CONVOCATION ADDRESS BY CHIEF GUEST PROF. NIRAJA GOPAL JAYAL:

1.Hon'ble Chief Justice of India, Mr. Justice Sharad Arvind Bobde
2.Hon'ble Judges of the Supreme Court of India
3.Hon'ble Chief Justices and Judges of the High Courts
4.Hon'ble Deputy Chief Minister and Minister for Higher Education, Dr. C. N. Ashwath Narayan
5.Hon'ble Minister for Law and Justice, Shri J. C. Madhu Swamy
6.Hon'ble Chairman of the Bar Council of India, Shri Manan Kumar Mishra
7.Hon'ble Members of the General Council, Executive Council, Academic Council and the Finance Committee of the University
8. Professor Sudhir Krishnaswamy, Vice-Chancellor & Faculty Members of the National Law School of India University.
9. Graduates and Parents.

It is a singular privilege to participate in this 28th Convocation of the National Law School of India University, and a great pleasure to join you in congratulating the graduates and their parents. An exciting future awaits you, even though the world has been quite dramatically transformed between the time you came to law school five years ago, and today. This morning, I would like to draw your attention to some challenges of the post-Covid world and to suggest how you, the most gifted members of Generation Z, might steer us through it.

Even in our highly networked times, the name of the first casualty of the coronavirus pandemic is not known. It could be argued that its first identifiable casualty was globalization, as we knew it. This was already prefigured in the backlash to globalisation in the past few years, with the rise of economic nationalism, trade wars and protectionism, and anti-immigrant sentiment. The pandemic brought these to breaking-point. Supply chains were disrupted as were the movement of capital, goods and people. With global air travel today plummeting to levels last seen in the 1970s, the pandemic has clearly compelled us to press the pause button on our carbon footprint, something that the pleadings of advocates of climate justice could not accomplish. As countries closed borders, people rushed across the globe seeking the safe refuge of home, the more vulnerable among them – like Indian workers in the Gulf – having to sacrifice months of wages as they rushed back.

But is globalization dead? Can or should it be dead? Or is it possible to re-imagine a newer and better form of globalization to replace it?

For globalization does not have to be about the exploitative offshoring of manufacture, or even only about the global integration of markets. A newer form of globalization, grounded in an acknowledgment of the necessary inter-dependence of nations, is not just possible but also necessary. Whether it is the immediate imperative of a vaccine or the longer-term imperative of forging coalitions to combat climate change, a more humane and equitable form of globalization needs to be crafted.

Already, in the Anglo-American world, moral and political philosophers and lawyers have collaborated with medical experts to develop an ethical framework called the Fair Priority Model for a just and equitable global allocation of the vaccine, as and when it comes. If such a principle of fairness could be adopted by the international community (and obviously I have few illusions here) this would arguably be the first time in human history that principles of distributive justice were honestly applied across national boundaries, without regard to the power or wealth of nation-states.

Today, I wish to speak to you on two particular global phenomena of the contemporary moment, both of which are also abundantly manifest in India, and will significantly inflect the future that you will be called upon to negotiate. These are the Democratic Deficit and the Digital Deluge. Both were present in pre-pandemic times, but both have come into sharper relief since the pandemic began. If the first has been a victim of the pandemic, the second has been its beneficiary. While they are obviously quite different from each other, they are also, I will argue, not entirely unrelated.

Let me start with The Democratic Deficit:

The erosion of democracy worldwide was already a notable phenomenon before the arrival of the pandemic. The *Democracy Report 2020* shows a surge in autocratization across the world. For the first time since 2001, autocracies are in a majority: 92 countries, home to 54% of the global population.

India sadly does not buck the global trend. In 2017, it was described as a liberal democracy; today, it is classified as an electoral democracy. The difference is not insubstantial: a liberal democracy provides for the protection of individual and minority rights and does this through constitutional protections for civil liberties, strong rule of law, and effective checks and balances that place limits on the use of executive power. An electoral democracy provides only periodic competitive elections. India, according to this report, has declined from a liberal democracy to an electoral democracy. This interpretation is complemented by our falling ranking on several other Indexes: to mention just a few, the Rule of Law Index, the World Press Freedom Index, the Academic Freedom Index, and the Social Progress Index.

Globally, as in our country, this unprecedented process of autocratization is characterised by a concentration of executive power that blurs the lines that we presume to be defining the separation of powers; an erosion of the core democratic principles of representation, accountability and transparency; and a blithe unconcern for the principles of legitimate governance. The absence of debate and deliberation on contentious issues in Parliament and the jettisoning of basic procedures of accountability means that laws can be made, not in accordance with the will of the people and their elected representatives, but by the will of the executive; that governments owe their citizens neither information nor explanation; and that citizens are effectively dispossessed of political agency till the next election comes around in four or five years, as the

case may be, and when it does, of course, the tidal waves of money and muscle power can be relied upon to carry it to its pre-determined conclusion.

Democracy, in sum, is reduced to an elective mechanism that begets governments that are committed not to the welfare of all citizens, only to its supporters among them. The claim to govern legitimately does not acknowledge the need to be responsive or accountable to citizens in the conduct of governance. This effectively means that the rights and liberties of all citizens will not receive the equal protection of the law, only those of favoured groups will; and that the rights of minorities and other disadvantaged groups, even if guaranteed by the law, will be disregarded with impunity. These are just a few of the multiple ways in which democracy – in procedure, in practice and in spirit – has been diminished in recent times.

As the political theorist David Runciman says, coronavirus has not so much suspended politics as it has revealed the nature of state power. Just a few days ago, Lady Hale, the former President of the UK Supreme Court, said that the UK Parliament had "surrendered" its role over emergency laws that were curbing freedoms, by giving sweeping powers to the government, and imposing draconian health regulations on the public with no parliamentary scrutiny. The application of the National Disaster Management Act with no end-date, and without any provisions for review of the exercise of enhanced executive powers, is not dissimilar. The silence around multiple aspects of the pandemic, from data on the spread of the disease to the migrant workers' crisis, has been resounding.

I mention these deficits of democracy because, as members of the legal profession, you will be called upon to engage with them. I urge you to never forget that you are among the sentinels of our republic and the protectors of its democratic fabric.

I turn now to the second issue I wish to discuss with you, The Digital Deluge.

The Digital Deluge:

The pandemic has, as we know only too well, caused real life to be transposed and projected on to screens. For the past few months, we have effectively been living online. For lawyers and judges, doctors and patients, teachers and students: the professional world of work has come to be conducted on the internet. Outside of work, too, life is being lived online - recreation, entertainment, grocery shopping, social interaction. The wonder of technology has us in thrall for the ways in which it has made our virus-induced incarceration bearable. What the Polish philosopher Zygmunt Bauman memorably called Liquid Modernity can now be renamed Liquid Crystal Display or LCD Modernity.

And yet, I have no doubt that a virtual convocation would not have been your preferred mode of celebrating this very special day. You would much rather have been on campus dressed in your academic gowns and mortar-boards, in the company of your teachers, and the friends with whom you forged enduring

friendships. Instead, you find yourselves in front of a screen, by all reckoning a sorry substitute.

The digital now envelops our lives and world in a quite unprecedented way. Even before the pandemic, much had been said about the interface of the digital media and politics across the world. We learnt, if distantly, of the power of the digital media to interfere in elections in different countries. At the same time, we celebrated what appeared to be the inherently democratizing quality of the social media – where every opinion could find a voice, or at least a tweet.

Social media bring much joy into our lives, but we need also to be alert to the fact that they take control over some aspects of our identities. As citizens, but also as lawyers who will be in the frontline of determining how the law can protect our rights over personal and non-personal data, and negotiating issues of privacy and consent, I encourage you to be mindful of some of these traps.

The philosopher Hannah Arendt taught us that the essence of politics, especially democratic politics, lies in the clash of opinions, which are formed through debate in a public sphere, a space in which all are political equals, in which individuals can form opinions freely, express them freely and test them in and through public debate. This may seem impossible when propaganda is used to make lies appear as true, exploiting the vulnerabilities and the anxieties of people. Yet, it is the only way, said Arendt, to deal with the contest between truth and lies in politics.

In recent years, Twitter came to be valorised as a virtual public sphere, an *agora* – the open space in the cities of ancient Greece where citizens would debate on what constitutes the common good. In our times, the digital agora has found expression in a pioneering experiment in what is called 'radical transparency' initiated by the famous Digital Minister of Taiwan, Audrey Tang. This entails using an online forum crowdsourcing public opinion for policy-making. On contentious subjects, people are invited to give suggestions, others respond and over a few weeks of online dialogue, a series of policy recommendations emerges. 'Civic tech,' as it is called, thus forges an innovative relationship between the state and civil society.

A digital agora is clearly not a feasible model for a country like ours. At the most banal level, the lockdown showed how, even on the micro scale of the WhatsApp groups of Residents' Welfare Associations, we struggled to have calm and reasoned debates on defining common goals by consensus.

Nevertheless, three aspects of the digital media and its enhanced presence in our lives demand our attention: technology and state power; technology and democracy; and digital inequality.

(a) The first is the contemporary iteration of the age-old question about the relationship between technology and state power. Technology can enhance state power in obvious ways, through the incredible possibilities for state

surveillance that are facilitated by the mountain of citizens' personal data stored on government servers that seem to be always hungry for more.

Justice B.N. Srikrishna, who headed the committee that drafted the Personal Data Protection Bill has described the version of the bill that is currently pending enactment as dangerous, because it gives sweeping powers to an Orwellian state, thus endangering the privacy of citizens whose personal data is not adequately safeguarded. There are legitimate anxieties about the enhanced possibilities for state surveillance, even when these are justified by benign purposes such as welfare interventions or, most recently, access to health facilities.

As the cliché goes, data is the new oil: the source of enormous economic value for companies and enhanced power for states.

(b) Secondly, the digital media today offer enormous opportunities for what used to be called propaganda, with the possible difference that propaganda was easier to identify than the sophisticated and subtle world of political messaging today, conveyed through ostensibly non-political platforms of social networking. The amplification of political opinion in a calculatedly one-sided way precludes the possibility of dialogue and deliberation, as it repeatedly, on the basis of your own viewing history, shows you what you need to believe and furnishes you with evidence as to why you should believe it. Psychologists tell us (as does the documentary *The Social Dilemma*) that the effect of social media on the brain is to provide a dopamine stimulant, so that the brain chemistry of social media addicts and drug addicts isn't all that different. We could be deluded into thinking that our opinions are uniquely our own, arrived at by the exercise of our own rationality, though they are actually the result of our having been programmed, with our own unconscious complicity, in particular ways.

When political actors use these sophisticated tools to burnish and instrumentalise echo chambers, the citizenry has been moulded, in ways that we do not recognise as propaganda even if that is what it is. The insidious consequences of these processes for democracy are not limited to how people vote. It has serious consequences also for social harmony, such as when particular social groups are projected as objects of hate deserving of violent speech and action.

Even science is rendered manipulable. It was reasonable to expect that the pandemic would have the effect of making the global public more receptive to science and to expert knowledge. Instead, we have governmental attempts to exercise control over the scientific establishment, to prevent transparency and information-sharing with citizens around the coronavirus statistics. Populist leaders, who first inculcated a skepticism about scientific expertise, now encourage vaccine nationalism, to the detriment of poorer countries.

(c) The flip side of the Digital Deluge is something that is often called the Digital Divide, but should actually be known by its proper name – Digital Inequality – because it mirrors and reproduces other forms of inequality in our society. The commonplace form of this of course is the inequality of digital access in the obsession with digital teaching, learning and examinations.

But the absence of access is only the most obvious way in which digital inequality is created. Experts have already begun to flag concerns about algorithmic bias – based on gender, religion and caste – with artificial intelligence magnifying such bias in a range of areas from the grant of loans and recruitment, to law enforcement and the judiciary.

In India, social media have allowed the doxing of inter-faith couples who applied for registering their marriages, so that hundreds of them found their private information displayed on Twitter and circulating on WhatsApp with hateful comments. Twitter has just taken these down after two months.

Conclusion:

Many of the dimensions of the democratic deficit and the digital deluge that I have discussed entail some loss of human agency: civic agency, political agency and, most of all, moral agency. Speaking of moral agency, I would like to applaud the Alumni of this great institution for their public-spirited generosity in getting planeloads of migrant workers safely home.

In the post-Covid world, it will be imperative to recover and reclaim agency. This will admittedly not be easy given that we are today seeing change on a scale that none of us has ever witnessed. At least as a philosophical principle, contradictory as it may sound, we all know that change is a constant. As the Greek philosopher Heraclitus famously said, you never step into the same river twice.

However, when change is combined with fear, risk and uncertainty, we find ourselves struggling to make sense of it and floundering in our response to it. This is not just a new version of the 'risk society' that sociologists spoke about in the 1980s. Today's risk has a universal quality – almost no corner of the globe is untouched by it. It has also triggered a universalization of fear – an almost primal fear of the stranger and of physical touch in a way that is disturbingly reminiscent of the dastardly practice of untouchability in caste society. But we must hope that the shared and collective quality of this fear will enable empathy, social cooperation and solidarity in ways that have been manifestly fraying of late. This will be essential to the task of redesigning a new and more humane social contract in which there is equitable provision of basic needs, including health and education.

Your generation has learnt valuable lessons that mine (unless they were game theorists) did not have the opportunity to learn – how to negotiate uncertainty,

and how to make choices under conditions that are unpredictable. These are lessons that will surely stand you in good stead in a post-Covid world.

As you advance in your careers, I hope your work will always be animated by the noble goal of upholding and strengthening the rule of law; and that the temptations of technical sophistry and clever casuistry will never deter you from ensuring that law works in the service of justice – in its most profound and meaningful sense – especially for the most vulnerable. This country asks you for nothing less, and I am very confident that you will give us your best.
Thank you very much.