

*Editorial***52 YEARS ON**

19th July 2021 marks the 52nd anniversary of the momentous and game changing decision of nationalisation of 14 major private banks in 1969. The anniversary of bank nationalization has arrived in the backdrop of a pandemic that has ravaged the country and equally pervasive threat of privatisation of 2 public sector banks in the current fiscal as was announced by the Finance Minister in her budget speech. Naturally, this year the banking trade unions have observed the occasion with fervour to celebrate the Bank Nationalisation day, which had ushered in a paradigm shift in Indian economic policy in general to trigger economic development to make India self reliant.

The issue of bank privatisation has to be viewed from a wider perspective of denial of social benefit to a large section of our marginalised citizenry, and not merely as a narrow issue affecting the service condition of employees of Public Sector Bank. It is important to break the eerie silence of a large section of our fellow countrymen who may be under the impression that it does not concern them. A silence can signify many things. It can immediately be taken as a sign of ignorance, not knowing all the background or implication of the proposal. The other reason could be fear of taking sides or an absence of any concern. These positions obviously help the political establishment. Finally there is another reason of silence. It is a tacit endorsement of happenings. It emerges from a mental belief of extraordinary arrogance. They can do it, they have a right to do it and nobody is able to stop their march. It gives political

establishment more right to carry forward the agenda. Such stoic silence and absence of organised democratic protest is a pointer to a large deficit of a democratic system. The arrogance can be judged from the pronouncements of Finance Secretary in the Conclave organised by National Council of Applied Economic Research on 14th July 2021 that eventually all public sector banks will be denationalized. This is a logical extension of all so called reform recommendation and announcement of FM in the floor of the house declaring privatisation of two PSB during current year. The precise aim of the campaign launched by AIBOC is to reach the silent majority who will be really affected and to convert their silence to an organised resistance of retrograde diktat of bank privatisation move which is nothing but the process of surrendering economic sovereignty of the Nation. The paragraphs that follow will pinpoint the hollowness of argument for privatisation.

The principal argument favouring privatisation is the so called economies of scale and efficiency. In real terms it implies rationalization of workforce, closure of bank branches, withdrawal from provision of targeted credit to the priority sector, etc. These are all so called cost cutting measures but have a disastrous impact in a labour surplus developing economy like India. Rationalisation of workforce and closure of branches will all lead to shrinkage of employment opportunities with adverse impact even on the social commitment of extending the benefit of public sector jobs to the identified backward section of the society. Similarly, closure of

A JUG FILLS DROP BY DROP

branches will deprive the millions to access banking service nearer their home forcing them to going back to the days of financial disintermediation. It appears that savings as a percentage of GDP is declining and more so during the pandemic. Closure of branches will only accelerate the process.

Similarly, gradual withdrawal of provision of credit to the targeted sector will have an adverse impact on the aggregate demand from the rural and semi-urban sector at a time when the country is reeling under an imminent threat of recession and declining GDP growth. The private banks with an eye to the profit will charge higher interest rate adding to the inflation and seriously disturbing the food security cycle by discouraging the farmers to avail easy credit with negative bearing on output, marketing and pricing of products. It is apparent that privatisation will impact the economy and society and this is the real menace before the national economy.

The entire history of private sector banking is punctuated with stories of systematic failure of banks. In India throughout the 20th century more than 500 banks failed. It all started with the failure of banks like Bank of Bombay and ends with the crisis in Yes Bank, LVB, etc. Two poster boys of private sector banking ICICI Bank and Global Trust Bank encountered serious operational issues. Global Trust Bank had to be rescued by a public sector bank Oriental Bank of Commerce while ICICI Bank is involved in a classic case of nexus between lender and borrower. Ex-CMD of ICICI Bank is under the scanner of investigating agencies. In addition the government is also planning to allow foreign players to have a dominant role in Indian financial market. It is to be understood clearly that acceptance of foreign technology or assistance in sectors where it is needed and handing over the ownership are two entirely different ball games. It has a direct impact on the sovereign character of our nation. It reminds us of the days when the British assumed the political reins of the country signaling the beginning of 200 years of colonial rule coming as they did under the veil of a merchant. In

effect the process of privatisation will be the beginning of a process that undermines the sacrifices and martyrdom of lakhs of our brave sons in winning the independence of the country.

We have to keep in mind that in the aftermath of the 2008 financial crisis, a number of privately-owned banks in the West had to be bailed out by governments, using taxpayer money. The US alone bailed out its banks at a cost of \$800 billion. There are other socio-economic implications of rapid privatisation of public sector banks. Privatisation would lead to social injustice and denial of reservation to backward section of the society. Apart from social issues critics have raised doubts over the style of functioning of private sector banks with allegations that they are excessively aggressive in their loan recovery efforts in connection with housing, vehicle and personal loans. On several occasions bank's loan recovery efforts have supposedly driven defaulting borrowers to take their own lives. There are logical apprehensions that privatisation process is a bail out operation for corporate defaulters. Private sector is responsible for the humongous bad loans which has been cited as a reason for privatisation but the same is set to be accomplished by handing over the banks to the same private sectors.

What lies ahead? It all depends on our ability to intensify our resistance in forcing the government to roll back the policy of privatisation. We have to brace ourselves for a prolonged fight to thwart the ill design motives of the government to sell off the jewel of national assets viz. the public sector banks to a chosen few crony capitalists both within and outside the international border. But this can only be achieved once we reach out to our real support base, our depositors and borrowers. They have to be convinced that ownership does matter. If it is privatisation today, it will be reintroduction of FRDI Bill in its new avatar tomorrow. The bank will flex their muscles to recover the dues from the poor and needy while the public deposit will be used to pay off the dues of the crony capitalists and wilful defaulters by making new laws post

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

privatisation. We have to appreciate that this is a grand design and the same needs to be defeated from a wider social perspective, rather than from a narrow question of protecting the benefits of service conditions which also the bankers have earned over decades of protracted struggle.

Common Bond strongly feels that in the face of the seriousness of the issues of privatisation which we are confronting, we have to collectively join hands and make use of our organizational presence throughout the length and breadth of the country. The call of the hour is to move in unison. Victory will be ours. ■

ORGANISATION

We are reproducing our Circular No.2021/58 dated 22.07.2021 on the discussion the four officers' organisations had today with the

IBA on account of the Revision on Pension Scheme in Banks for ready reference of our readership:

Circular No. 2021/ 58

Date: 22.07.2021

Dear Comrade,

DISCUSSION IN REVISION ON PENSION SCHEME IN BANKS

We reproduce hereunder the text of the circular issued by four officers' organisations on the captioned subject for your information.

With greetings,
Yours Comradely,
Sd/-
(Soumya Datta)
General Secretary

ALL INDIA BANK OFFICERS' CONFEDERATION (AIBOC)
ALL INDIA BANK OFFICERS' ASSOCIATION (AIBOA)
INDIAN NATIONAL BANK OFFICERS' CONGRESS (INBOC)
NATIONAL ORGANIZATION OF BANK OFFICERS (NOBO)

To All Units of AIBOC/AIBOA/INBOC/NOBO:

Date: 22.07.2021

Dear Comrades,

DISCUSSION ON REVISION ON PENSION SCHEME IN BANKS

IBA today convened a meeting with the representatives of four officers' Organisation's with the newly constituted committee by IBA under the Chairmanship of Shri CH.S.S.Mallikarjuna. On behalf of IBA apart from Shri CH SS Mallikarjuna Rao MD & CEO PNB, Shri M.V Rao, MD & CEO Central Bank of India, Shri O.P.Mishra, DMD SBI, Shri S.L.Jain, E.D BOB and Shri D.Mukerjee, ED, Canara Bank, Shri Gopal Murli Bhagat Dy.CEO, IBA and Shri.Brajeswar Sharma, Senior Advisor HR & IR, participated.

2. Our representatives have presented all the issues pertaining to pension revision in a logical and cogent manner as well flagged other important residual issues related to 8th Joint Note. As decided by the four officers' organisations, a joint letter has been addressed to the Chairman of the committee listing the issues in a chronological manner for taking it to a logical conclusion.

3. The response from the Committee was, however, disappointing, because the chairman concluded with the

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

remarks that the meeting was convened for the purpose of eliciting the views of the organisations. On other issues, he mentioned that the IBA will take steps to address our concern. We enclose the letter addressed to the Chairman, Committee of Revision on Pension Scheme in Banks, which is self-explanatory.

With regards
Yours sincerely,

Sd/-
(Soumya Datta)
General Secretary
AIBOC

Sd/-
(Nagarajan S)
General Secretary
AIBOA

Sd/-
(Prem Kumar Makker)
General Secretary
INBOC

Sd/-
(Viraj Tikekar)
General Secretary
NOBO

Copy of Text of the Letter dated 22.07.2021

Shri C H S S Mallikarjuna Rao
MD & CEO., Punjab National Bank
Chairman – Committee to review the Pension Scheme in Bank &
Chairman, HR Committee, IBA, New Delhi

Date : 22.07.2021

Dear Sir,

Discussion with 4 Officers' Organisations on Revision of Pension scheme in Banks

We are thankful for the meeting convened by IBA with the Committee to review the pension scheme in banks under your Chairmanship through virtual mode for a collective presentation on the standpoint of the four Officers' Organisations on improvement of the pension scheme in Banks. In addition to communicating our views on updating of pension, the following important residual issues were raised so that the same can be resolved on a priority basis:

- ☞ It was agreed in the 8th Joint Note that Family Pension would be enhanced @ 30% without ceiling. It is pending for approval with the Govt. We have requested for immediate proactive intervention from IBA for its clearance.
- ☞ It was also agreed in the aforesaid Joint Note to enhance the employer contribution to 14% (BP + DA) in respect of the beneficiaries of the New Pension Scheme to be implemented from the date of signing. The approval for the same is also pending from the Govt. This should receive priority attention of IBA for immediate implementation.
- ☞ We communicated our reservation on the recent Government's circular on commutation factor for career officers. It is not clear to us what exactly is intended to be conveyed by the jargon "Career Officer". We pointed out that the revised chart of commutation so communicated by the Govt. in line with the recommendation with the 6th Pay Commission cannot be considered in isolation. Other factors like allowing 40% commutation, full pension after 20 years of service and calculation of eligible pension amount at the last pay drawn or 10 months average pay, whichever is higher should also be taken into account.
- ☞ Bank Employees Pension Regulation provides that pension updation has to be at par with RBI employees. The pension of the RBI employees was updated twice in the intervening period. We submitted that the pension of the bank employees covering all pensioners who retired up to 31.10.2017 should be effected broadly in alignment with the formula implemented in RBI. We would also like to incorporate a provision that revision in pension should be made along with the wage settlement.

OVERCOME ANGER BY LOVE, EVIL BY GOOD

⇒ In addition to the above, we also placed before the Committee the issues pertaining to:

- i) Clarification on interpretation of stagnation increment
- ii) Circulation of fitment formula factoring in the new scale of pay as agreed in the 8th Joint Note
- iii) Extension of one more option to persons who resigned to join the pension scheme
- iv) To revisit the compassionate appointment scheme keeping in mind the eligibility age criteria in view of the number of deaths of bankers due to the Covid pandemic and advise the member banks to expedite the process of such compassionate appointment.
- v) To consider reimbursement of expenses over and above admitted by the TPA for Covid victims considering that the bankers are frontline covid warriors and they have to bear additional expenditures due to spread of pandemic.

⇒ There are other important pending issues like:

- a) 5 day banking
- b) Finalisation of an agreed position on vigilance matters and staff accountability
- c) Payment of boarding and lodging expenses to the defence assistants as per their eligibility etc.

We, would therefore, urge upon your good office to convene a meeting in physical format at the earliest to arrive at a decisive and negotiated settlement.

With regards,
Yours sincerely,

Sd/-
(Soumya Datta)
General Secretary
AIBOC

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(Nagarajan S)
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(Prem Kumar Makker)
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News

BANK BACHAO DESH BACHAO

July 18, 2021 had seen the passionate participation of bankers, depositors, borrowers particularly from priority sector and marginalized section of the society along with all other stake holders for an online round table of economists and social scientists on the theme **"IS BANK PRIVATISATION IN THE PUBLIC INTEREST"**. The round table was inaugurated by the President of AIBOC, Comrade Murali Soundararajan T. A galaxy of internationally reputed economists and social scientists participated in the round table and they include, Prof. Amiya Bagchi (Emeritus Professor IDSK), Prof. Partha Pratim Pal (IIM, Calcutta), Prof. Prasanta Ray (Presidency University, Kolkata), Prof. R. Ramakumar (TISS, Mumbai), Prof. Ranjanendra Narayan Nag (St. Xavier's College, Kolkata), Prof. Rohit Azad (CESP, JNU, New Delhi), Prof. Subhanil Chowdhury (IDSK, Kolkata) and Prof. Zico

Dasgupta (Azim Premji University, Bengaluru). The session was moderated by Prasenjit Bose (Economist) Comrade Soumya Datta, General Secretary, AIBOC, made an authoritative intervention by chronicling the stand point of the confederation against the entire move of the government ever since the days when the so called reform process in the financial sector was rolled out leading to the move of privatisation as a final nail in the coffin of public sector banking. The entire proceeding was available in the facebook www.facebook.com/BankBachaoDeshBachao as also in the YouTube channel. The facebook page of this event has nearly 22K visitors at the time of going to press. However, for the benefit of our readers we are sharing an abridged version of the entire proceedings.

In his opening remarks, Prof. Amiya Bagchi traced the origin of modern banking as well as its history of

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

failures coinciding with the business cycle movements. An upswing in business cycle ensure a healthy financial for a bank business while a down swing may knock it out from the business itself. He referred to the collapse of Bank of Bombay, Oriental Bank Corporation, Agra Bank, Alliance Bank of Shimla, Arbuthnot Company, etc., due to change in external environment or fraud in the early part of the 20th century. The important lesson that one can draw from such history of banking runs is that it is not the ownership but the external environment which led to the downfall of bank business apart from fraudulent activity of its private owner. The story remains the same throughout the 20th century till the nationalization in 1969 and more than 500 banks went out of business during the entire period and their private ownership tag could not prevent such an eventuality. He pointed out that entry of foreign players will further destabilize the system and they would be beyond regulatory controls. The pitfall of such an arrangement was brilliantly essayed by acclaimed economist J. M. Keynes in one of his essays. Prof. Bagchi pointed out that green revolution would not have happened without flow of bank credit to agriculture post nationalization and even today the food security of the population would be seriously compromised in reverse flow of credit from priority sector post denationalization. He referred to recent time failure of National Housing Bank, Global Trust Bank, Dewan Housing Finance, Lakshmi Vilas Bank, Yes Bank, IL&FS and PMC Bank as a glaring example of unregulated banking misadventure after initiation of so called reform process. Privatisation according to him is nothing but private profit at public cost.

Prof. Partha Pratim Pal of IIM, Calcutta raised certain questions for demolition of the arguments favouring privatisation. He responded to the questions during his submission by referring to an article by noble laureate Prof. Joseph Stiglitz, that privatisation would not lead to any tangible benefit. Empirically, even without change of ownership, the country's largest public sector lender SBI is functioning exceedingly well than its private sector peers. The happenings in the western countries have confirmed that the assertion "Too big to fail" is not backed by real time events. This is true in case of failure of Lehman Brothers, City Bank etc. It is also argued by the advocates of privatisation that economies of scale do matters. But the way the government is moving in India initially by

consolidation and merger of PSBs followed by privatisation now will ensure an oligopolistic market structure which is not always conducive from the point of efficiency as is understood even in the literature of the proponents of free market economy. He relied on his own real time experience to conclude that the outcome of merger is disastrous for the banking public in particular and bank in general. He referred to the impact of oligopolistic market structure in telecom sector and expressed his apprehension that in the days to come the banking space may replicate the same crisis which is being exhibited by telecom sector today.

Prof. Pal pointed out that private sector banking will give a deadly blow to the depositor's confidence and bank will face problems in mobilizing deposits affecting credit deployment aggravating the economic down slide further. There will also be a huge cut in employment opportunities in public sector banks which in turn will disturb the well calibrated reservation policy for socially backward classes in employment.

The baton was taken over by Prof. Ramakumar (TISS, Mumbai). In his introductory remarks he pointed out that the political outfits which opposed bank nationalization in 1969 are in power today. It is but natural that they would implement their agenda once they are in power. The most important impact of the nationalization is on rural India. There is an unprecedented expansion of bank branches followed by expansion of rural credit the bulk of which had gone to the under privileged sector. In a theoretical frame work, bank nationalization is a successful use of monetary policy to ensure redistribution of wealth. Ever since 1990, the role of the monetary policy to ensure redistribution of wealth was distorted and journey in reverse direction started. This phase also saw the departure of development financial institutions like IDBI, ICICI, etc., and a drop in rural credit. Private sector banks were allowed to operate. Interestingly, two of the first generation new private sector banks, i.e., Global Trust Bank had to be taken over by a public sector bank, OBC and ICICI Bank is in deep trouble with its ex-CMD shuffling between custodial and free life. Banks are also paying the price for playing the role of stabilizer in the national economy for the preference of monetary measures to extend relief to the pandemic battered sector instead of resorting to fiscal stimulus. This has put

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

additional strain on the public sector banks financials. The government is planning to transfer the bad debt to a so called Bad Bank of India to ensure cleansing of balance sheet prior to privatisation.

Prof. Ranjanendra Narayan Nag from St. Xavier's College, Kolkata pointed out that the government is depending on stock market rather than on banks for mobilizing capital needed for economic development. Government is also selling prized public assets to finance its activities while it is allowing huge tax relief to corporates. The reduced flow of credit is leading to non-repayment of loans in a covid affected distressed economy which in turn is leading to further low appetite for loans. Government needs to recapitalize the banks instead of outright sale of the public sector banks.

Eminent sociologist Prof. Prasanta Ray from Presidency University, Kolkata observed based on empirical evidence that most of the bank failures in India occurred due to fraudulent nature of ownership. Privatisation and gradual reduction in the role of RBI will encourage the re-emergence of such fraudulent owners putting at risk the life time savings of the common man.

Prof. Rohit Azad of CESP, JNU, New Delhi pointed out that NPA in the banking system started ballooning from 2007-08 in public sector banks. He informed that private sector banks reported higher NPA ever since 2014. Such observed evidence corroborated that ownership do not determine the level of NPA, there are other factors in play. Private banks are mostly driven by profit and there is an perceived nexus between lender and the borrower. The Videocon case in which the husband of the former MD of ICICI Bank was allegedly favoured by the borrower Videocon group confirmed the assertion. It also brought to the light the shape of things to emerge with more doses of privatisation. Deposit and activities of private banks do not enjoy the sovereign guarantee and they are more capital intensive entity than public sector peers which would have a detrimental effect on the future job market for millions of aspirants looking for an opening in the banking sector.

Prof. Subhanil Chowdhury of IDSK, Kolkata opined

that IBC is touted as a major reform measure. Share of gross NPA is coming down during pandemic. He observed that such coming down of gross NPA is not because of efficacy of recovery mechanism per se but for huge hair cut being accepted by the banks for settlement of dues. This is rather a case of socialization of private debt impairing the health of the bank adversely. However, he pointed out that India is far behind in recovery of NPA (39%) as against 80% recovery rate in developed economies. It is evident that IBC mechanism has failed to deliver the desired results.

Prof. Zico Dasgupta from Azim Premji University, Bengaluru drew the attention to the fact that the average lending rate of private banks is higher than that of public sector banks. This divergence in interest rate is widening. Privatisation will push up the lending rate adding up to the cost push inflation at a time when the current inflation rate is well above the bench mark rate as conceived by RBI. This will prolong recession with an adverse impact on aggregate demand and other consequential fall out. This may finally result in financial instability. Rise in interest rate will not be symmetrical across the sector rather it will be skewed against agriculture/MSME and may favour the traditional industrial sector. So privatisation has a wider impact in terms of both contractions in aggregate demand as well as serious negative fallout for distributive justice. It may or may not be a coincidence that FM intends to mobilise ₹ 1.75 lakh crore by sale of public sector banks and which is exactly equivalent to the corporate tax concession given in the budget. Privatisation is not a panacea for revenue mobilization rather it may affect it in the long run.

During his intervention, Com Soumya Datta, General Secretary, AIBOC, picked up the thread of the discussion and observed that privatisation will remove the safety net that is availability to the depositor. He apprehends that government may reintroduce the disputed FRDI Bill in a new avatar as a corollary to privatisation. Newspaper reports are suggesting that DICGC cover on deposits will be increased to ₹ 5.00 lakh from the existing ₹ 1.00 lakh. But the best cover for ensuring security and safety to depositors as being provided by the public ownership of banks will get revoked. Bank Boards are without officers' as well as workmen representatives for a long time and this has been deliberately done so that trade union representatives cannot raise their voice and issues inside the board room in the interest of all stake holders

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

including the marginalized section who are being served by public sector banks. Employment opportunity for youth and unemployed will obviously be exterminated. The fight against privatisation is not a sectorial fight for bank employees but for upholding the economic sovereignty of the nation. Any compromise on economic sovereignty will finally lead to dilution of political sovereignty. So it is a battle for saving the country.

Moderator Prasenjit Bose summed up the discussion. He hailed the role of AIBOC in leading the movement. He concluded that the public ownership of banks is the best guarantee available to the depositor as well as it ensures requisite credit flow for the marginalized sector. DICGC&I cover will not satisfy the appetite of the stakeholders rather the continuation of public ownership will. ■

CIRCULARS

56 dated 09th July, 2021: Text of UFBU Circular No. UFBU/2021/11 dated 08.07.2021 on discussions with the IBA on Group Medical Insurance Scheme

57 dated 13th July, 2021: 52nd Bank

Nationalisation Day

58 dated 22nd July, 2021: Text of the circular issued by four officers' organisations on the discussion on revision on Pension Scheme in Banks.■

JUDICIAL VERDICT

The Editorial team has decided to carry the full text of 17th P D DESAI Memorial lecture delivered by the Hon'ble Chief Justice of India Justice N V Ramana on 30th June, 2021. We are not publishing the regular feature of legal decision affecting bankers in this issue. We strongly feel that bankers are the part of the society. The lecture very clearly upholds the basic values of 'JUSTICE' and 'EQUITY' on which the legal system really has its foundation in contrast to the use of legal system for furthering either colonization or surrendering economic independence of the citizenry even in a free democratic country. We trust our readers will be benefitted and this lecture will enrich ourselves as a soldier of our ongoing struggle.

1. It is a great pleasure for me to be delivering the 17th Justice P. D. Desai Memorial Lecture. Justice Desai's distinguished judicial career spanned over two decades, during which he established himself to be a fiercely independent judge and an exceptional administrator. He always believed that law and justice are essential agents for initiating social change. His desire to build a better tomorrow can be witnessed from his humanitarian actions. The creation of "Praleen Trust" and its noble actions symbolize his belief that the law must have a human face.

2. 'Rule of Law' is the topic that I am going to speak on today. Irrespective of what era we are living in,

who the rulers are, what the mode of governance is, this is one topic which is never going to lose its sheen and relevance. Because, the story of 'Rule of Law' is nothing but the story of civilisation of humans.

3. When talking about 'Rule of Law', it is necessary to first understand what the law is. Law, in its most general sense, is a tool of social control which is backed by the sovereign. However, is this definition complete in itself? I would think not. Such a definition of law makes it a double edged sword. It can be used not only to render justice, it can also be used to justify oppression.

4. Renowned scholars have therefore argued that a law cannot really be classified as a "law" unless it imbibes within itself the ideals of justice and equity. An "unjust law" might not have the same moral legitimacy as a "just law", but it might still command the obedience of some sections of the society to the detriment of others.

5. What is clear is that both these thoughts highlight certain facets of what is meant by the term "law". I think that any law backed by a sovereign, must be tempered by certain ideals or tenets of justice. Only a State that is governed by such law, can be said to have the "Rule of Law".

6. The legal history of pre-Independence India gives

THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE

us a clear picture of this. The British colonial power enacted various laws to further their economic and political interests, at the cost of the colonised. The British used the law as a tool of political repression, enforcing it unequally on the parties, with a different set of rules for the British and for the Indians. It was an enterprise famous for "Rule by Law", rather than "Rule of Law" as it aimed at controlling the Indian subjects. Judicial remedies lost their significance, as they were administered keeping in view the best interests of the colonial power, rather than what was just or legal.

7. The historical trial of Raja Nand Kumar in 1775, a case famously recounted as the "Judicial Murder of Raja Nand Kumar" amply demonstrates this. Raja Nand Kumar had accused the then Governor General Warren Hastings of receiving bribe. Shortly after this incident, charges of forgery were preferred against Raja Nand Kumar. On 15th June, 1775, Raja Nand Kumar was found guilty of the charges and was awarded the capital punishment by Chief Justice Impey, a close aide of Warren Hastings. The trial had many peculiarities: such as instead of being tried before the local Court by local men he was tried by a British judge and jury, who arguably did not have jurisdiction. Historians have later stated that Raja Nanda Kumar paid the price for daring to accuse the Governor General Warren Hastings.

8. Around 150 years later, there was a growing consciousness about the values of liberty, equality, justice and fraternity. As part of persistent and organised campaign for the freedom, the Indian masses were increasingly made aware of how unjust and oppressive the discriminatory laws of the colonisers are. In 1922, during his famous trial, Mahatma Gandhi captured the imagination of the nation with the following words:

"Little do they realize that the Government established by law in British India is carried on for this exploitation of the masses... In ninety-nine cases out of hundred, justice has been denied to Indians as against Europeans in the courts of India."

9. He thus concluded, "In my opinion, the administration of the law is thus prostituted, consciously or unconsciously, for the benefit of the

exploiter."

10. Our struggle for independence, thus marked our journey towards establishment of a state defined by the "Rule of Law". The move from a colonial past to the present required a shift from the colonial idea of laws imposed by foreign rulers for their benefit, to laws given by our people to govern themselves, laws which are not merely commands but are also embodied by a sense of justice. There was a need to give guarantee for the laws to be framed with human face for the benefit of the masses. A framework was needed to ensure this. The framework that which forms the binding link between law and justice in this country. That is what "We the people" gave to ourselves in the form of the Constitution.

11. When the framers set out to draft the Constitution, the existing social conditions played a crucial role. The newborn country was faced with enormous challenges such as illiteracy, poverty, immense religious, ethnic, linguistic, and social diversity. The framers envisaged a document which not only took care of the prevailing conditions but would also continue and be relevant for all times to come. It is therefore, conceived as a living document whose contents evolve over the years, as the Courts deal with new situations and question and interpret the Constitution in the light of the same.

12. The Constitution embodies within itself the concept of Rule of Law and the same can be witnessed from our Preamble, the Fundamental Rights, the Directive Principles of State Policy, the Separation of Powers, etc. By situating the concept of Rule of Law at the confluence of three important values – human dignity, democracy and justice, our founding fathers showed the path for the rest of the world too.

13. In its 1955 "Act of Athens", the International Commission of Jurists explicitly stated the "state" has to be subject to the law. Subsequently in the year 1959, under the support of the same Commission, International Congress of Jurists – consisting of 185 judges, practicing lawyers and teachers of law from 53 countries - convened in New Delhi and issued the "Declaration of Delhi", which is one of the seminal documents on rule of law. After reaffirming the "Act of Athens" and particularly the

EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE

need for a completely independent judiciary, the International Congress of Jurists declared that the rule of law "is a dynamic concept which must be employed to safeguard and advance the civil and political rights of individual in a free society."

14. Now, more than 70 years down the line, the entire world is facing an unprecedented crisis in the form of Covid-19. At this juncture, we necessarily have to pause and ask ourselves as to what extent we have used the Rule of Law to ensure protection to, and, welfare of all of our people. I do not intend to provide an evaluation of the same. Both my office and my temperament prevent me from doing so. But I began to feel that this pandemic might yet be a mere curtain raiser to much larger crises in the decades to come. Surely we must at least begin the process of analysing what we did right and where we went wrong.

15. Coming back to the topic, from within the perspective of legal positivism, many conceptions of Rule of Law have emerged. From Dicey to Lord Bingham, different formulations of principles informing the concept of rule of law have been made. It would be impossible to adequately address the rich tapestry woven by human intellect in this area in the course of a speech. However, I thought it would be relevant to emphasise 4 principles, given the current events across the globe.

16. The first principle is that 'laws must be clear and accessible'. This is the fundamental point that when laws are expected to be obeyed, the people at least ought to know what the laws are. There cannot therefore be secretive laws, as laws are for the society. Another implication of this principle is that they should be worded in simple, unambiguous language. In furtherance of the above principle, in India we are constantly striving to make legislations and judgements accessible to general public by translating them in to various Indian languages.

17. The second principle relates to the idea of "equality before the law". Laws are to be applied on an equal basis in a non-arbitrary fashion. This is, of course, an important fundamental right promised under the Indian Constitution.

18. An important aspect of "equality before law" is having equal "access to justice". I must emphasize

that, in a democratic country like ours, access to justice forms the bedrock of the "Rule of Law". However, this guarantee of equal justice will be rendered meaningless if the vulnerable sections are unable to enjoy their rights because of their poverty or illiteracy or any other kind of weakness. In India, the Legal Aid Authority is estimated to serve more than 70% of the population who are entitled for free legal aid, making the Indian Legal Aid system one of the largest in the world.

19. Another aspect I want to highlight over here, which might be a bit of a tangent but is certainly very important, is the issue of 'gender equality'. Traditional roles are changing within the family, as is the structure of the family itself. Most nations have recognized equality and dignity of women, either constitutionally or statutorily.

20. The legal empowerment of women not only enables them to advocate for their rights and needs in society, but it also increases their visibility in the legal reform process and allows their participation in it.

21. Bias and prejudice necessarily lead to injustice, particularly when it relates to the minorities. Consequently, the application of the principles of Rule of Law in respect of vulnerable sections has to necessarily be more inclusive of their social conditions that hinder their progress.

22. This leads me to the third principle, which is that members of society have the "right to participate in the creation and refinement of laws" that regulate their behaviours. We live in a democracy. The very essence of a democracy is that its citizenry has a role to play, whether directly or indirectly, in the laws that govern them. In India, it is done through elections, where the people get to exercise their universal adult franchise to elect the people who form part of the Parliament which enacts laws. Incidentally, we, the Indian people gave ourselves the Universal Adult Franchise from day one of the coming into existence of our Republic, unlike some of the 'advanced democracies'.

23. In the seventeen national general elections held so far, the people have changed the ruling party or combination of parties eight times, which accounts

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

for nearly 50 percent of number of general elections. In spite of large scale inequalities, illiteracy, backwardness, poverty and the alleged ignorance, the people of independent India have proved themselves to be intelligent and up to the task. The masses have performed their duties reasonably well. Now, it is the turn of those who are manning the key organs of the State to ponder if they are living up to the Constitutional mandate.

24. It has always been well recognized that the mere right to change the ruler, once every few years, by itself need not be a guarantee against tyranny. The idea that people are the ultimate sovereign is also to be found in notions of human dignity and autonomy. A public discourse, that is both reasoned and reasonable, is to be seen as an inherent aspect of human dignity and hence essential to a properly functioning democracy. As Professor Julius Stone observed in his book "The Province of Law", elections, day to day political discourses, criticisms and voicing of protests is integral to the democratic process.

25. The idea of the judiciary, as a "guardian of the Constitution, brings me to the fourth and final principle- the presence of a "strong independent judiciary".

26. The judiciary is the primary organ which is tasked with ensuring that the laws which are enacted are in line with the Constitution. This is one of the main functions of the judiciary, that of judicial review of laws. The Supreme Court has held this function to be a part of the basic structure of the Constitution, which means that the Parliament cannot curtail the same.

27. But the importance of the judiciary should not blind us to the fact that the responsibility of safeguarding constitutionalism, lies not just on the Courts. All the three organs of the State, i.e., the executive, legislature and the judiciary, are equal repositories of Constitutional trust. The role of the judiciary and scope of judicial action is limited, as it only pertains to facts placed before it. This limitation calls for other organs to assume responsibilities of upholding Constitutional values and ensuring justice in the first place, with the judiciary acting as an important check.

28. For the judiciary to apply checks on governmental

power and action, it has to have complete freedom. The judiciary cannot be controlled, directly or indirectly, by the legislature or the executive, or else the Rule of Law would become illusory. At the same time, judges should not be swayed by the emotional pitch of public opinion either, which is getting amplified through social media platforms. Judges have to be mindful of the fact that the noise thus amplified is not necessarily reflective of what is right and what majority believes in. The new media tools that have enormous amplifying ability are incapable of distinguishing between right and wrong, good and bad and the real and fake. Therefore, media trials cannot be a guiding factor in deciding cases. It is therefore extremely vital to function independently and withstand all external aids and pressures. While there is a lot discussion about the pressure from the executive, it is also imperative to start a discourse as to how social media trends can affect the institutions.

29. The above, however, should not be understood as meaning that judges and the judiciary need to completely disassociate from what is going on. Judges cannot stay in "ivory castles" and decide questions which pertain to social issues.

30. The oath we took, to perform our duties 'without fear or favour, affection or ill-will', applies equally to governmental and non-governmental entities. The ultimate responsibility of a judge is, after all, to uphold the Constitution and the laws. Reason, reasonableness and protection of human dignity are the values that will serve us well.

31. I would now like to speak on the role of lawyers in upholding the "Rule of Law". It demands expertise, experience and commitment. Lawyers have an obligation to perform their duties with integrity and diligence, with full respect for the Court, opposing counsel, clients, victims, witnesses and persons involved in proceedings. We need social-virtue rather than economically self-interested behaviour.

32. Historically, lawyers have a rich tradition of social activism demonstrated by the number of lawyers who participated in the Indian freedom struggle. In part, this civic virtue stems from their having had a public-minded clientele. We need now to rebuild and recreate a tradition of civic professionalism. We need a professional ideology about social responsibility.

DO NOT DWELL ON THE PAST OR FUTURE. CONCENTRATE ON THE PRESENT MOMENT

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Here, I would urge both young and senior counsels to extend a helping hand to those in need of justice. Extending ease of access to justice is no less a social justice. Let economy, gender, class or caste never be a hinderance in the path to secure justice.

33. Undoubtedly, reverence for the "Rule of Law" is our best hope for survival as a free society. In order to advance the "Rule of Law" we primarily need to create a society where "Rule of Law" is respected and cherished. Only when the citizens believe that they have fair and equal access to justice, can we have sustainable, just, inclusive and peaceful societies. Citizens can strengthen the "Rule of Law" by being knowledgeable about it and by applying it to their daily conduct and pushing for justice when needed.

34. I am taking the liberty to quote in Telugu, Maha Kavi Gurajada Appa Rao, a great poet and reformist of 19th / 20th Century. He said, and I quote :

"Desamamte Matti Kadoi, Desamamte ManushulOI" (unquote). Gurajada gave a universal definition to the concept of nation. He said "a nation is not merely a territory. A nation is essentially its people. Only when its people progress, the Nation progresses".

35. You are the stewards of this nation and custodians of a very rich tradition. I hope that you contribute by way of giving back something to this society, to this great nation which has bestowed you with so many privileges. I must lastly state that the work of ensuring complete justice as aspired to, under the Constitution can never be said to be completed. The mandate of our Constitution is to work tirelessly to surpass our own expectations, to make India a country wherein rights are cherished, and which sets an example for other countries to follow. There is no better way to end this speech on "Rule of Law" than reciting a poem by Kaviguru Ravindranath Tagore,

**" Where the mind is without fear and the head is held high
Where knowledge is free
Where the world has not been broken up into fragments
By narrow domestic walls
Where words come out from the depth of truth
Where tireless striving stretches its arms towards perfection
Where the clear stream of reason has not lost its way
Into the dreary desert sand of dead habit
Where the mind is led forward by thee
Into ever-widening thought and action
Into that heaven of freedom, my Father, let my country awake."**

Thank you.

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