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JUDICIAL DELAYS: HISTORICAL OVERVIEW

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ABSTRACT

The paper attempts to throw light on delays in judicial process in different time periods in India. How the justice was delivered in ancient India, during Moghul period, and in colonial times and also briefly discussed the present period or in independent India. The paper also discusses that how the avoidance of delay was made in different phases of administering justice in India and what precautions were taken to avoid delay in proceedings before the courts prevalent during those times and now. The historical perspective will help us to know the present position in the light of previous

KEYWORDS: *judicial process ,securing justice and procedure.*

1.INTRODUCTION

Law is the medium for securing justice and procedure its handmade. Availability of quick justice depends very much on the procedure prescribed by the law. Law is the measuring rod of the progress of the community. Procedure is becoming more and more complicated; as a result justice is receding to a distant point. The world is demanding for easy, quick and simple procedure for ensuring quick justice. Every law changes with time and procedure appropriate to the law is evolved.

The most essential function of the State is basically two: war and administration of justice and if State fails in performing either of two, it cannot be called a State. The most important function of the State is to ensure proper administration of justice by bringing offenders to book and awarding suitable punishment to them and adequate compensation to the person aggrieved. No innocent person can suffer if justice is properly adminis tered by the State. Faith of people in administration of justice is essential for maintaining peace, because if they lose faith in it they will resort to self help. The ideal of justice has inspired human beings from the very dawn of civilization. Sages, saints, philosophers, judge, jurists have always urged the people as well as the government to follow this ideal. But the administration of justice did not for a part of the state's duties in early times. There are no clear references to any judicial organization in the Vedic literature. However, Ghosal holds that the beginnings of judicial administration by the state go back to the Vedic age. 'The exercise of criminal justice by

king is hinted in some passages of the RigVeda. In the later Vedic samhitas and the Brahmanas; the old Vedic tribal council called the sabha appears to have developed into the king's court as well as his council.' The pre Mauryan age marked the beginning of an epoch in the history of our ancient judicial administration as well as of jurisprudence. In the Dharamsutra and Arthashastra system, the king's justice is held to prevail throughout his territory. It is assumed that the king was to exercise exclusive jurisdiction not only over the whole sphere of civil and criminal laws, but also over the extensive branch of social regulations. The king exercised supreme jurisdiction even in the sphere of potential law, the only exception being the purohita's right of passing heavy sentences on Brahmana transgressors of caste rules. The Hindu DharamShastras have attached great importance to justice.

The classical literature – Ramayana, Mahabharata, Dharamsastra, Nitisastra, Arthasastra, Smirtis, Rigveda, seems to have had warned that, "culpable delay" in dispensation of justice was in itself an act of injustice. The Anglo-Saxon Magna Carta is in a similar vein. For clear thinking it will be better to study briefly the procedure adopted in different periods for administering justice, because in search of justice different processes have been followed. The administration of justice in India has been different at different periods. It has been divided in four periods i.e. justice in Ancient India, Justice during Mughal Rule, Justice during British era, and justice after independence. In order to appreciate the present system of judicial administration it is necessary to probe into past, evolution and development of law and courts in India.

I.JUSTICE IN ANCIENT INDIA

In so far as India is concerned, a careful examination of the Ancient legal and constitutional system would show that it had established a duty based society. Its postulate was not only the duty of individual towards the society but also the duty of the Ruler towards the individuals and the society. The legal system which was the same for the whole of India, notwithstanding the existence of large number of kingdoms some larger in size and other smaller indicates that the concept of absolutists monarchies had always been rejected and the supremacy of 'Dharma' (Law) over the king as declared in the authoritative texts was respected in letter and spirits. Though the King as the head of the State was held in highest esteem and people were asked to respect him as God, so that he might command the respect and obedience of the people who were by nature god fearing and thereby ensure obedience to Dharma.

In Ancient times it was held to be the king's duty to protect the kingdom and the people, to see that the rules of Varnas and Ashramas were carried out by them, to make them conform to the dictates of Sastras. If they swerved from them, to punish the wicked and to dispense justice. The Arthasastra says, "People of the four Varnas and in (different) Ashrama protected by the king with the rod of (punishment) and attached to the action prescribed as their respective duties keep to the paths appropriate to them". In Ancient times in India, the legislative activity of the Ruler was extremely limited. Manu and Katyayna also provided that causes (law suits) were to be looked into i.e. (decided) by the King according to Sastras and in the absence of the Sastric dicta, by the usage of the country and if the king decides cause by his fiet when there is in existence a Sastric text, it leads him away from heaven and reduces span of his life. "Dharma" embodying duties, obligations, rights, and liability of individuals covering topics in respect of which law was concerned necessary from time to time had been laid down in Ancient India. The strength of Dharma in Ancient India surely was in public acceptance. The entire Indian philosophy including Indian polity was based on the principle of Dharma, Artha, and Kama called together as Trivarga, the first controlling the second and third. Rajadharma gave great importance to the administration of justice and declared that it was the personal responsibility of the King himself. He was required to preside over the highest court and render justice to the litigants as well as punish the offenders in an impartial manner. The origin and development of the concept of justice in Ancient Indian Philosophy has basis in Vedas and DharamSastras.

The legal system according to Manu comprises laws that are divinely ordained as well as those which are derived from usages or customs. The first step in the judicial procedure is the constitution of the court of justice and it is the king's prerogative to investigate law cases in the court of justice. Manu was in favour of trial of cases by jury. He also stated that the judge must pay full attention to the truth, to the object of the dispute to himself

and next to witness in juridical proceedings. The administration of justice is done only through an instrumentality – the Court. The jurists in Ancient India realized the importance of administration of justice. To ensure success of rules of Dharmsastras, they made complete and comprehensive rules for constitution of Courts, qualification of personnel's of courts, rules of evidence and procedure.

I) Judicature

The definition of an ideal court is given by Manu as: "that place, where three Brahamanas learned in the Vedas sit, as also the learned Brahamanas appointed by the King, they regard as the court of Brahaman".

According to Brahspati the courts are of the four kinds:

1. Pratisthita, court established in a fixed place such as town.
2. Apratisthita, circuit court.
3. Mudrita, court presided over by a judge who is authorized to use the royal seal.
4. Sasita, court presided over by the king himself.

Besides these courts other Tribunals were also recognized by the Dharamsastra writers as well as by the commentators. The courts were in hierarchy, the highest being the court of the king himself and the lowest on the ladder was the village council (Kulani). The judicial power was vested in these courts. The Jury system was also in vogue in Ancient India. Every care was taken to ensure justice to the litigants.

There were ten constituents of the court: King, Judge, Assessors, Smriti or Proclaimer, Computer, Writer, Gold, Fire, Water and Bailiff. The existence of the hierarchy of the courts in Ancient Hindu Law is the evidence of the fact that adjective branch of law was equally advanced in Ancient India as in modern days. The qualifications and appointment of judges occupies a prominent place in Hindu legal system. Manu clearly says, "If due to the other work of administrative nature the king is unable to attend the work of administration of justice, the king must appoint learned Brahaman together with the three Sabhyas to decide the dispute of the people. Besides the Chief Judge the King was required to appoint at least three Sabhyas, Puisne Judges or Members of the Courts of justice. The Chief Judge is to be representative of the King. The Sabhyas were held responsible for miscarriage of justice.

The Judges had no executive power. They could not execute their own judgements. Ancient Law givers took care to see that the legislative, the executive and the judicial authorities were vested in bodies separate from one another. The Ancient legal system was more duty-oriented. The Administration of justice in Ancient India was wider than today. The litigant had no difficulty in putting their case before the courts. The law to avoid mis-joinder of parties and causes of action was very strict. Katyayna laid down special rules to avoid superfluity and in consistency in pleadings. The procedure adopted by the Ancient Courts was to a great extent similar to that of our present practice in civil and criminal courts. The institution of 'lawyer' was probably not prevalent those days.

ii) Avoidance of Delay

In Hindu jurisprudence, much care was taken to avoid delay, which is most glaring defect of present day procedure. A precedent is found in the Ancient Indian literature, in which a king was to suffer the consequences for causing delay in deciding a dispute. The Mahabharata cites it as a precedent that if a king is overwhelmed with pleasures, does not show himself to litigants who approach him for decision would suffer like Nrga. Kautilya is very conscious of the fact that delay may cause the fall of the king and his kingdom. Therefore, he gives an advice that when in court, the king should not cause petitioners or litigants to wait long at the door because when a king makes himself inaccessible, those who are near him create confusion about what should not be done. Thus, we find that in Ancient Hindu legal system, delayed justice was considered most dangerous to the State.

"Justice delayed is justice denied." Was the maxim, well known to the Ancient jurists? According to them delay in deciding cases is tantamount to denial of justice (death of justice). One of the causes of delay in the administration of justice in the modern age is indiscreet adjournments which were scrupulously avoided by the

Hindu jurists. They had laid down strict rules as to adjournments in order to avoid delay in the administration of justice. The Ancient law giver emphasized the evils of delay in disposal of cases; Sukra said that the king should not give much time for the preparation and trial of cases. Great evils flow from delay and it may amount to denial of justice. Yajanvalkya said that in violent crimes, thefts, defamation, abuses and assaults, accusation of major sins and charges of unchastity of woman cases should be disposed of quickly. Modern law is similar, criminal cases are expected to be disposed of quickly. In civil suits, the courts were liberal in granting adjournments but not as liberal as modern courts are. Kautilya, Narada, Katyayana and other laid down rules about the length of adjournments in different types of cases. Kautilya provided fine for delay in filing defence statements. The defence was to be concise, precise, to meet points raised in the plaint, not in a vague or evasive manner but in plain and simple language. Admission or confession in criminal cases simplified matters for the court. The defence of res-judicata was also available in name of 'Prannyaya'. The King's court was final court of appeal. In Ancient India, execution of the fruit of judgement, (decree) was easy than in modern India because the parties had to provide security at an early stage of the suit.

Manu said that the King should give priority to the cases of higher castes. But on the other side Kautilya said that the importance of the case or the urgency had also to be looked into, unless urgent suits were disposed of expeditiously, it created serious difficulty or became uncontrollable. Kautilya did not permit any privilege to higher caste. In case of vexatious litigation, a party against whom a decree is passed may ignore it, or delay it or he may file a suit against the winning party, on the same facts or cause of action.

II. JUSTICE IN MOGHUL PERIOD

With the advent of Moghul rule in India, the Muslim Rulers introduced their own laws for judicial administration within their territories. Whereas, the Hindu Kingdoms continued with their own judicial system for administration of justice. When the Muslim Sultans established their rule in India, they tried to enforce the Mohammedan law imported from Arabia on the conquered people. To settle disputes between the subjects, and to maintain and enforce the criminal code, have been recognized as basic function of Muslim ruler or king, he came to occupy the highest court of the kingdom for which he was the ruler and was considered as the fountainhead of justice. Muslim law is founded upon 'Al-quran' which is believed by the Muslims to have existed from eternity, subsisting in the very essence of God. The Prophet Mohammed himself declared that it was revealed to him by the Angel 'Gabriel' in various portions at different times. The Muslim king in an Islamic State is required to rule in accordance with the Quranic law. The sources of law were not in legislation but in revelation and the sources are: Quran, Hadis, Qiyas- Analogy, Ijma – Universal consent.

If the parties desire to examine witnesses and ask for time, the Qazi must give time and adjourn the hearing, otherwise he had to adjudge the case on material before him.

The Qazi must possess the qualification of a witness i.e. he should be sane, adult, a Muslim and un-convicted of slander etc. to be eligible for appointment of a Qazi. Supreme or the Chief Qazi of the Empire was called Qazi u-Quzi. Qazi had to administer justice according to Islamic Law and can consult jurists and lawyers to come to a right decision. Mufti was appointed by the State to advise and assist the azi with the exposition of the law. A Mufti was attached to royal court.

EXPEDITIOUS DISPOSAL OF CASES

According to Islamic jurisprudence, as was the position under the Hindu jurisprudence, the ruler or the sovereign constituted the highest court of justice. Aggrieved person could approach the king for the redressal of their grievances. The judicial system however was not well organized, jurisdiction and powers were not demarcated and hierarchy was not definite. Despite the defects, the system worked satisfactorily during the moghul period in view of the importance attached by Akbar and his successor to the administration of justice. Akbar administered justice impartially. Similarly, Jahangir, Shahjahan, and Aurangzeb had fixed particular days for judicial work.

Cases of those in custody reported to the Subedar must be dealt with without delay. Cases pertaining to revenue should be handed over immediately to Revenue Officers with instructions for early disposal. It must be a

regularly monthly routine to enquire in the cases of arrested persons in the Kacheri and to ensure their acquittal or trial depending on the merits of their cases. The Kotwal must attend immediately to the cases of those brought to the Chabutra under arrest. The offender will be sent to Qazi's court daily till his case is decided or the Qazi fixes the date for hearing, in which case he would be sent only on that date.

The speedy trial of arrested persons was arranged. Once a month, the Governor went through the list of prisoners in the Diwani courts and in the police custody to secure their speedy trial. The filing of the suits and procedure of the courts were not over burdened at every step with the multiplicity of formalities to be fulfilled before the suits could come up for trial. Nor were there the ingenious lawyers to delay the process indefinitely by a display of his debating skills. The procedure of Moghul Courts provided for quick, simple and generally impartial justice, without the present day lawyers, the nobility of whose profession cannot be denied. The Moghul hated delay in the administration of justice and they contrived means to see that it did not take place. Akbar, to expedite judicial work, split the imperial sadarat (Judicial) and religious authority of the empire into six separate jurisdictions, so that applicant might not have the pain of delay. The promptness in administering justice was not due to undue haste, because every detail of the case was examined and proper hearing was given to both the parties. The Moghul did not like to use imprisonment much as to avoid unnecessary expenditure to State as far as possible.

In case of unreasonable delay, even the judges and Qazis had to compensate the parties. The litigation was not encouraged. The fixed number of witnesses was also insisted upon in Muslim law. Moghul decided cases quickly and executions were carried out without delay.

III. JUSTICE IN BRITISH INDIA

India has a known history of over five thousand years. There were Hindu and Muslim periods before the British period. The British settlers were entrusted with the responsibility of governing three presidencies Surat, Bombay and Madras. They improvised an elementary judicial system. The administration of justice was entrusted to non-legal and non-professional Englishman who had little knowledge of law and procedure. The establishment of Supreme Court of judicature at Fort Williams (Calcutta) under Regulating Act of 1773 is considered to be the landmark in development of legal institutions in India. It was English Law Court constituted of Professional English Judges, well versed in law and legal practice, and also English bar to assist in Administration of Justice.

The emergence of Privy Council as the highest court of appeal from India constitutes yet another important phase of development in the legal system. It stimulated proper development of law in India on a uniform pattern and motivated courts to apply high judicial standards in discharging their function as dispensers of justice. The growth of laws became more conspicuous after 1833 with the setting up of the First Law Commission which started the process of codification of Indian Laws to ensure uniformity and certainty and administration of justice. The Govt. Of India Act 1935 changed the structure of Indian Govt. From unitary to that of Federal type. It did act as intermediary between the Privy Council and High Courts.

PROCEDURAL DELAYS

In Ancient and Medieval Indian Society the machinery for the administration of law was quite simple. There was hardly any need of engaging a lawyer to plead on behalf of parties. The law of evidence was quite simple. Britishers introduced complicated laws of procedure, unnecessary details, results in unusual delay and enormous costs. The procedure up to 1869 was very much in favour of rich party in as much as on mere application permitted the transfer or withdrawal of a case to the District or some other High Courts where the poor party could not bear the expenses. There was special procedure for European British subjects. They used to be tried by assessors which was a formal affair. But the costs in time and money involved outweighed the advances of these trials so they were abolished in course of time. The procedure for conducting trial was contained in Cr.P.C., it provides for summary trial, summon cases, warrant cases and session trials. The present study reveals that the same position continues even now. The British legal system stimulated the growth of the falsehood, chicanery and deceit. The inordinate delay in the decisions of the case was one of the significant

negative features of the legal system of British. The lawyer class in the British legal system was interested in delaying and prolonging cases and pleadings for clients who could afford to pay them.

IV. JUSTICE IN INDEPENDENT INDIA

The British rule in India brought about the introduction and development of the common law legal system, on which India has based its present judicial frame work. The Britishers introduced 'rule of law' in India which means the equality before law, appeared as a novel feature in caste ridden society. The British rulers established codification of law i.e. the civil procedure code 1908, the Criminal Procedure Code 1898 and Indian Penal Code 1860 and also Indian Evidence Act 1872, which is applicable to all the citizens and these legislations have been amended from time to time whenever need arise and are containing till date. No wonder, even now the cases are decided on technical and formal objections and no proper investigation in the cases are done.

In modern times India has advanced judicial system having well defined hierarchy of courts with Supreme Court at the Apex and a number of sub ordinate courts below it.

I.Heirarchy of Courts: The hierarchy of courts functioning in modern India is as follows:-

a. Supreme Court

Supreme Court has been declared as the highest court of the land by the Constitution of India and interpreter and guardian of Constitution. It has original, appellate and advisory jurisdiction. The Supreme Court being a court of record can punish for its contempt. Such power is necessary for maintaining the sanctity of the court and its authority.

b.The High Courts

Immediately below the Supreme Court, there are High Courts in different States, which constitute the highest court of appeal and revision in the State, both for civil and criminal matters. The High Court exercises original jurisdiction in matters relating to issues of writs for violation of fundamental rights of the persons or for any other purpose.

c. Sub-Ordinate Courts

Below the High Court there exists a network of subordinate courts comprising criminal and civil courts. The various categories of sub-ordinate civil and criminal are as follows:-

I) Civil Courts

There exists in each state the hierarchy of courts for administration of civil justice which consists of:-

- District Courts.
- Lower Courts.
- Other small causes Courts.
- Civil Courts of presidency towns.
- Village Panchayats.
  - The Presidency High courts.
  - The city civil courts of Madras, Bombay and Calcutta.
  - Presidency courts of Small Causes.

ii) Criminal Courts:-

The Criminal Procedure Code 1898 which remained in force for about three quarters of a century, now replaced by a code of criminal procedure of 1973. The important changes brought about by the Code are, the new set of Criminal Courts, based on separation of judiciary from executive. The new courts provide uniform hierarchy of criminal courts working throughout the country. The code of 1973 provides following classes of criminal courts.

• Courts of sessions.
• Judicial Magistrate of Ist Class; and Metropolitan Magistrate in Metropolitan area
• Judicial Magistrate of 2nd class.
• Executive Magistrate.

V. DELAYS IN DISPOSAL OF CASES

The present legal system and administering justice in India is a legacy of British rule. Complicated procedure, enormous arrears and delays in court cases, slow and costly justice are some of the features of present Indian legal system. The drawbacks are not of post independence origin but are inherent in the complex system established in India by erstwhile British rulers. They have introduced guarantees and formalities which involves costs and delays. Despite all these provisions it cannot be said that, the present system of administration of justice is perfect one. The system is suffering with complicated procedure and is too much bureaucratized. The need for simplicity and conciseness in the system of judicial procedure was realized by the Britishers themselves. They were aware of the facts that multitude of forms and details of procedure only increased the labour of courts and diminished their efficiency by creating injurious delays. The gravest defect in the existing judicial system of India is that it suffers from undue delays. In disposal of cases which often results in mis-carriage of justice because justice delayed is justice denied. Moreover, the relief granted to the aggrieved parties loses its significance by the lapse of time. The litigation in courts is a costly affair. The highly complex, lengthy and technical nature of court procedure creates problem for litigants. The Supreme Court and High Courts are overburdened with appellate work which causes inordinate delay in disposal of appeals.

CONCLUSION

It is clear that in Ancient India the mechanism for the administration of justice was quite simple. The cases both civil and criminal were often tried personally by the Kings or the judges on receipt of jurist's instructions from experts or Pandits. The emphasis was on Dharma which bound every aspect of life. Kings followed Dharama. Similarly in Moghul period administration of justice was regarded as a special responsibility of Muslim rulers. It was expeditious, the least expensive and impartial. They never encouraged litigations. It provided prompt and inexpensive justice. Village Panchayats settled the bulk of cases. Coming to British era, we can say that the present judicial system is introduced by the Britishers which have been modified to the present needs and requirements. The British legal system was for rich. There was growth of falsehood and deceit. The British lawyers used delaying tactics.

A sound judicial system of administration of justice is perhaps the most valuable legacy which the Britishers have left behind in India. The gravest defect in the existing judicial system of India is that it suffers from undue delay in disposal of cases which often results into miscarriage of justice. Present legal setup is not free from delays in disposal of cases. One can see the hierarchy of courts and multiple stages of litigations, which obviously results in unusual delays and unnecessary expenditure to litigants. The highly complex and technical nature of the court procedure also creates practical problems for the litigants.

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