

One-day Online Lecture on “The Indian Legal System: A Critique”

Organized by the Centre of Advanced Study in International Humanitarian Law (CASH) in collaboration with IQAC(Internal Quality Assurance Cell), RGNUL

Guest Speaker: Mr Ravi Nair, Executive Director, SAHRDC (South Asia Human Rights Documentation Centre, New Delhi on 25th October, 2021

Mr Ravi Nair, delivered the lecture on the Indian Legal System: A Critique and he initiated his talk by raising the problem of delay and pendency that are decaying the Indian Justice system. He gave the example of a civil case of land dispute that was disposed of after 53 years from the date of the institution of the suit. He stated that the amount of expenditure and time incurred in legal cases, especially civil make the justice system inaccessible to the poor. Talking about the criminal law, he talked about the famous Akshar Dham case, where the four accused were acquitted by the Supreme Court after 11 years since the occurrence of the incident when they had spent eleven, six, and five years, respectively, in custody. The Court stated that there has been illegal custody torture, fabrication of information; yet not a single official was charged for the deep perversion of the justice system. In the light of this, he opined that the Indian legislative, executive and judicial system needs revolutionary changes just like the French system did 200 years ago.

He took each case one after the other. Coming to the legislative system, he stated that the legislature has so far enacted or attempted to enact several shoddy Statutes. He took the example of TADA, the bill for which was passed in 48 minutes in the Lok Sabha with only 16 members present, under which 68, 000 people were arrested with the conviction rate only being 1%. He also took the example of other preventive acts of POTA, UAPA and how they send human rights up in the smoke.

He criticized Justice Felix Frankfurter of the USA, on whose suggestion, the drafters adopted the provision of “procedure established by law” instead of “due process” in our Constitution and how the same led to and still lead to determination of the constitutionality of legislation based on the procedure involved in its enactment and not its substantiveness. He talked about the extreme violation of the rule of law owing to preventive detention in Punjab during the 80s and the 90s, Odisha and Chhattisgarh.

Mr Nair further criticized the AFSPA and informed the participants that he even took the issue of extreme human rights violations done by the said provision to the United Nations. He mentioned the 2014 EEVFAM judgment, delivered by Justice M. Lokur, wherein the petitioners had pleaded to have the CBI investigate some of the cases alleged to be involving extrajudicial killings. The CBI investigated 80 odd cases and found that all of them involved cold-blooded killings. However, further enquiry on most of these cases stalled owing to the intervention of the Manipur govt. and the Assam Rifles. He pointed out that it has been 7 years since the investigation, but no single army officer has been prosecuted yet.

He stated that the special law of AFSPA and the earlier discussed preventive legislation are clearly in violation of the provisions of the ICCPR to which India is a party.

Coming to the justice system, he stressed that there is no justice in the system for the poor. He stated that after being caught in the legal system, one could only be “Bhagawan bharse”. He stated that the institution of Legal Aid is not very strong in India. He recounted an incident when Mr Chaman Lal, the former DGP of Punjab, and the then newly appointed Special Rapporteur of the NHRC, went to examine a jail in Assam and encountered a disarrayed man who could not even speak coherently. Upon enquiring about him with the officers of the jail, Mr Chaman Lal found out that the said person had been in jail for 40 years and had not been brought before the Court in nearly 25-30 years after his files were lost. Mr Nair expressed his anger and anguished with the system, especially insofar as the violation of human rights is concerned. He stated that in a class and caste divided society, justice can never be equal unless the system deals with varying societal problems.

He also reflected upon the problem of judicial delay. He stated that the records point out that it will take a minimum of 40 years, at the present rate of disposal, to patch these pending cases. He further presented a very critical view of the system of sovereign and official immunity. He stated that the Indian Legal system is in a crumbled state owing to the existence of impunity and immunity to a large extent.

Mr Nair also referred to the problem of Court rosters. While he confessed to having jumped the roster himself in some cases, he stated that the purpose for doing the same was not fishy and that those cases required urgent attention with regards to the human rights violation. Mr

Nair, however, pointed out that the rich industrialists and other influential segments are involved in jumping the roster owing to their deep pockets and sheer power, and that the same must be prevented.

Mr Nair said that at the international level, the failure of domestic legal systems is being looked at and owing to the same the human rights committee of the OHCHR under the new Magnitsky Act is allowing individuals from the EU, UK, and the USA to approach the committee without even exhausting the domestic legal remedies as long as one has proper evidence. Regarding the ICC, he stated that even the cases emanating from countries that have not signed the ICC can be brought before it if the prosecutor agrees and the matter is presented before the Security Council and a decision is made in favour of the same.

In his concluding remarks, Mr Ravi Nair stated that the Indian Justice system is very weak and though the current CJI is attempting to push for changes in the system the same could not be done without public opinion in support of reforms; sending of legislative bills to the standing committee for examination; reduction in impunity; right to compensation; and prosecution of the perpetrators. He advised the student to go into litigation as India needs responsible lawyers with the determination to bring a change in the system. He also advised the participants that are looking for going into litigation to spend at least 5 years in the lower courts as that is where one would be offered a good understanding of the procedural aspect of the law.

Mr Nair then opened the floor for the Q/A round. The round witnessed various participants, students and teachers alike, asking pertinent questions. Mr Nair's critique of the Indian Justice system proved very informative for the participants and evoked their utmost interest.

The one-day online lecture came to a successful end with Dr Abhinandan Bassi offering a vote of thanks. For the event more than 100 participants were registered.

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