

Virtual Consultation on Criminal Law Reforms. Eminent criminal lawyers

Gandhinagar, July 25, 2020: Gujarat National Law University (GNLU) organized a Virtual Consultation on Criminal Law Reforms. Eminent criminal lawyers expressed their views on the subject:

1. Shri. B.V. Acharya, Senior Advocate and former Advocate General of Karnataka. He has completed 63 years at the bar. As an Advocate General, he has appeared before the Supreme Court in many landmark cases. He was the special public prosecutor in the Jayalalitha disproportionate assets case.
2. Shri Shekhar Naphade, Senior Advocate. He appeared in many important cases including Aruna Shanbag Case (Euthanasia case), Jayalalitha disproportionate assets case, Adarsh demolition case.
3. Shri Joseph Aristotle, Advocate-on-Record, Supreme Court of India & Honorary Secretary of the Supreme Court Advocate-on-Record Association

Mr Acharya said that for a fair trial, you need an honest Investigating Officer, an honest public prosecutor and an honest judge. Unfortunately, in our country, barring few exceptions, the standard of public prosecutors leaves much to be desired. The appointments of public prosecutors are generally politicized. Almost all states have dispensed with the provision of prior consultation with the High Court and District Court before appointing a public prosecutor. To improve on the quality of public prosecutors, the law should provide for the appointment of public prosecutors through a proper and transparent process supervised by High Court.

Mr Acharya said that section 239 of the Criminal Procedure Code (CrPC) empowers the Magistrate to discharge the accused without trial if the Magistrate considers the charge against the accused to be groundless. However, in practice, there is a tendency on the part of courts not to pass such orders without a trial. Courts should exercise the powers of discharge without trial liberally in fit cases.

Mr Naphade said that the law relating to bail is very problematic; it would not be incorrect to say that there is no law. There are no crystal clear principles to deal with bail applications. Judges use their discretion on an ad-hoc basis. Consequently, we see accused in serious offences getting bail while those in petty offences languish in jail for a long time. “Urgent reforms in the law relating to bail law are the need of the hour,” he added.

Pointing to a serious anomaly, Mr Naphade said that the Central Bureau of Investigation (CBI) is constituted under the Delhi Special Police Establishment Act, 1946. Section 6 of the Act stipulates that the CBI cannot exercise powers and jurisdiction in any area in a State without the consent of the Government of that State. However, Supreme Court has ruled that constitutional courts

(meaning, Supreme Court of India and various High Courts), in the exercise of their powers under Article 32 and 226 of the Constitution, can direct investigation by CBI without the consent of the concerned state government. “In my opinion, the Supreme Court is not above the law. This is a serious issue and there should be a national debate on this issue,” he said.

Pointing to another serious anomaly, Mr Naphade said that While the constitution of a police force is a state subject (List II, VIIIth Schedule of the Constitution), National Investigation Agency is constituted by the Central Government under section 3 of the National Investigation Agency Act, 2008. Thus, the National Investigation Agency came under a serious challenge on this ground. While the Bombay High Court has upheld the constitution of the National Investigation Agency, lawmakers should consider removing this anomaly by amending either the Constitution or the Criminal Procedure Code.

Mr Naphade said that criminal procedure falls in the concurrent list giving powers to both the Parliament and state legislatures to enact on the same. As a result, various state legislatures have enacted laws like Maharashtra Control of Organized Crime Act, Gujarat Control of Organized Crime Act and Karnataka Control of Organized Crime Act, which often collides with the provisions of Unlawful Activities Prevention Act (a central act) leading to a constitutional conundrum. “It is high time we have one comprehensive law to deal with organized crimes,” he said.

Commenting on the selection of judges, Mr Shekhar Naphade said that while there is no fault in the selection procedure, the problem is competent lawyers are not willing to take up judgeship. The compensation package of judicial officers acts as a major deterrent. “In my view, the salary structure of judicial officers should be liberated from the salary structure of Babus of Mantralaya and judges should be offered better compensation and better work environment to attract the best talent to the judiciary,” he added.

Mr Joseph Aristotle said that the Law Commission had recommended, way back in 1997, that requisite amendments should be brought about in the Code of Criminal Procedure and the Indian Evidence Act making it the duty of the police officers to ensure the safety of the arrested persons in their custody and holding them responsible for the failure of the same. Even today, this amendment has not been incorporated. As a result, cases of custodial torture and custodial deaths continue. “It is high time that we act on these recommendations to eliminate, or substantially reduce, the inhuman and uncivilized practice of custodial torture,” he added.

Agreeing with Mr Acharya’s statement about the need for honest IO, PP and Judge for a fair trial, Mr Aristotle said that “we also need an honest witness protected by the system and society. The present system of witness protection will not suffice.”

Earlier, in his inaugural address, GNLU Director Dr Shanthakumar said that the criminal law in the country is primarily modelled after the law of the colonial era. While the law has been amended from time to time, the amendments have failed to keep pace with the socio-economic and technological changes. Consequently, there is an inordinate procedural delay and a low conviction rate. Urgent criminal law reforms are, therefore, required to bring the law up-to-date with the ever-changing dynamics of the society.



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This consultation was held as a part of the series of consultations being organized by GNLU to promote national debate on criminal law reforms. GNLU plans to hold about 10 such consultations over two months.

Dr Saira Gori, Assistant Professor moderated the consultation and proposed a vote of thanks.

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