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Justice delivery systems: Challenges and prospects in modern societies

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Abstract

The research paper discusses the essential role of society in the existence of human beings, emphasizing the interdependence and social nature inherent in human life. The author argues that without society, only those who transcend humanity or fall below it can survive. Society is portrayed as a system with norms and regulations that ensure peaceful coexistence. The paper explores the concepts of equity, justice, and good conscience as fundamental principles guiding the rules and regulations of society. Justice is identified as a crucial element for the functioning of society, and the paper delves into the justice delivery system. However, it highlights a significant problem faced by the justice delivery system, namely, the delay in justice. The delay is deemed a denial of justice, and the paper asserts that a society lacking prompt justice risks losing its identity over time. The author quotes Ernst Banker, stating that justice is a term of synthesis, the final principle comforting the general distribution of rights and various principles of their distribution. Justice, according to the paper, is not given but taken, emphasizing the need for individuals to be conscious of their rights and duties. The paper further explores the concept of justice, drawing on Aristotle's distinction between universal and particular justice. Universal justice is described as adherence to the law, emphasizing the importance of individuals following the norms and regulations set by society. The justice system in India is briefly touched upon, tracing its evolution from the Vedic ages. The author discusses the historical development of the legal system, correlating it with the evolution of human society. The paper emphasizes the interconnected growth of human beings, society, and culture. As individuals started living in societies, the need for a justice delivery system arose due to conflicts of interest among members. The author suggests that achieving justice involves a balance between individual rights and societal regulations. Different philosophical perspectives on justice are presented, including John Rawls' focus on eliminating luck-based advantages and Robert Nozick's emphasis on fair exchange processes. The paper explores the principles of distributive justice, arguing for a fair distribution of societal benefits based on individual efforts and needs. In summary, the research paper explores the intricate relationship between human beings and society, emphasizing the importance of justice in maintaining a balanced and harmonious coexistence. It delves into the challenges faced by justice delivery systems, advocating for prompt and fair resolution of conflicts to preserve the identity and stability of society.

Keywords: Norms, equity, universal justice, legal system evolution, distributive justice, fair distribution

Introduction

Navigating the Landscape of Justice: Perspectives on Fairness and Equity

Human being is by the nature social and for his existence the need of society is essential and without society only those can survive who are either above the humanity or below it. It means man is by nature social and he cannot live without state or society, if a man is able to live without state it means he is either god or a wild animal. Man cannot perform his all task by himself this is the reason he needs society. Human society is characterized by interdependence of man. In the society each and every individual is dependent on other individual for his needs and other purposes. Man cannot live without society and society cannot exist without rules and regulations. If there are number of individuals in the society so the problem called conflict of interest is a normal thing. To solve these conflicts some norms and rules are made by the society. These norms of the society are made for the peaceful running of society and some sanctions are also there it means if any individual will not follow the rules of society he will get punishment.

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In our justice delivery system punishment is served on two basis first, correction of the offender to become a good citizen secondly to eliminate a person who proved to be guilty to society. Equity, justice and good conscience are the basic principles on which rules and regulations are made by the society. For the effective society participation of each and every individual is must and participation of every member of society is not possible without fair play and Justice to each and every individual. No one can deny this fact that without the concept of Justice the existence of society is not possible.

The society which does not ensure justice without delay to its member cannot exist in another word we can say that the society in which the concept of Justice without delay is not there will lose its identity sooner or later. Justice delivery system of our nation is facing some problems and one of the big problems is delay in justice. Justice which is not delivered on the time is not a justice and it is the duty of the society to maintain the balance between the duty and the freedom of all the individuals in the society. If there is a slow delivery of justice it will be considered as justice is denied. The people of our nation are dying waiting for their cause to be heard and decided because of delay in justice.

According to Ernst Banker

“Justice is a term of synthesis. It is the final Principal which comforts the general distribution of rights and the various principles of their distribution.”

Justice is not given. It is taken. The meaning of this sentence that justice is not given it is something to be achieved is that one must be conscious about his rights and he must be vigilant about his rights and duties. Justice is harmonious reconciliation in the society between the interests of general public against the interest of an individual. There is always a conflict between the Individual conduct against the general welfare of the society. So, to achieve the justice the act of individual is differentiated between the just and unjust. Now question arises what are those Acts which come under the definition of Just and what are those Acts which comes under the definition of unjust Acts. Just acts are considered those acts which promotes happiness promotes common good and on the other hand unjust acts are considered those acts which promotes self interest and which acts against the general interest of the society. No one can deny this fact that justice cannot be given; it is something to be achieved even in the welfare of State as no one is going to deliver justice to the man who is himself not vigilant and careless about his interests.

According to ROSCOE POUND, “Justice is an Endeavour that achieves results”

The Term Justice and the acts of individual which are considered the just and unjust acts, they all are not fixed and they change by time and by change in the Social conditions. So we can say that these are ambiguous in meaning and changed by changing situation and the time.

According to Aristotle the concept of the justice can be divided in the two parts to have deep sound understanding while studying the same.

1. Universal,
2. Particular.

It is further divided into two parts first commutative justice and secondly distributive justice.

The meaning of universal justice is to follow the law. If a person is living in society so he has to follow the norms and regulation in the society which is made by the society. If an individual follow the law of the society only in that case he can be called just and if an individual is not willing to follow the rules of society his act will be called unjust. Universal justice is a conduct in agreement with law. According to Universal justice if anything which is lawful that thing can be considered as just and if anything is not lawful that particular thing will be called unjust. If you want to know that a particular act is just or not, you have to see whether that particular act is lawful or not as if an act is lawful that act will be just and if that act is not Lawful that act will be called unjust. According to Aristotle justice is complete virtue or perfect virtue. It means that one has to follow the law made by the society and he has to act and behave according to the rule and regulation of the society. The meaning of law is the common general rules which are made in the society so that the behavior and activity of the members of the society can be controlled for the Peaceful living.

The process to make rules and regulations for the society is based upon some techniques in which first society has to decide that what is the correct behavior and then what should be the rules and law so that everyone will adopt the correct behavior. When every individual is willing to follow the rules and regulations of the society it creates good for the society. In Universal justice the rules are made for the whole community and to protect the interest of each and every individual who is member of the society.

To know the meaning of particular justice is first we have to understand that what was the need of particular justice in the society? The meaning of universal justice means that everyone has to follow the rules of society and these rules are of general nature such as traffic rules or the civil and criminal laws and there is no particular rule for any particular individual but sometime some situation arises in which there is no rule and law to deal with. To deal with such situation and to resolve the problem we have to take decision according to the particular situation in another word we can say that to take decision in such type of situation we need to take help of particular justice. So the particular justice helps the society to take decision in the situation where there is no Law and rule provided.

It is divided into two kinds. First is “distributive justice”. Second is “corrective justice”. Distributive justice means and relates with the distribution of Justice. It gives us answer to the question that how there must be fair and proper distribution of honor, property, wealth, benefit, burden, opportunity and political power. So in another word we can say that the fair and proper distribution of honor, property, wealth, benefit, burden, opportunity and political power is the task of the distributive justice. For the distribution of these things one principle is adopted by the society. The principal which is adopted is equal should get equal share and unequal should get unequal share.

Corrective justice is also called commutative justice. Society needs distributive justice for the equal and fair distribution of valuable such as honor, power, property, wealth, benefit, burden, opportunity and political power. On the other hand we need corrective justice to correct the wrong done by an individual against another individual in the society. Corrective justice is to correct the act of an individual and

the person to become a good citizen and to eliminate a person who proved to be guilty to society.

Law in India has evolved after a long process and it came in the existence after the social structure evolved. Society cannot exist without rules and regulations. If there will not be rules in the society, it will create anarchy.

The history of legal system starts from the Vedic ages. Initially the man was like an animal as he was not social as the concept of society was not there. Then man felt the need of society as the protection of his interest is not possible without the existence of the society. Man adopted the culture and then he became socialized and society came into existence. The concept of culture came into existence when human felt that without it the need of basic life cannot be fulfilled. So the culture came into existence to help the man to meet with his needs, Human, society and their culture they all grow up with each other and the whole range of culture in the different societies is identical and closely related.

When man started living in the society then his journey to search for justice started. The need of justice delivery system was the result of conflict of the individual's interest while they are dealing with each other. Now the question arises that how to solve the difference in the interest among the members of the society. The best way which was adopted and still in use is by balance of interest between the member and society itself. In another way the conflicts among individuals must be solved by the harmonious human relations.

Justice is a term derived from the Latin word "Justia" and Jus means truth, morality, rightness. India is a welfare state and the welfare state has a responsibility to provide the justice to the members of the society and we can divide the concept of justice in the two types. First, Distributive Justice and we can explain it as the economic, political and social frame work of each society is a result of benefits given by the society. These are the result of human political process. Distributive justice is a fair and just distribution of social primary goods such as right, liberty, income, wealth. Distributive justice is an idea of fair share and it is related to the word of Sanskrit that means realized justice. Now question arises that what is the meaning of realized justice. So, the meaning of this is that what is the actual consequence of the law in society Distributive justice is concern about the fare distribution of assets among the members who are living in the society.

Armstrong who was the great scholar of political science believed that there is a difference between the application of the distribution of the benefits and the principle provided in the theories related to the distributive justice. Armstrong said that society needs distributive justice for the equal and fair distribution of valuable such as honor, power, property, wealth, benefit, burden, opportunity and political power. On the other hand we need corrective justice to correct the wrong done by an individual against another individual in the society. This provides the basic idea that how the burdens and these benefits ought to be divided and circulated. Everything which the society possesses is adequate for the need of the society but it is not adequate to satisfy the greed of the members of the society. So, the benefits must be circulated in the way that all persons may get the share they deserves. The solution for this problem is that public assets must be dispersed in a manner which must be sensible so that all the persons who are participating in

the society by their respective work may get the "reasonable share". But now question arises that how we can explain a "Fair Share". We can say that if we distribute the goods equally to all the individuals that it can be called "Fair Share". To see and to find out the right way to distribute the goods we can take help of the equity. So that all must have the benefits available in the society related to the goods and other rights and the base of the same must be equality.

However, due to divergences in level of the demand, the equal outcome will not be the result. Another possibility is to go for the Principles of equality and distribute the benefit as per the rule of proportion means distribute the benefit in proportion to the individual's contribution. The person who has performed the great task in the society will get the great share in the society. Thus, in this theory if the member of the society work hard and do valuable job in the society he gets the more money, in another words if a person work hard and perform valuable task in the society he deserves to have more money for that. The relation of this theory is directly with that type of economic system where the opportunity is there for all the members of the society compete. So, in the system where there is the concept of competition is there, the wealth or goods might be circulated on the basis of the personal efforts and the skill of that person. The goods might be distributed according to the needs, so that an equal outcome shall be result of that. The person who need more, get more and the person need more resources will get more resources for example need-based scholarship is offered by the colleges or welfare payment is provided by the state to the poor. The state protects the interest of the members of the society specially the person who cannot compete in the society because of the poor financial condition. This type of system is combined with the principle of equity with that of need. These system problems two task at the same time. It rewards the person for his extra ordinary efforts as well as it ensures the basic needs of those who needs.

The resources of the society must be distributed in the accordance with the social utility and also in the accordance with the interest of the general society, in another word we distribute the resources on the basis of two ideas not only to give the award to the performing person but also to help those members of the society who needs the part of the resources of the society. the executives of our country who are high paid generally makes a statement to justify their high salary that they deserves to get high salary because of the contribution they made in the society, they also argue that they are the one who creates the job in the society with the aim to give benefit to each and every individual of the society.

Effective and efficient production by the members of the society is essential for the existence of the society and if effective and efficient production is not there by the members of the society then society cannot grow. To give scene of full-fledged membership to the members of the society, the principle of distributive system came into existence. The principle of equity motivates the members of the society to participate and to produce and it also works to motivate the members to be rewarded for his efficiency. Distribution according to need and efficiency of the member of the society creates the atmosphere in which everyone can survive and it is good for the members of the as well as it prevent the act of crime and disturbance in the society. So, in another words it can be said that if all the members of the

society knew that their essential needs are going to be met by the society itself and equal opportunity will be provided so that the members who can perform can get the best prize, the ratio of crime will reduce.

John Rawls also claims that some status such as social and family status of a person or the birth place is the matter of luck and that shall not effect or influence the benefit one must get in his life. So, according to him one must get the benefit from the society on the basis of his personal efforts and performance and not according to the position achieved by their family. He said that the doctrine of "Distributive Justice" is to make limitation on the factors such as luck and award those who performed in the society so that they can get motivated.

It was believed by the Robert Nozick that the aim of the distributive justice is to make sure that fair process of exchange is existed in the society and everyone can have the fair share. According to him for the existence of the society the fair distribution is must and the efforts of an individual must be recognized. It was believed by him that any particular outcome cannot be the aim of the distributive justice but other believed that the aim of the distributive justice is not only the process but the aim also consist the particular outcome.

It is believed by them that in order to make the people feel that their interest is safe in the society the process of the distribution must be fair. Sometimes the thing which is to be shared is the burden and not the benefit for example which person has to pay income tax and how much tax one has to pay etc. The theory provides that it will be considered injustice if the member of the society come to believe that one other person is having similar position in the society but the outcome of that other person is not similar to his outcome. So, when it is felt by the members of the society that they are not getting the fair share in the society they feel unjust and because of this circumstances arises in which they generally wants to change the whole system. In our society one thing is good for the persons is that a person who wants to achieve good position by this personal efforts than he can change it and that the distribution is not based on the things such as skin color or any other thing like this. If the distribution in the society is based on the practice which is not just than it can affect the peaceful atmosphere of the society so, for the existence of the society the distribution must be based on the principles such as equity and the efforts of the person must be considered while giving the position to any person in the society.

On the other hand the Procedural Justice can be explained as this is a popular conception that fair procedures are the fair and best guarantee for the fair and outcomes. Decisions are made in the procedural Justice according to the fair process. Whether the people like the outcomes of Procedural Justice or not if procedural law treats them with respect and dignity, it is accepted by the people. But what makes procedures fair? First it must be consistence, it also guarantee that like cases must be treated alike. So it means if the cases are same there will be no difference in the Procedural Justice, as it must be duty, if the Authority to provide justice in which feeling of equality is there and there must not be any difference between the members of the society on the basis of cast, social position or race or sex.

It is essential that those carrying out the procedures must be the person who is neutral and impartial. It is also important that the person who has the responsibility of Procedural

justice must be the one who is unpaired decision maker and only he can carry out the procedures to be reached in the fair and accurate conclusion. Those who involved must have faith on the intention of the third party that the third party has fair intention and the third party is no biased. For the decision making process both things is required. There must be third party and that third party must be unbiased and second thing which is required is that there must be a law which is equal for all and there must not be any discrimination between any person on the basis of cast, colour or sex. One more thing which is important for the Procedural Justice is that the person must have the voice and the representation who is directly affected by the result. The thing which increases the trust factor is the representation of the members in the process as it shows that it is for the good of the society by the society itself. This is important for the weaker section of the society whose voice go un-heard.

Two types of systems are available for the delivery of justice. First, adversarial secondly, inquisitorial system. In our country the system which is adopted is called Adversarial System which is inherited from the British system. There are two different systems, one is Adversarial and other is Inquisitorial. In France and Germany Inquisitorial system is followed.

The Adversarial System is followed by our country. The adversarial system is based on the practice in which the opposing side has to act as the adversaries and they have to compete to convince the court that the version produced by them is more convincing as compare to the other side. In this system two advocates represents their client before a judge, who is an important person and the Judge tries to understand the matter and pass the judgment accordingly. But on the other hand, if we see the Inquisitorial system we can see that in that system the judge himself engaged in the investigation to find out the truth.

The Adversary system is the system of trial that we used in India. It is based on the ideas of two parties also known as adversaries-battling in an arena before an impartial third person, whereas on the other hand we can see that the inquisitorial system which is adopted by the "France" and "Germany" is different.

In the Adversary system the accused is assumed innocent till the time he is not proved guilty and the prosecution has to prove that accused has done wrong and the wrong done by the accused must be proved beyond the reasonable doubt. The doubt is favorable for the person facing the accusation as it is believed in our system that "Let the thousands of criminal go unpunished but innocent must not be punished". Even Judge has a reason to be sure that the accused has participated in the crime he cannot be order re-inquiry because he is the neutral umpire.

In the "Inquisitorial system" the judge is initially a neutral person but if he has reason to suppose that the participation of the accused is there in the crime then he can order the prosecution to investigate the crime properly which he can monitor and even he can take side. If the judge has a doubt then the burden shifts on the person facing the accusation to show that he is not at fault and he is innocent.

The Adversary system is also called as the accusatorial system of justice. This system originated in England as an integral part of common law. It is relevant in criminal law. Under this system it is provided that the innocence of the accused is a presumption till he is proved to be guilty. This system is based on the doctrine of the presumption of

innocence. "It is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt". If the guilt of the person facing accusation was not proved by the prosecution or if the judge has a reason to suppose that the accused is not involved in the crime as there is a doubt then the benefit must be given to the person facing accusation and the punishment must not be imposed on him instead the court will acquit the accused. The meaning of this doctrine is "Let the thousands of criminal go unpunished, but innocent shall not be punished."

In the adversarial system court comes in the capacity of a referee to solve the matter which is between the prosecution and the defence. The contest is there between the prosecution and the defence as one party is the state and the other party is the person who is facing the accusation. The court plays the non-partial role in this process. But if we see the process adopted in the inquisitorial system we can see that the court has an active participation in this system as the investigation is done by the court to find out the truth. The main aim of this system is to resolve the dispute and to achieve the justice for the members of the society.

The following are the main features of the adversarial system

1. This system has the aim to find out the truth through the open competition between the two parties.
2. In this system the parties has to decide that to whom they will call as a witness and the nature of the evidences given by them. The court only sees the process by which the evidences are admitted in the court.
3. In this system the decisions of the Supreme Courts and the High
4. Courts are binding on the subordinate court.
5. The judgment is pronounced by the judges on the basis of the evidences or on the examination and the cross examination.
6. The role of the judges in this system can be called passive in the nature.
7. The role of the judges is not to manage the case so the role of the judges is very limited in this system.
8. The lawyers of the parties have the role to present all the references in the adversarial system.
9. To manage the case is the task of the lawyers of both the parties and they manage the case by their own wishes.
10. In an adversarial system the work done by the lawyer get the importance and judges have to decide the case with the help of the work done by the lawyers and the investigating agencies.
11. In the adversarial system judges are not permitted to exchange the views with the parties to make their case strong as he is neutral person, this is the reason that the judges cannot take any initiative for the speedy trial of the case.
12. In the \adversarial system the discretionary power is provided to the judges but the discretionary power provided to the judges is not wide.

Main features of the inquisitorial system

1. The aim of the inquisitorial system is to get the truth of the matter through assessment of all proof by extensive investigation.

2. In inquisitorial system it is in the hand of the judge to decide that what witness should be called first and the order in which witnesses are to be heard.
3. Inquisitorial system judicial precedent are used in a little sense and court is free to decide the case and the court is not bound to depend on the previous judgment of Superior Court in the similar matter.
4. In the inquisitorial system the role of lawyers is passive.
5. In this system judges has the active participation as they can ask question and here the parties.
6. In this system the role of judges is very important and the case management is in the hand of the judge
7. The term for the disposal of any case is also in the hand of judges as the cage management is in his hand.
8. Documents and the information about the real facts get priority in the inquisitorial system.
9. Case management in the inquisitorial system is generally effective as judges spend time with the parties and the exchange views before taking any decision.
10. There is generally speedy disposal of the cases in the inquisitorial system.
11. The discretionary power provided to the judges is very wide in the inquisitorial system.
12. Speedy trial is one of the main objects of inquisitorial system and to achieve this object judges plays an effective role.

This research is based upon the principle that if there is any problem in justice delivery system it is not good for the law abiding citizens as well as it will destroy the faith of victim in the judicial system as well as it will encourage the offenders to commit more crime. If justice delivery system of a nation is not efficient the member of that society will face number of problems and ultimately it will result in to social breakdown. Failure of justice delivery system causes people to adopt unconstitutional means to settle their disputes. Now days the system which provides the justice in our country is affected by the problem called delayed disposal of the cases. The speedy trial is the main purpose of the justice delivery system. There is a common proverb "delay defects justice and Justice hurried is justice buried". It is in the interest of the society that the cases must be disposed speedily and it is the responsibility of the prosecution. The speedy trial is also in the favour of the person facing the accusation because if he is guiltless he will not face the problem as to face the entire allegation and the process of justice delivery system for the long period. In the year of 2003 "The Malimath Committee" was appointed to give suggestion how to make our justice delivery system more effective and speedy disposal of the cases. It is sad that the recommendation was not adopted in our justice delivery system.

Conclusion

In conclusion, the intricate tapestry of human society is woven with the threads of justice, equity, and interdependence. From the earliest formations of societal structures to the complexities of modern legal systems, the quest for justice has been a constant force driving human interaction. The essence of justice lies in the harmonious reconciliation of individual interests against the backdrop of the common good. It serves as the cornerstone on which the pillars of societal order, peace, and prosperity stand. The principles of justice, equity, and good conscience form the

bedrock of legal systems, providing a framework for the fair distribution of rights, benefits, and burdens among individuals. Distributive justice, with its focus on the equitable allocation of resources and opportunities, strives to create a society where each member receives a fair share based on their needs and contributions. Corrective justice, embodied in the concept of commutative justice, seeks to rectify wrongs committed by individuals against others, promoting accountability and societal harmony. Throughout history, legal systems have evolved to address the dynamic needs of societies. The concepts of justice put forward by philosophers such as Aristotle, Rawls, and Nozick reflect the nuanced approaches to distributive and corrective justice. The evolving nature of societal norms and the changing dynamics of human interaction necessitate continual adaptations in the pursuit of justice. However, challenges persist in the delivery of justice, with delays and inefficiencies plaguing legal systems. The quest for justice requires a delicate balance between individual rights and societal welfare. As Ernst Barker aptly noted, justice is a term of synthesis, aiming to comfort the general distribution of rights and maintain a delicate equilibrium. In the contemporary context, the significance of justice delivery systems cannot be overstated. Timely and effective justice is essential for the preservation of societal identity and the prevention of grievances that may lead to unrest. The delay in justice delivery poses a critical challenge that needs to be addressed to maintain the delicate equilibrium between individual rights and the greater good. In essence, justice is not a given but a continuous endeavor. It requires conscious effort, vigilance, and active participation from every individual in society. The principles of justice transcend mere legal frameworks; they are the moral compass guiding individuals toward a collective well-being. As Roscoe Pound emphasized, justice is an endeavor that achieves results, and its pursuit is essential for the thriving coexistence of individuals in society. In the ever-evolving landscape of societal structures, justice remains a foundational pillar, ensuring that the threads of human interdependence are woven into a tapestry of fairness, equity, and shared prosperity. As societies navigate the complexities of the present and future, the pursuit of justice will continue to be a defining force shaping the contours of human interaction and societal well-being.

References

1. Abhijeet Aaryan, Legislation & Common Law: Indian Legal System, see at <http://www.legalservicesindia.com/article/587/Legislation-&-Common-Law--Indian-Legal-System.html>
2. Ajay Kumar, Judicial Delays in India: Causes & Remedies Vandana; c2012.
3. CJI Justice K.G. Bala Krishnan, Efficient Functioning of India's Justice Delivery System. 2007;4(SCC):J-15.
4. Dinesh Singh, Indian Judiciary: Current Problems and Possible Solutions, see at <https://www.civildocs.in/gs2-Indian-judiciary-current-problems-and-possible-solutions/>