited the example of the L.N. Mishra case, which took 39 years to be decided. The accused had died before the conclusion of the case. The speaker remarked that the inefficiencies and delays in the due process of law are the reasons such extrajudicial killings are celebrated and perceived by the public as "speedy justice". The speaker expressed his disappointment with the reluctance of those in power to implement the recommendations of the Malimath Committee Report, which had suggested wide ranging reforms for the criminal justice system. He suggested that one of the major reasons for the reluctance is due to the vested interests of various stakeholders within the administration, citing opposition to the Report by the advocates lobby, possibly as it contained recommendations reducing their role in the bail process. Shri Kamal Kumar asserted

that exerting public pressure to reform the criminal justice system is essential. Justice Chelameshwar agreed but pointed out that the translation of the pressure into actual change is not an easy task, as the public at large is very disorganised. There is no large-scale awareness among the public regarding such issues, making it difficult to garner widespread support, thereby reducing its effectiveness. Dr. Jayaprakash Narayan brought to attention the fact that such extrajudicial killings have bigger repercussions than merely being a violation of rule of law. He pointed out that such incidents inevitably lead to bigger problems of tyranny, coercion, and suppression of the rights of vulnerable communities. Dr. Jayaprakash Narayan stated that the major thrust of bringing awareness to the public should be to lead the common people to the realization that these events are not short-term, but rather, have long-term repercussions. Giving the people who commit these acts the license to continue such extrajudicial killings will ultimately lead to further impairment of the image and credibility of the judiciary as an institution.

The next question was centred on the need to make the selection process open and

transparent for public prosecutors instead of selectively recruiting them based on the recommendations of political bodies. Justice Chelameshwar, concurring with this view, said that public pressure on the elected representatives is required to bring in this change. Shri Padmanabhaiah suggested that an All-India Service of public prosecutors at the national level or at the state-level must be constituted to recruit a cadre of public prosecutors in a transparent manner. Dr Jayaprakash Narayan also agreed, asserting that the political leadership would attend to these reforms only under public pressure that is directly linked to votes.

A question addressed to Shri K. Padmanabhaiah asked whether the Indian system could emulate the Singapore model of plea bargaining, where the process takes place in a pre-trial stage in the presence of a judge, to solve the problem of the huge number of undertrial prisoners. Shri Padmanabhaiah responded by saying that while the plea bargaining system was already in place in India, it is under-utilized. To the issue of almost 70% of prisoners currently being undertrial, most of them poor and unable to afford legal representation, Shri Kamal Kumar remarked

that a 2005 amendment of the CrPC simplified a provision for undertrial prisoners to be set free if they served more than half of the prescribed sentence for the offence which they were to be tried for. The problem arises due to improper legal representation and lack of knowledge and resources which is required for those affected to make their case. It is the duty of the Legal Service Authority to help them get the required legal aid, which is currently inadequate.

The last question, addressed to Dr. Jayaprakash Narayan, inquired whether the failure of the Indian institutions in upholding the rule of law has created an unwarranted perception around the globe that India is an unsafe country, despite its crime rate being low. The speaker stated that the negative perception around the globe arises when the functioning of the rule of law institutions doesn't meet the expectations ascribed to them by the people. Putting the issue in perspective, the speaker drew comparisons with other countries such as the United States and the United Kingdom, stating that India has significantly lower number of rape cases compared to these developed countries. He mentioned that in India, there

are roughly 30,000 reported rape cases in a year. If we include unreported cases, the number might come to 60,000. In the United Kingdom, which is 1/24th the population of India, the rape cases are nearly half of that of India. In the US, which is 1/4th the population of India, there are 100,000 cases a year. Despite this, India is portrayed as the rape capital of the world. The speaker stated that in India, due to our culture and societal traditions, we are relatively more sensitive towards crimes against women, leading to greater focus on such crimes. Shri K. Padmanabhaiah added that the violent and heinous manner in which these rape cases and other crimes are carried out also plays a role in building such negative perception. Dr. Narayan agreed and was of the opinion that it would be more productive if we could channelise the emotions towards finding possible solutions to these issues instead of merely exhibiting outrage.

CONCLUSION

The panelists, with their overarching experience and immense erudition, shed light upon the significance of rule of law for the 21st century. Given its vast population, infrastructural and budgetary constraints, India has done well in maintaining the rule of law in the past 70 years. However, we still have a long way to go. The webinar dissected the existing institutional inconsistencies that are hampering the implementation of rule of law in the country. The real challenge has been the lack of seriousness of purpose rather than design or intent.

It is time to recognise the potential economic and social dangers of undermining the rule of law in the country for both the citizens as well as the political leadership. Public opinion and political will are key ingredients to reform. Upgrading the current forensic infrastructure, specialized training for police forces, adopting the philosophy of community policing, creating an independent crime investigation agency, strengthening the supervisory role of the prosecution in crime investigation, providing adequate judicial resources and manpower,

and the establishment of local courts are some measures urgently called for.

The webinar marked the contours of the rule of law reform, which will be deliberated at a granular level during the second edition of the Indian Democracy at Work conference in February, 2021.