



A STUDY ON “ SUBSTANTIVE JUSTICE AND PROCEDURAL JUSTICE “

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ABSTRACT

Substantive justice is administered according to law and come out from common law, statutory law, constitutional law , and which interpret from legal precedents. Substantive justice deals with relationship between citizen and the government. Substantive justice primary motto to provide rights and obligation to citizenship. Substantial justice has two type :- Substantive criminal and civil law were substantive criminal law deals state which include view of all society member vs respondent and civil law deals with individual and individual . it also include natural justice which does not violate the right of the people who can not afford the money they will legal aid on the basis AUDI ALTRAM PARTM hearing which include exception of EX PARTE in some cases and second one is right against bias.

Procedural justice :- Also know as Adjective law and . it main motto to enforcing right of person whose right has been violated by following different mechanism like criminal procedure law , civil procedure law . without substantive law no existence of procedural law .

The topic which I will be covering in this research paper are :- 1. Need of natural justice or not in my opinion it very important so that both party convict and innocent both can get a chance of heard and it also show a positive sign of equality .

2 . How Right to life get violated because of unstable judicial system and imperfect decision :- right to life get violated when judiciary not providing decision on timely basis but it keep pending for more and more time. So court should get disposal at time , so that any party right can not violated in the form of under trial and probation period example.

2. INTRODUCTION

JUSTICE :- It is a process where both parties get fair treatment in decision. From ancient times the innocent party gets justice which is based on custom, shastra and all, but in the current era custom became law and is strictly followed by the people; otherwise they will get punished.

Substantive and procedural justice both are interdependent on each other for imposing justice. In the substantial justice pre-trial method was misused on a convict or an innocent person in the way that when any person gets convicted without any proper proof and the convict spends their time in imprisonment and after some time they get a clean chit from court in this type of case the innocent person's rights get violated under article 21 of the constitution. Here the due process of law can be taken as granted when it gets helped from the due process of law through the procedure established by law. Substantive law discusses about compensation in civil matters and punishment in criminal matters. Substantive justice mostly works in the refined or interpreted form of precedent which is always applied in anticipated cases. Substantive law provides actual rights against any type of wrong justice given by court.

Procedural justice :- also known as adjective law, it also acts for enforcing rights and duties. It also includes the process of judicial review so that any innocent party can claim their rights and not get misused and the procedural justice is governed by the Evidence Act 1872, Criminal Procedure Code 1973, Civil Procedure Code 1908, Limitation Act 1963, and the Suit Valuation Act 1887.

Law of civil procedure where courts deal with civil trials and involve individuals and individuals where it discusses about which type of remedy they will get, what process they have to follow, all these things are dealt with the Law of Civil Procedure Code 1908 which is also amended by the court over time for development in the individual rights of the people.

Law of criminal procedure where courts deal with criminal trials and involve the state and parties where it discusses about which type of punishment they will get, what process they have to follow, all these things are dealt with the Law of Criminal Procedure Code, 1973 and the Evidence Act, 1973 which is also amended by the court over time for development in society. It also deals with the process of bail, appeals, revisions and other types of crimes.

The procedural justice is continuously used in different countries with specific names such as Due Process in the United States, procedural fairness in Australia, fundamental justice in Canada. Procedural justice follows the equitable and the pellucid process by which judgments are made but disparity arises with distributive justice (equitable in the allocation of rights or resources) and retributive justice (equitable punishment for all people). Mostly while performing the justice the court should hear both parties and understand the actual problem and on that criteria the court will move to give justice.

Procedural justice involvement in many fields with different aspects like in the court system, the workplace, education and the government, all should use an equitable and pellucid manner.

3. BACKGROUND

The term procedural justice and substantive justice developed by the jurist Jeremy Bentham in year 1843 who is English thinker , jurist and social changer¹ . he says that both law are interdependent of each other they will not able to facilitate without each other.

The administration of justice in present civilised society has progress through stages. In ancient era mostly when any crime occur only responsibility lies with individual and individual remedy , and no one will be helping in filing the case or congregate proof . the second developments is arising of society by the help of state were all function are persuasive in nature . in third stage any wrongdoer found in the society they will be compensating the victim for wrongful act. And in current era distribution of private and public justice because private justice include of individual rights were public justice include of whole societies right and this bifurcation were arises by the state to confined their liabilities on their jurisdiction . so we can say that modern administration of justice owes its it origin and growth to the gradual evolution of state and and its political power.

Salmond says that every man to satisfied their own needs in the way of respecting their needs and their right . That is only a appropriate problem which give arises to external force in the society which can control the society in the way like no chaos will take place while performing ‘ mine and thine view’ . in current status people get right of justice in different field like social justice, economic justice, criminal justice, civil justice.

One has to be fair not for himself but for society also so that all person presume that equality in the society and there is no violation of right to life on any criteria.

4. STATEMENT OF PROBLEM

The actual problem in justice system against Article 14, Article 15, Article 21 and Article 22 in the way of²:-
The person who suspect to be criminal but there is no prove of that but he was arrested by the police it like violation of right to life under article 21 and when the criminal are belongs to poor section of society they all not get legal aids on time because of less approach which also lead to delay in bail which violate art 14 and art 15. (samajpati, 2022) Ans supposedly when that accused got a bail after expiring of punishment time and then it clearly proofs that accused is innocent with clean hand so in that case our justice system is also responsible , they has also take proper due procedure that this person is involved in crime or not but now a days suspect accused kept in undertrial for more time than imprison this all show negative aspect of justice system .

In modern time many burden on court because pending of 4.3 crores cases in court which also not provide relief on time to the people and arising the problem to parties always through summons. (service, 2019)Approximately

¹ P.J Fitzgerald : Bentham on jurisprudence , (12thedition) p.51

² Common Cause vs Union of India , 2018 5 Scc 1 (para52)

SIXTY SEVEN percent inmates are under trial and FORTY percent remain in jail for six months without any specific proof towards them. This all problem hinders the innocent party's view by living with accused in imprisonment they inculcate all types of views so we can say that justice system is increasing the criminals in the society instead of diminishing the crime in society.

5. OBJECTIVE OF STUDIES

- Imperfect decision of court led to violation of article -21
- Needs of progressive development in justice
- Needs of natural justice

6. RESEARCH METHODOLOGY

The methodology which I will use in this research paper is Doctrinal Research where I will be following secondary data such as judgement of courts, legal journals, magazine, article, law made by legislation. The type of research which is involving is analytical research and explanatory research.

7. DISCUSSION ON PROCEDURAL AND SUBSTANTIAL JUSTICE

Substantive justice which covers two parts civil and criminal justice were in civil justice related specific work and compensation were in criminal justice related to punishment in the form of imprisonment and compensation. Substantive justice comes in the end of case when all points lay down in court through procedural justice and then judge provides final verdict of the cases. It comes from law making body of government that is legislature, and also it comes judge made law that is precedent especially in common law system.

7.1 NATURE OF SUBSTANTIVE JUSTICE

- Substantive law discusses about right and obligation of individual (samajpati, 2022)
- Substantive law deals with what legal provision will impose and what liability will be there this all thing mentioned under act like Indian Penal Code, 1860 and other act.
- Substantive law can not need assistance for giving any judgement (Paranjape, 2017)

7.2 SOURCE OF SUBSTANTIVE JUSTICE

- Constitution of India
- Precedent which is made through interpretation of law
- It also arises from many convention like World trade organisation that how trade will go smoothly in the country, world meteorological department work is to inform all countries related issue about climate.

7.3 TYPES OF SUBSTANTIVE JUSTICE

- Substantive civil justice which deals with individuals rights and liability in the form of compensation. Liability to prove the damage is on plaintiff that his legal right has been violated and when plaintiff able to proved he will be getting compensation otherwise not. Illustration :- when two party A and B enter in to agreement for sale of pen by A to B and for that b will be giving consideration in the form of money , but after some time A refused to give pen to B then in this case B has responsibility to claim damage from A through court procedure and after proving the fault of A , B will be getting compensation because it is violation of law which is made by Legislature .
- Substantive criminal justice deals with criminal offence and liability in the form of punishment in many case but in some case also include compensation in the form of money . illustration :- person A has intentionally killed B through a car and after that A is defending in court that it is not a rash driving , then court will apply their analytical view and give the judgement.

7.4 LIMITATION OF SUBSTANTIAL JUSTICE

- Many time judiciary not work as independent authority they are restrict by legislature made law which affect the rights of people.
- Substantive justice has the power to restrict or control the power of any person who is surpassing it

8. PROCEDURAL JUSTICE

It main work to enforce the right through doing judicial proceeding . judiciary cover the concept of ‘DUE PROCESS OF LAW’ and ‘ NATURAL JUSTICE ‘³ were natural justice concept related to right of fair listening of both parties that called ‘AUDI ALTRAM PARTM’ in legal language but in some exception cases ‘EX PARTE’ only apply . when natural justice principal will not apply during the proceeding it will effect right to equality of some people and also effect on the basis of discrimination , so that the primary reason of court to impose natural justice . then second one is due process which is not used in India but apply in USA but in one cases it taken as granted in our country also so, on my opinion it should be in our country so , that person who think that lower court has not done his work properly then they can claim in superior court through appellate jurisdiction and request to review the case again .

7.2 NATURE OF PROCEDURAL JUSTICE

- Procedural justice can be enforce by the help of substantive justice
- Enforced against the law made by legislature or state

³ State of Haryana vs Darshan Devi , AIR 1979 SC 855, Justice Krishnan Iyer

7.3 SOURCE OF PROCEDURAL LAW

- Law made by organ of government that is legislature
- Law made by honourable apex court

7.4 PILLAR OF PROCEDURAL JUSTICE

- Fairness :- All the parties should get a chance for fair trial instead of biasness against the one parties.
- Impartiality :- There should be no discrimination on the basis caste , race, religion any thing between the trials of justice
- Giving voice:- All people tell their problem to court in their way that how there right is violating
- Transparency :- All trail in the court should be in the present of both instead of one party.

Assessment = outcome(positive or negative) + process

7.5 PERSON HAS A RIGHT TO TAKE A BAIL

Accused has a right to get a bail in the case of bailable offence but in case of non bailable offence it will depend upon discretion of court to give bail or not . many people in under trial and imprison without any actual proof , so in this type of situation they all need of right of bail .

9. JUDICIAL APPROACH

9.1 A.K GOPLAN VS UNION OF INDIA ⁴

Court describe that article 21 of the constitution did not made compulsory for nation court to apply a due process of law . But after some time attitude of court is change through procedural established by law to procedure due process.

9.2 MANEKA GANDHI VS UNION OF INDIA⁵ (law, 1978)

When any act made by legislature is arbitrarily under article 14 of the constitution it will proceed for judicial review and when after reviewing it found arbitrarily then it will conclude as void law .

9.3 COMMISSIONER OF WEALTH TAX VS SHARVAN KUMAR ⁶

In this case apex court made difference between procedural justice and substantial justice .substantial justice right and duties are impose by law establishing body were procedural justice for providing force to right and duties.

⁴ A.K Goplan vs Union of India A.I.R 1950 SC 27

⁵ Maneka Gandhi vs Union of India , A.I.R 1978 SC 597

⁶ Commissioner of Wealth Tax vs Chandra Sen , 1986 SCC 567

9.4 APEX COURT ADVOCATE ON RECORD VS UNION OF INDIA⁷

In ancient time mostly judge were appointed by collegium system but through 99 amendment in year 2014 the to appointed the judge allocated to national judicial appointment commission but after some time it was repealed by the court that it was involvement of legislature which not led to fair appointment .

9.5 FAROOKH MOHAMMED VS STATE OF MADHYA PRADESH

The procedural law should not taken as granted for giving justice only substantial justice will led to provide fair justice to people which after some time it was amended in other cases . (kanoon, 1965)

9.6 KESAVANANDA VS STATE OF KERALA⁸

In this largest constitutional bench sitting ever in the history of court were judgement was given that legislature has the power make amendment in fundamental right which mention in part third of constitution but basic structure of doctrine can not be amended otherwise it will bound the power of court also and people liberty also infringe .

10. CRITICAL ANALYSIS

The main reason of justice delay is overburdening of case but now a days court is appointing specific tribunal for specific case dealing like in environment cases appointment national green tribunal because it led to fast disposal of cases and all person who are involve as convict in cases they will we proving their liability on two way that is as accused or innocent when found accused they will legally get imprisonment or compensation but when parties found innocent they will be getting interim bail . so, this states that disposal of case is compulsory in smoother way.

In lower judiciary cases were pending for many time and they are not providing chance to parties to appeal as appellate jurisdiction in some of cases this is violating the right of people so this all problem can be short out by court so that no inconvenience get to people. Mostly substantive justice part will be ending as much as fast procedural justice should take place but this can not happen that without presence of one justice the case will be decided properly.

In many case court also know that appeal was perform by parties is waste of time but court is providing fair trail to not violate the natural justice process but when people impose for judicial review the higher court has discretion to take the case or not . otherwise in our country justice system is almost good .

⁷ SC Advocate on Record vs Union of India A.I.R 2014 SC 265

⁸ Kesavananda Bharti vs State of Kerela A.I.R 1963 SC

12. CONCLUSION

A substantial justice dealing with right and obligation of parties were procedural law provide procedure to the case law that the parties will follow in the case for renewal of their right and what remedy will get. Now a days the accused who found guilty after completion of case and punishment impose by the court in that case substantial justice has been completed. My opinion no right of any person can be violated by court because it is only a last trust of people who are not privilege and then also through writ petition to apex court they are reaching. So, one statement told by one jurist that ‘JUSTICE DELAYED IS JUSTICE DENIED ‘ the best conclusion coming out from this statement is right of people is more important so it can not be violated in giving late decision.

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