THE APPLICATION OF PROCEDURAL JUSTICE: SPECIAL REFERENCE TO INDIAN LAWS

Written by ***Amulya Anil***

Chief Knowledge Adviser, Internationalism

ABSTRACT

The principle of 'Fiat Justitia Ruat Caelum' which literally translates to 'May the justice be done, even if the heaven's fall' is bestowed with paramount importance in the legal jurisprudence. The research paper attempts to dwell into an analysis of the ideology and the application of the concept of Procedural Justice. After conducting a review of literature, the paper attempts to cater to the short comings thus identified. The doctrinal research paper attempts to define the term 'Procedural Justice' and further also relates the significance of it with the concept of Natural Law. Further the paper also briefly explains the major causes or types of manifestations of Procedural Justice. Let alone the philosophical and the jurisprudential approach, the paper also attempts to identify the consequences of such a miscarriage of justice and the practical implications of the same. The paper successfully gives an insight to its readers regarding the international covenants which have been ratified by the third world countries in order to safeguard the procedural justice. Further, the researcher has made a diligent effort in identifying the legal statutes of various other countries which are intended to protect procedural justice in brief. The paper however throws emphasis on the procedural malfunctions in the criminal judicature of India by relying upon various precedents and statutory provisions and deals with the substantial principle of vicarious liability of the state and a significant defence of sovereign immunity which is available to the state. There is a probing made into the Law Commission of India's report on Miscarriage of Justice, thus highlighting the approach of the Commission and their recommendations. Before venturing into proposal of suggestions, the paper concludes by highlighting on how the lack of consensus with regards to the definition of Procedural Justice and the definition of Malicious Prosecution in the international realm has impacted the judicature negatively and throws on light on a major

lacuna- the fact that acquittal is mandatory to the claim the benefits of laws related to wrongful prosecution. It highlights the deficiency of the system with respect to its inability to help the innocents who were wrongfully convicted and couldn't be fortunate enough to be given an acquittal. Finally, the researcher calls upon the legislature to inculcated multi-dimensional and holistic tactics in combating such legal deficiencies which come into a conflict with the ethical ideals.

INTRODUCTION

The paramount aim of any legal establishment is to ensure that the law and order is monitored with utmost diligence and hence has to be stabilized with very less or minimum chaos. The concept of procedural justice thrives to make this whole process ethically and legally just. The very motivation behind the establishment of a judicature is defeated when the laws and the regulatory measures laid down in black and white have practically failed because of faulty policy prescriptions or because of the lack of procedural justice – as a result the judicature is subject to the question of degree of reliability. The concept of procedural justice cannot be put into a straight-jacket formula, since its disciplines are spread over varied dimensions. The System of Government or the legislation is often said to be a similar analogy of actions that take place in a contract – there is an important question that arises – why that particular performance must be carried out. Thus, from this concept, arises a popular question in the minds of the general public- Why must they adhere to the laws made by legislature and the affirmative circumstances that follow such an adherence. Often it is opined that the legislature can obtain such adherence only because of the existence of the system of sanctions that has managed to create fear in the minds of the general society. However, the major contention of various researchers is that the procedural justice can be better established when the citizens are voluntarily motivated to adhere the regulations by virtue of moral consciousness. And hence, procedural justice in the criminal system of India has been chosen as the domain of the research.

REVIEW OF LITERATURE

Kristina Murphy in her paper – "Procedural Justice and its role in promoting voluntary compliance"[i] explains the importance as to why obeying the law becomes important to the people. She clubs it with the theory of "social identity". She goes on to explain what is procedural justice and firmly believed that the idea of procedural justice is a symbiotic concept. It invokes "quality" and "neutrality". She proposes that trust worthiness of procedural justice is what which persuades the citizens to be more accommodating and submitting themselves to the legal frameworks. However, the shortcoming of this paper is that it addresses much of the theoretical ideologies and is a mere general analysis. It doesn't seek to propose concrete counter policies and the paper is of a socio-legal philosophical genre.

The paper – "Procedural Justice as Fairness"[ii] by John Thibant, Laurens Walker, Stephen LaTour and Pauline Houlden commends the Rawl's Theory- "that fairness is the paramount aim of the nature and the character of justice. The paper puts forth the different procedural dimensions of inquisitorial systems, adjudicatory systems, adversary and military systems of hearing. It focusses much on how the ignorance of the parties and that the "veil of ignorance" is the major contributor for the deficit of fairness in trial procedures. The paper fails to address the specific legal provisions and doesn't touch upon the aspects of faulty expert procedures such as DNA exoneration and doesn't talk about India in specific.

David Resnick, in his "Due Process and Procedural Justice"[iii] emphasized on how procedural justice does not only focus on upholding a valid trial but also is the soul of the American Constitution. It is a descriptive concept which is spread over varied disciplines of law and cannot be fit into a straitjacket formula. He talks about the Rawl's classification of "perfect procedural justice" and "imperfect procedural justice" , where the former is mostly related to criminal procedure and also is of the opinion that it is not an absolute possibility to expect cent percent accurate results consistently though the due process of law is followed, for , the due process of law is not bereft of any imperfections. The paper fails to talk about the wrongful convictions and its remedy in detail.

Lawrence B Solum in his work- "Procedural Justice" [iv] talks about how the actual ambition of the procedural norm is to guide the conduct of the action. The author goes on to explain on three major reasons for why procedural justice cannot be attained: lack of adequacy of

knowledge relating to the legal dos and the don'ts; lack of specifications in the statutes and the adoption of techniques that promote partiality. He says that "*law without legitimacy can only guide action through force and fear. When we sacrifice procedural justice on the altar of substantive advantage, we risk a very great evil.'*"[v] However, this paper too fails too fails to address why or why not acquittal should be made necessary for an action to be brought against wrongful conviction, the extent of sovereign immunity available and doesn't pay heed to the Indian Legal scenario in specific.

Therefore, the research has been carried out after considering the shortcomings mentioned above.

PROCEDURAL JUSTICE

What is Procedural Justice?

The very intent of the legislature behind the promulgation of laws and statutory orders is to ensure that there exists expected and acceptable law and order within the territory and that the social order is maintained, while also protecting the rights of the people and imposing sanctions on the offenders. For such a control, there prima facie exists two mandates: the legal enactment, followed by the application and the implementation of it. Procedural justice is a dimension of such an implementation, which obligates the law enforcers and the system of judicature to observe the facets of morality and ethics while deciding upon the rights and the liabilities of the people.

This ideology leads to an inference that both the types of justice: Judicial and Procedural are essential for a system of judicature to function effectively. In the present circumstance, there persists a significant gap with the, judicial theory and the pragmatic judicial practice, and the same gap is recognized by Rawls, "veil of ignorance"[vi]. This "veil of ignorance" along with the specific interest of the parties, are responsible for creating a perception of what amounts to a fair system with procedural system which in reality is distinct from the original system of judicature[vii]. The lack of procedural justices rises mostly because of the lack of credibility in the distinction between what amounts to be good as opposed to what is actually righteous in nature[viii].Bourricaud said that the idea of legitimacy is not just with respect to the theoretical law, instead it is also attributed to the – "a power which accepts or institutionalizes its due

process of legitimation."[ix] He further also emphasized on how the lack of procedural justice would actually contribute to the breakdown of the state machinery[x].

Procedural Justice is a concept which is spread over a vast and a varied dimension making it a challenging to exhaustively define it. However, many attempts have been made to define what procedural justice is. David Resnick says, - *"The right to procedure is puzzling because what we have a right to is certain state of affairs; we have a right to just treatment by the state, and the process by which such treatment is accorded individuals would seem to possess no independent value."*[xi] (Resnick, 1977). Further, the definition proposed by another thinker defines the term as – "*Procedural Justice has to do with how authority is exercised and how people experience it"*[xii] (Mclean, 2017)

Procedural Justice with respect to Natural Law and Legal Jurisprudence

Fairness, moral and ethical credibility is the paramount facet of any system of judicature. Natural law is credited because of its attribute of eternal in nature. The relation between procedural justice and natural can be best explained with the maxim – *"Fiat Justitia Ruat Coelum"* which means – "may the justice be done, even if the heaven falls". The principles of Natural Law, intend towards bringing out the fact that Justice is focused in delivering the righteous service to the people. The law of nature and the rule of law focusses on delivering the people with what is naturally right and not with what they infer or perceive to be good or bad.

The legal Jurisprudence the idea of rule of law as the one which is universal in nature. It extends the intention behind establishing a system of judicature to the rest of the world. Thus, when procedural justice and the law of nature are read together, it is established that procedural justice is a necessary element that must prevail in every system of Judicature, irrespective of the political and cultural variations prevailing behind the enactment of such laws. In fact, this has led to many scholars coining and identifying the word – *"Procedural Natural Justice"*[xiii]

THREAT TO PROCEDURAL JUSTICE IN THE CRIMINAL JUSTICE SYSTEM

Wrongful Convictions

Wrongful Convictions, in layman's terms, refers to a scenario where an innocent is adjudicated to be guilty. Wrongful convictions are condemned and feared around the world since it defeats the very purpose of judicature. The Indian system of Judicature, especially believes in the fact that there must be no possibility at all that an innocent person must be punished. It also nurtures the ideology a person must be perceived to be innocent and should not be treated as an offender or a criminal, unless the judicating system has proved the guilt of the accused, without any room for reasonable doubts. However, the cases of wrongful conviction manifest a system which functions of a contradictory ideology that a person would be perceived to be guilty, until proven innocent. The cases of wrongful convictions as Tony G Poveda suggests, has continued to be a hotly discussed topic and yet remains to be inconclusive, and persists as a blind spot in the criminal justice system[xiv]. He further defines that wrongful convictions can be perceived to be a continuous or persistent error committed along the entire procedural chain of criminal trials which covers a false accusation to a false conviction which further develops in to a false imprisonment[xv].

The perimeter of wrongful conviction is very wide and hence the causes of it cannot be defined with certainty. The reasons may include- unethical practices performed and manifestation of negligent or careless attitude by the police, preconceived notions by the bench or the executive authorities, commission of perjury by the witnesses, corruption in the system, undue influences or may be even unauthorized or questionable expert opinions such as flawed DNA exonerations reports. The concept shall be discussed in detail under the further heads.

Delay in Justice

It is often very evidently ascertained that the when there exists a delay in the delivery of justice it isn't really distinct from the denial of justice. The delay in justice, also paves the way to question the reliability and the genuineness of the process which was followed in such a delivery. The delay in such procedural furtherance would only increase the probability of inadequate fairness in the entire process- it would liberalise the investigation, collection of evidence and so on.

However, this in a grey area which can't be approached under extreme conceptions. While on one hand the delay in justice is rendering the system of judicature in efficient, on the other hand, obligating the system to fasten the process, would also affect the quality of the functioning of the system.

WRONGFUL CONVICTIONS

International Scenario

The occurrence of wrongful conviction is a situation which is not confined to the territory of India, but also to the rest of the world. In most of the western countries, the wrongful convictions occur mostly because of the falsity in the forensic and the DNA exoneration reports. Various countries have taken the necessary steps to curb such indigenous lack of procedural justice and have promulgated their own sets of rules and regulations for the same. To vindicate – The United Kingdom has the *Criminal Justice Act of 1988,* the Part XI of which deals with the wrongful prosecution or the miscarriage of justice. The German Legislature, called the *"Strafverfolgungsentschadigungsgesetz"* also addresses the issues of reversal of the respective conviction and also deals with the compensation for the same. The title 28 of the United States Code also makes it a mandatory affair for the judiciary to award compensations for the victims of wrongful prosecutions. Further, Canada has also executed the Provincial Guidelines which aims at providing compensation to the people who have been subjected to wrongful prosecution or even for that matter, those who have been falsely imprisoned. The New Zealand, however, has taken a step ahead and has incorporated the practice of awarding ex-gratia compensation, which shall be at the expense of the state. The same practice is also often embraced by Australia, while it is also backed up with the provisions provided in the Human Rights Act of 2004, though it is specific only to the Australian Capital Territory.

Indian Scenario

Even in India, the incidents of wrongful prosecution are not negligible. However, the matter was considered to be of prime importance only in the year 2018. The Indian Legislature grew considerate over the inefficiency of laws against the wrongful prosecution, majorly after the case of ***Babloo Chauhan v State of NCT***[xvi] . In this case, the court was to adjudicate upon an appealed matter which dealt with the issues of fine, wrongful prosecution and incarceration of

non-guilty citizens. The court in the same case, also brought the fact that the Indian system of judicature was not equipped with any substantial statutory provisions that would act as a deterrent to the wrongful prosecutions. It ascertained that, though there existed some civil remedies with respect to the justice which is miscarried, there was an urge to formulate or devise a separate statute, which also provides the remedies to the victims of the wrongful prosecution. With the ambition of drafting such a statute in mind, the court solicited the Law Commission of India to strategize a legislative document which would combat such issues and further propose the implementation and the enforcement of the same to the Government of India.

STEPS TAKEN TO COMBAT WRONGFUL PROSECUTION AROUND THE WORLD

The International Covenant on Civil and Political Rights

The ICCPR 1966 constitutes among the list of most dominant documents of International Understanding. The primary intention behind the making of this covenant was the very need to have an international command over the wrong prosecution stories that occur in the ratifying or the signatory states. The covenant identifies compensation to be one of the most effective and a primary remedy, in order to sympathise with the victim. According to it , wrongful prosecution is when a seemingly conclusive judgment had rendered the accused / victim to be a convict , and subsequently the same has been reversed or the victim has been let off , on the basis of the fact that he was wrongfully prosecuted.

The Article 14(6) of the Covenant provides for the concept of wrongful prosecution and also holds it indirectly as a kind of miscarriage of justice. According to the section, the essentials of wrongful prosecution are: there must exist a conviction that was considered to be final, the same conviction has to be rendered to be invalid by virtue of a reversal, the person either must have been given the benefit of the pardon , in lieu of the discovery of a material fact proving his innocence or the occurrence of procedural injustice , the person must have served the punishment as a consequence , and further provided that such cases would be dealt by awarding a compensation. However, the article also puts forth an exception which says that if there was an attribution to the person, with respect to the non-disclosure of the fact within the rationally

expected time of the person's innocence, then the benefit wouldn't be available. Further, the Article 9(5) of the same covenant, makes the right to compensation of a victim of the wrongful prosecution, an enforceable one.

However, the article has attracted significant criticism, for the very fact that it makes conviction a necessary element, for an of the judicature or the state machinery to constitute an offence concerning the wrongful prosecution. The covenant has been ratified by 168 territories with India being one of them and therefore, these ratifying states are put under an obligation to adopt such a method of compensation, as provided by the Article 14(6) of the Covenant.

India's authorities to combat Wrongful Convictions

Every country has a multi-faceted remedial system to combat its legal issues and social disorders. India, too has a multitude of public remedies, remedies under the civil laws , provisions of the criminal law[xvii] and also the other statutory provisions to combat the factors leading to the miscarriage of justice. However, for the purpose of this paper, the focus shall be majorly on the provisions of the laws that govern the Indian Procedure of Criminal trials.

The Criminal Code of Procedure of 1973, acts a supplement to the Indian Penal Code of 1860. While, the former governs the procedural aspects of the criminal proceedings or the trials, the latter governs the matters related to the substantial right of the persons.

The contention arises , on noticing that the 132nd and the 197th Section of the CrPC 1973, brings the judges and the authorities who discharge a statutory function under a protective shield from non-credible litigations, provided that the litigation is in respect with the activities carried out by them in the course of performing their legal duties , and the same has been emphasized on , by the Indian Courts in the case of ***Jaysingh Wadhu Singh v State of Maharashtra***[xviii]**.**

These sections have been subjected to contentions for prima facie seeming to be authoritative and biased against the general public. However, over the years, the interpretations of the courts have diluted such contentions at large. In the case of ***Subramaniam Swamy v Manmohan Singh*** **and Anr**[xix]**,** the court held that such legal provisions must be construed in a way that it promotes the utmost values of honesty, so as to promote justness and quality governance, so as

to curtail corruptions. Thus, the state authorities, the police officers and the judicial officers wouldn't be deemed to be having absolute immunity against such litigations filed against them.

The court in the case of ***Bajinath v State of Madhya Pradesh***[xx], as well ascertained the fact that the sections of 132 and 197 of CrPC shall not be absolute and hence shall be subject to certain circumstantial exceptions. The same scope has also been given a restricted interpretation by the courts in the case of ***P.P Unnikrishnan v Puttiyottil Alikutty***[xxi] , where it asserted that the requisite is not that the action is merely done in the course of performing the statutory duty , but must also exhibit reasonable connection with the vested statutory functions.

However, the most important case regarding the same, was also the case of ***Rajib Ranjan and Ors v R Vijayakumar***[xxii] where the court evidently held that when such officers indulge in activities which are criminal in nature, then shall not be vested with the benefit of the sections.

To facilitate the implementation and to add to the effectiveness of the central criminal code, the respective state laws have also been enacted. And yet, a large number of incidents pertaining to the procedural injustice remain unquestioned merely because of the fact, that the evidence with respect to it is not brought on record.

Further, the CrPC 1973, also takes notice of the persons who have been arrested without the existence of a credible ground. The Section 358 of the Code recognizes inconveniences and infringements caused to search persons and thus provides for them to be compensated.

When it comes to the vicarious liability of the state, the case of ***State of Rajasthan v Vidyawati Mst*** [xxiii]can be an impressive example. The court in this case had held that the State was indeed vicariously liable for the illegal acts done by one of its recruits who was a driver. Since then, the case has been perceived to be a landmark one and hence has had impactful persuasive effect, as a precedent, on the courts. The scope of the benefit of the sovereign immunity has been carefully restricted by the courts through the judgments they have pronounce. One of the significant examples can be the case of ***Nilabati Behera v State of Orissa***[xxiv]**,** where the court had decreed that the police officials were not covered under the ambit of sovereign immunity, for any of their acts of procedural misconduct.

LAW COMMISSION REPORT ON MISCARRIAGE OF JUSTICE (WRONGFUL PROSECUTION): LEGAL REMEDIES

Definition of Wrongful Prosecution

The Report no 277 of the Indian Law Commission, made sure there isn't any room for the same kind of criticism the ICCPR faced with. The report puts forth a list of substantial illustrations which would be considered to be a component of wrongful prosecution. They are:

a) Any system of adjudication provided for by the law, being provided with a document or a record which isn't correct or if there has been the framing of the same, or if the incorrectness of such material is made up, during the timeline of the proceeding.
b) When there is an obligation to produce the truth before the system but a non-truthful declaration or a false statement which is otherwise by law, fit to be treated as an evidence has been made.
c) When there is delivery of an evidence which is false, while the person was under a legal obligation to do otherwise.
d) When there arises an instance where the evidence to be submitted before the judicature has been fabricated and hence is false.
e) When an evidence which was to be presented before the judicature or any other legally recognized proceeding has been destroyed.
f) When the concerned authority has instituted a false proceeding under the criminal law; has falsely charged a person, or has caused to put the victim in such situations.
g) When a person is subjected to any confinement or trial which is not what has been provided by the law
h) When a person has acted in any other manner, and such an act has caused the injury of wrongful prosecution to the person.

Recommendations of the Committee

The Committee while putting forth the recommendations, took into consideration, the various precedents put forth by the courts in different cases. The Law Commission pointed out the fact that despite the persons acquittal, the society would treat him nothing more than a convict, and accordingly , for this compromise on the part of his reputation, compensation must be awarded. The Commission reiterated the provisions of the ICCPR 1996 and took example of various landmark cases related to the wrongful prosecution.

The Commission's report derives examples from the cases of ***D.K Basu v State of West Bengal***[xxv] , ***Nilabati Behera v State of Orissa***[xxvi], ***Rudhal Shah v State of Bihar***[xxvii] etc to emphasize on the monetary compensation to be awarded to the victim. The Commission also highlighted the relationship between the Article 21 of the Constitution of India 1950 and the concept of procedural justice.

The Committee majorly recommended that there was a need for a separate legal provision which would control the aspects of wrongful prosecutions and the compensation for the same. It was the view of the Commission to put the obligation of paying the compensation on the State. Highlighting the importance of preventing the pendency of suits, the Law Commission recommended on the establishment of Special Courts to deal with the issues of wrongful prosecutions. It further , recommended that a wider interpretation must be given to the term "Wrongful Prosecution" and hence also bring the cases of malicious prosecution under the ambit, along with the suits which are instituted in the absence of bona fide faith. , thereby making the conviction and the acquittal , not really a necessity element.

Incorporating the important points above, the Code of Criminal Procedure (Amendment) Bill of 2018, was proposed by the Law Commission of India and meanwhile proposed the insertion a Chapter XXVIIA to the Criminal Procedure Code of 1973, which would deal with the matters related to the wrongful prosecution.

CONCLUSION

The ideology of procedural justice has been long existent in the society and in all the systems of judicatures and state machineries. However, the lack of certainty and consensus with respect to what constitutes procedural justice, has been a deterrent for our venture to device a model to heal the legal system out of procedural justice. The legal systems of the world have adopted various measures and promulgated various rules in order to compensate or pacify the victims of procedural justice violations. Nevertheless, a bigger practical and philosophical problem lies in a scenario where the victim has only been convicted, but couldn't unfortunately be acquitted because of lack of evidences in his favour, on record. Procedural justice is not an isolated concept, and tracking down the occurrence of such infringement is a humongous and a challenging task. The combat tool list against procedural justice cannot be restricted only to legal methodologies but also must extend to the adoption of ethical values and moral education.

The presently adopted mechanisms, only focus on remedial measures to succour a victim of wrongful prosecution. There is less in the statutes on how to identify such a victim, and how to effectively prevent the occurrence of miscarriage of justice at prima facie itself.

Procedural justice therefore is something which needs more probing into the matter, and hence cannot be certainly concluded at this point or put into a strait jacket formula.

SUGGESTIONS

The major flaw in our legal administrative system is the irrational desire of wanting to combat the legal ailments only through the mode of statues. The policy makers mostly forget, that a multi-dimensional perspective must be adopted in order to combat such issues, irrespective of the genre.

A holistic remedy must be thus implemented, which involves, not only the legal measures, but also educational measures, ethical teachings and social services. The legislature has to identity the root causes and adopt a bottom - up model

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