

# **WORLD JUSTICE PROJECT'S ASIAN LAUNCH OF THE RULE OF LAW INDEX 2021**

## **Opening Remarks**

28 October 2021, Thursday

The Honourable the Chief Justice Sundaresh Menon  
Supreme Court of Singapore

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1. Warm greetings to all of you and congratulations to the World Justice Project on the launch of the Rule of Law Index 2021. Over the years, the Rule of Law Index, now in its twelfth edition, has established itself as a trusted source of data on the rule of law. The Index currently covers 139 countries and offers a longitudinal overview of how the commitment to the rule of law, at the national, regional and global levels, has evolved over time. The simplicity and clarity with which the data is presented belies the tremendous work that goes into collecting and processing it; I understand that this year's Index distils data from, amongst other sources, surveys of no less than 138,000 households and around 4,200 legal practitioners and legal experts. This is a truly monumental effort, and it is all the more impressive given that it was undertaken despite the challenges posed by the pandemic.

## I. Rule of Law Culture

2. The rule of law has, at various times, been taken to mean different things to different people. But even recognising the scope for disagreements over the precise *content* of the rule of law, most would agree that the rule of law comprehends, at least, a *shared societal commitment* to its values and core principles,<sup>1</sup> such as accessibility, accountability, transparency, and the principle that the exercise of public authority must be subject to legal limits.<sup>2</sup> For the rule of law to exist meaningfully in a society, the governed and those who govern must be equally *committed* to these values encompassed by the rule of law, and they must take it for granted that the rule of law is a necessary element for the proper functioning of society. On this view, the rule of law resides not in a collection of rules and laws, but in a shared *belief* that the law *should* rule.<sup>3</sup>

3. This belief manifests in the countless micro-transactions that people undertake in the shadow of the law in the humdrum of daily life, such as when a motorist stops at a traffic light, a merchant honours a contract, or a policeman decides not to force an entry without a warrant. In this way, public commitment to the rule of law is reinforced as legal actors live up to their legal obligations.<sup>4</sup> Seen in this light, the best evidence for the rule of law exists in society living in that way. As Professor Murray Hunt, Director of the Bingham Centre for the Rule of Law, quite aptly puts it, the rule of law is a “*living and breathing culture, a habit and state of mind instantiated by public*

*participation*".<sup>5</sup>

4. It follows that the *true* measure of a society's adherence to the rule of law will be found not in the grandeur of its courthouses, the sophistication of its statute books or even the reputation and standing of its judges. Rather, one should look *within* a society to gauge how the rule of law is actually experienced and perceived by its members. This is what the Rule of Law Index endeavours to do, by relying on surveys to gain some insight into the lived experience of the respondents, even if this is shaped by their perspectives. To that extent, it serves as an important guide to societal attitudes and commitment to the rule of law.

5. The picture that the Index paints this year is one of the rule of law somewhat in retreat. For the fourth consecutive year, more countries have declined than improved in their overall rule of law performance,<sup>6</sup> and national scores for several categories, including timeliness of justice and absence of discrimination,<sup>7</sup> have seen sharp declines. These trends also seem broad and persistent: countries which saw declining or stagnant scores outnumbered those which saw improvement across *all* regions of the world and *all* income groups,<sup>8</sup> and a majority of those which had experienced a decline in 2020 had also seen a deterioration in their scores in the previous year.<sup>9</sup>

6. This should concern us. If the decline in the commitment to the rule of law is eroded, it will tell in societal life. When our trust and belief in the rule of

law is eroded, the impact can be grave and can manifest rapidly. And the danger is that unlike a building which can be repaired or a statute which can be amended or re-enacted, public *trust* in the law and its institutions – once lost – can be difficult to restore.

## **II. Public trust and the rule of law**

7. Public trust in the law and its institutions is often seen as a *casualty* of the overall decline of the rule of law, but I suggest that that loss of trust might also be a *cause* of that decline. If the rule of law is brought to life by public commitment to and belief in its values, then its existence depends on there being a substratum of public *trust and confidence* in the justice system. I want to touch on two widespread challenges which threaten to undermine that substratum of trust and confidence: (i) first, rising inequality; and (ii) second, the breakdown of truth in public discourse.

### ***A. Rising inequality***

8. While the global economy has been on an upward trajectory for some time, various studies note that the gains have not been evenly distributed and that the benefits of global growth have disproportionately accrued to the rich. According to the 2018 World Inequality Report, between 1980 and 2016 the top 1% of global earners captured twice as much of the growth in global income as the poorest 50%.<sup>10</sup> Of course, some measure of inequality is to be expected in any meritocratic society, since there will always be differences in

ability and circumstance. But extreme and entrenched inequality can bring about feelings of division, exclusion, and a growing sense of hopelessness fuelled by the view that one's *future* is largely determined by one's *background*.<sup>11</sup>

9. The law should, in theory, operate as a bulwark against inequality. It is, after all, a fundamental principle of the rule of law that all are equal before the law. But there seems a growing sense that the law and its institutions often do not live up to that ideal.

(a) A substantial part of this can be traced to inequalities in *access to justice*. In 2017, a staggering 86% of civil legal problems reported by low-income Americans received inadequate or no legal assistance.<sup>12</sup> And in 2019, the World Justice Project's report on "*Measuring the Justice Gap*" estimated that nearly 1.4bn people were unable to obtain justice for a host of civil legal problems, ranging from disputes over land, to matrimonial and employment disputes.<sup>13</sup> Legal rights are worthless until and unless there exist accessible and efficient means by which they may be claimed and vindicated.<sup>14</sup>

(b) Another issue of concern pertains to the incidence of what appears to be the discriminatory *enforcement* of the law along a range of societal fault lines – whether racial, religious or socio-economic.<sup>15</sup> In the US, several high-profile incidents of police violence against persons of colour

have sparked concerns of discriminatory policing practice. Last year, one report on police shootings in the US found that amongst unarmed victims of such shootings, African Americans were killed at nearly *three times* the rate of White Americans.<sup>16</sup> Such outcomes are often deeply intertwined with *economic* factors; one study found that America's poorest neighbourhoods are also the most likely to see deadly police encounters.<sup>17</sup>

10. Plainly, these feelings of *exclusion* and *discrimination* can adversely affect public trust and confidence in the justice system,<sup>18</sup> and, by extension, in the rule of law. Each year, the Edelman Trust Barometer surveys public trust in Government, business, and the media, among other institutions. Its 2020 report found that 57% of those who indicated distrust of governments did so because they felt that governments serve the interests of only the few.<sup>19</sup> While one might be tempted to dismiss these as somewhat abstract feelings of dissatisfaction and unfairness, they seem symptomatic of a deeper distrust of institutions of authority arising from a perception that the system – including the *justice* system – has been co-opted by the “elite” in society at the expense of the regular citizenry and worse, of minorities.<sup>20</sup>

### ***B. The breakdown of truth in public discourse***

11. The second, related challenge to public trust and confidence in the rule of law is what has been referred to as “truth decay”.<sup>21</sup> Trust in almost *all*

sources of facts and information – from the Government, to the mainstream media, and even social media – has fallen to new lows. 64% of Americans say they find it difficult to distinguish between fact and fiction when listening to elected officials.<sup>22</sup> And just 35% of respondents to a 2021 survey trusted social media as a source of news, while 59% believed that journalists deliberately aim to mislead people by saying things they know are false or gross exaggerations.<sup>23</sup> We have never had more information, but at the same time, we have a dearth of objectively verifiable, trusted facts, and this has driven the alarming rise of “alternative facts”, echo chambers, and consequently a decline in the role of facts and truth in public discourse.<sup>24</sup>

12. This should be of great concern to us not least because of the effect that falsehoods, or even inadvertent inaccuracies, can have on the administration of justice. In the *Miller* case in the UK, which concerned the constitutional limitations on the Government’s power to effect Brexit, the judges involved were branded “enemies of the people” by the tabloid media,<sup>25</sup> with subsequent commentary accusing them of “straying into political territory”, even though, as the judgment itself clearly stated, the parties had all agreed that the case raised a “justiciable question which it is for the courts to decide”.<sup>26</sup>

13. This has several implications for the rule of law. At the most basic level, those of us charged with the responsibility of administering justice, must do our utmost to ensure that our judgments convey our reasons in terms that are

as accessible and transparent as they can reasonably be. But the much deeper concern is that without a dependable substratum of objective facts that most right-thinking people can agree on, it will be extremely difficult to engage in sensible and rational debate. The decline of truth must surely be among the most pernicious threats against the sustenance of the rule of law, which at its most basic level must be rooted in the pursuit of truth in order to achieve justice.

### **III. Conclusion**

14. The Rule of Law Index in recent years may make for disheartening reading. But this underscores the importance of the work that is being done by the World Justice Project. The task of *rebuilding* trust in the rule of law will require the coordinated and sustained efforts of a range of stakeholders, including the Judiciary, the Government, the legal profession and the media. Benchmarks like the Rule of Law Index can help by affording us at least a sense of where we are, how far we have progressed or regressed, as the case may be, and where we might consider intensifying our efforts.

15. Let me conclude by commending the World Justice Project team once more for the tremendous work that they have put into the preparation of this year's Rule of Law Index and thank them for their commitment to advancing justice and the rule of law in our world.



16. Thank you very much for inviting me to speak to you.

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- <sup>1</sup> Brian Tamanaha, “The History and Elements of the Rule of Law” (2012) SJLS 232 (“Tamanaha”) at 246. See also Brian Tamanaha, “A Concise Guide to the Rule of Law” in Gianluigi Palombella and Neil Walker eds, *Relocating the Rule of Law* (Hart Publishing 2009).
- <sup>2</sup> World Justice Project, Rule of Law Index 2020 at pp 9-10. The World Justice Project’s Rule of Law Index defines the rule of law as a durable system of laws, institutions, norms, and community commitment that delivers four universal principles: (i) accountability; (ii) just laws; (iii) open government; (iv) accessible and impartial dispute resolution.
- <sup>3</sup> Tamanaha at p 247.
- <sup>4</sup> Tamanaha at p 247.
- <sup>5</sup> Murray Hunt, Prospect Magazine, “Why the rule of law is a living culture” (8 December 2020): <<https://www.prospectmagazine.co.uk/sponsored/why-the-rule-of-law-is-a-living-culture>>.
- <sup>6</sup> World Justice Project, “Rule of Law Index 2021 Insights” (“2021 Insights”) at p 2: nearly *three-quarters* of countries covered by the Rule of Law Index experienced declines in rule of law performance (74.2%), which together account for 84.7% of the world’s population, or approximately 6.5 billion people.
- <sup>7</sup> 2021 Insights at p 3.
- <sup>8</sup> 2021 Insights at p 2.
- <sup>9</sup> Ted Piccone, The Brookings Institution, “The rule of law is under duress everywhere” (17 March 2020): <<https://www.brookings.edu/blog/order-from-chaos/2020/03/17/the-rule-of-law-is-under-duress-everywhere>>.
- <sup>10</sup> World Inequality Lab, World Inequality Report 2018: <<https://wir2018.wid.world>> at p 11. We see the same unevenness when one looks at the distribution of global *wealth*. One 2019 Oxfam study found that the world’s 26 richest persons own as much as the poorest 50%: Larry Elliott, The Guardian, “World’s 26 richest people own as much as poorest 50%, says Oxfam” (21 January 2019): <<https://www.theguardian.com/business/2019/jan/21/world-26-richest-people-own-as-much-as-poorest-50-per-cent-oxfam-report>>. It is estimated that the world’s richest 1% could own two-thirds of global wealth by 2030: Michael Savage, The Guardian, “Richest 1% on target to own two-thirds of all wealth by 2030” (7 April 2018): <<https://www.theguardian.com/business/2018/apr/07/global-inequality-tipping-point-2030>>.
- <sup>11</sup> Patrick Butler, The Guardian, “Social mobility in decline in Britain, official survey finds” (21 January 2020): <<https://www.theguardian.com/society/2020/jan/21/social-mobility-decline-britain-official-survey-finds>>, noting that 44% of adults surveyed in the UK agreed that where a person ends up in society was largely determined by their background. See also Clint Smith, The Atlantic, “Elite Colleges Constantly Tell Low-Income Students That They Do Not Belong” (18 March 2019): <<https://www.theatlantic.com/education/archive/2019/03/privileged-poor-navigating-elite-university-life/585100>>, noting that in the US, children with parents in the top 1% of income distribution were 77x more likely to attend elite colleges and universities than children with parents in the bottom 20% of the income distribution.
- <sup>12</sup> Legal Services Corporation, “Justice Gap Report: The 2017 Justice Gap Report”: <<https://www.lsc.gov/our-impact/publications/other-publications-and-reports/justice-gap-report>>.
- <sup>13</sup> World Justice Project, “Measuring the Justice Gap”: <<https://worldjusticeproject.org/our-work/research-and-data/access-justice/measuring-justice-gap>> at pp 13-14.
- <sup>14</sup> The COVID-19 pandemic seems certain to exacerbate this. The Rule of Law Index 2021 Report found that 94% of countries experienced increased delays in administrative, civil or criminal proceedings: 2021 Insights at p 3.
- <sup>15</sup> In 2020, 67% of countries covered by the Rule of Law Index experienced declines in equal treatment and absence of discrimination: 2021 Insights at p 3.
- <sup>16</sup> Brita Belli, Yale News, “Racial Disparity in Police Shootings Unchanged Over 5 Years” (27 October 2020): <<https://news.yale.edu/2020/10/27/racial-disparity-police-shootings>>

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unchanged-over-5-years>. These findings were based on an analysis of 4,653 fatal shootings for which information about both race and age were available. In the case of *armed* victims, black people were killed at 2.6 times the rate of white people. In the UK, statistics released by the Metropolitan Police indicated that police officers were *four times* more likely to use force against black people compared with the white population: Sam Francis, Tarah Welsh & Zack Adesina, BBC, “Met Police ‘four times more likely’ to use force on black people” (30 July 2020): <<https://www.bbc.com/news/uk-england-london-53407560>>, noting that while force was used on white people more often in absolute terms, the rate of incidents was lower compared to the proportion of London’s population that was white.

<sup>17</sup> Francie Diep, Pacific Standard, “Police Are Most Likely to Use Deadly Force in Poorer, More Highly Segregated Neighborhoods” (24 January 2019): <<https://psmag.com/news/police-are-most-likely-to-use-deadly-force-in-poorer-more-highly-segregated-neighborhoods>>.

<sup>18</sup> One poll found that only 26% of Americans believed that the civil justice system provided timely and reliable resolution of disputes: see Ron Faucheux, The Atlantic, “By the Numbers: Americans Lack Confidence in the Legal System” (6 July 2012): <<https://www.theatlantic.com/national/archive/2012/07/by-the-numbers-americans-lack-confidence-in-the-legal-system/259458>>. And, in 2020, confidence in the police hit a nearly 30-year low in the US: Scottie Andrew, CNN, “Americans’ confidence in police falls to its lowest level in nearly three decades, new Gallup poll shows” (12 August 2020): <<https://edition.cnn.com/2020/08/12/us/american-confidence-in-policing-new-low-trnd/index.html>>.

<sup>19</sup> See the 2020 Edelman Trust Barometer: <<https://www.edelman.com/trust/2020-trust-barometer>> at p 23, noting that 57% of respondents cited the fact that government “serves the interests of only the few” as their reason for distrusting government.

<sup>20</sup> See, for instance, Lawrence Baum & Neal Devins, “Why the Supreme Court Cares About Elites, Not the American People” (2010) College of William & Mary Law School Faculty Publications 1116; Sheldon Whitehouse, Project Syndicate, “America’s Captured Courts” (25 November 2020): <<https://www.project-syndicate.org/commentary/dark-money-federalist-society-captured-us-courts-by-sheldon-whitehouse-2020-11>>; Sheldon Whitehouse, “Dark Money and US Courts: The Problem and Solutions” (2020) 57 Harvard Journal on Legislation 273.

<sup>21</sup> Jennifer Kavanagh & Michael D Rich, RAND Corporation, “Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life”: <[https://www.rand.org/pubs/research\\_reports/RR2314.html](https://www.rand.org/pubs/research_reports/RR2314.html)> (“Kavanagh & Rich”).

<sup>22</sup> Pew Research Center, “Trust and Distrust in America: Americans’ struggles with truth, accuracy and accountability” (22 July 2019): <<https://www.pewresearch.org/politics/2019/07/22/americans-struggles-with-truth-accuracy-and-accountability>>.

<sup>23</sup> 2021 Edelman Trust Barometer: <<https://www.edelman.com/trust/2021-trust-barometer>>.

<sup>24</sup> Sundaresh Menon CJ, “Justice in a Globalised Age”, keynote lecture at the 3<sup>rd</sup> Judicial Roundtable on Commercial Law (29 September 2021) at para 42, citing Kavanagh & Rich.

<sup>25</sup> Estelle Shirbon, Reuters, “Branded ‘enemies of the people’ over Brexit case, senior UK judges hit back” (29 March 2017): <<https://www.reuters.com/article/us-britain-eu-judges-idUSKBN1701BA>>.

<sup>26</sup> The Guardian, “Against the law: why judges are under attack” (22 August 2020): <<https://www.theguardian.com/books/2020/aug/22/against-the-law-why-judges-are-under-attack-by-the-secret-barrister>>. See also *R (Miller) v The Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin) at [5].