



**NUJS ONLINE LECTURE SERIES IN COLLABORATION WITH THE SOCIETY
FOR ADVANCEMENT OF CRIMINAL JUSTICE**

2nd Digital Lecture organised by SACJ

Date: 13.06.2020

Speaker: Mr Gopal Subramaniam, Senior Advocate and Former Solicitor General of India

Topic: Advancing Criminal Justice in the Present and the Future

Moderator: Mr Surja Kanta Baladhikari

Rapporteur: Aanish Aggarwal

OPENING REMARKS FOR THE SESSION:

The speaker after being welcomed by the host (Deepanshu Agarwal, Convenor, SACJ) and the moderator (Mr. Surja Kanta Baladhikari) started the session by pointing out the inequities in the justice system. He talked about the schism between the justice given to the rich and the poor, illustrating with a few examples. He then talked about the unevenness of the Indian Judicial system fuelled by caste discrimination, poverty and lack of education. He emphasised on the rights afforded to everyone under the Declaration of Human Rights. He said that guilt must be proved beyond reasonable doubt and bail is the rule whereas its refusal is its exception.

FUNDAMENTAL ISSUES/CHALLENGES:

- The prosecutors need to have a separate identity and must dissociate themselves from the Government as much as possible.
- The number of legal aid authorities present to assist the people currently must increase and be made more accountable.
- The scope of discretion available to the judges in matters relating to the grant of bail or the use of inherent power of the High Courts.
- Certain threats to the rule of law that can lead to further criminalization of the marginalised must be addressed.



- Lack of uniformity in prosecuting methods across the country make the process seem more arbitrary.
- The number of Public Prosecutors in the country is much below the needed number and the Government must come up with other solutions to increase opportunities to increase this number.
- The disparity is present as chances of getting justice depends on the economic status of a person.
- Overcrowding of prisons.
- Unnatural deaths of prisons
- Gross inadequacy of staff to maintain the prisons.
- Improper training given to the staff that maintains the prisons
- Per Capita Spending on legal aid given to Indians is not enough. Funding must be increased.
- Inadequate legal protection provided to witnesses.
- There is a need to be clear on the point of proof beyond reasonable doubt.
- Conviction rates in cases are extremely low.

VIABLE RECOMMENDATIONS/SOLUTIONS:

- Public Prosecutors may withdraw from a case on grounds not only limiting due to paucity of evidence but also on grounds of public justice.
- The public prosecutors must focus on ensuring justice to the needy rather than focusing on obtaining convictions.
- The Public Prosecutors must have the ability and the competency to exercise discretion.
- State is under obligation to provide the poor and needy with free legal aid under Article 39A of the Constitution as was dictated in Hussainara Khatoon.
- Urgent necessity of introducing a dynamic legal aid program to ensuring justice to the accused man under Article 21.
- The lawyers representing the people should not be a luxury but a necessity.
- Must form a scheme to provide legal aid in police stations.



- The funding apportioned by the Government for legal aid must be brought to the notice of the Government and it must be convinced to increase their spending on providing legal aid to the poor.
- Supreme Court must commence a suo motu proceeding to address the issues faced by the people to obtain legal aid and the conditions of the prisons in India.
- The Courts must understand their role to do justice under Article 32 of the Indian Constitution.
- An independent legal profession must be established through proper training and they must speak up on behalf of their clients.
- The Bail given to persons must not be withheld as a punishment, it is only the measure whether a person would be present for their hearing or not. Withholding bail is an exception and not a rule.
- The Government could decide on a class of prisoners that could be released on parole, and also the court should decide on matters relating to interim bail.
- Any effort to settle civil disputes and claims which do not involve any criminal offence should be deprecated and discouraged.
- Every relevant facts which leads to the commitment of an offence must be proved to ensure conviction in criminal matters.
- Cases unfit for prosecution must be decided and should not be allowed to proceed further.
- Cases at the stage of committal must be paid attention to.
- Any complaints in relation to violation of human rights of prisoners must be subjected to scrutiny.

CONCLUSION:

The administration of justice is an act of compassion and humanity. Even in the administration of criminal justice, the possibilities of revival, reformation is a very important consideration. We must look at the nexus between law and poverty. Important issues relating to unevenness of the society, prosecutors' role in administration of justice in the society, condition of prisoners need to be addressed. Article 21 ensures the personal liberty and fair justice to everyone and its implementation must be seen through. Bail laws must be discussed



more thoroughly and the answers need to be subjected to scrutiny if ideas are to progress in the society.

QUESTIONS:

The following questions were raised by the participants to which the speaker responded:

- Could you explain your views regarding the need and feasibility of gender neutral laws in India?

These issues were dealt with by the Justice Burma Committee. The speaker says that gender neutral laws are feasible as well as important for the country.

- The Home Minister has recently called out for reforms in criminal law legislations. What do you think of this step and what kind of changes are needed to be done?

India could follow a time bound system for the disposal of cases in Courts like the French which would change the way cases are being dealt in the judiciary. It is important that only relevant evidence is produced before the Court. High Courts could also take cognizance of the cases pending before them, classify and analyse them and make benches to dispose the cases in a speedy manner. Also, cases should only be handed over to the judges who have prior knowledge of the concerned laws. Increment in the number of prosecutors along with appropriate independence to the prosecutors is also needed.

- Could you enlighten us with the need to bring reforms in the Victim Compensation Schemes and dearth of awareness among the masses regarding the process to avail such compensation?

The victim's lawyer should not face any threat by taking up the case for the victim. Recognition of the disparity between the powers of the victim and the accused is needed and steps must be taken to safeguard the victims. Furthermore, guidelines for sentencing and more legislations for the victims would be helpful.

- How to control the scope of judicial discretion so that it is not tainted by personal prejudices?

We must converge in a position where impartiality and freedom from prejudice is assumed by the legal profession and the actions must also reciprocate the sentiments of the legal professions. It should be a fiduciary system. The judicial value must be optimized. We must



learn to engage with the trouble actively. The way judgements are delivered is extremely important.

- In light of the Nirbhaya case, could you explain the importance of the saying ‘Justice Delayed is Justice Denied?’

Delay in justice is itself a denial of justice. However, pragmatically speaking, there is a need to address the fact that it does take time for the administration of justice. The maximum time taken for the disposal for a case should be three years. Empathy is an important factor that decides the speed of disposal of cases.

- What are views on the fact that trial Courts do not have any discretionary powers. Only the High Court and Supreme Courts have that power?

By the virtue of Article 32(3), the Parliament can provide powers equal to the Supreme Court to Courts of Lower Status. The Constitution did not really intend a pyramidal structure as is in use right now. We must look at the issue economically, scientifically.