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## PROCEDURAL INEFFICIENCIES THAT BURDEN THE ADMINISTRATION OF JUSTICE IN INDIA

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### INTRODUCTION

The history of Judiciary in India dates long back the period of civilization which was governed by Natural laws or the self proclaimed divine rules. According to these laws and theories, the sovereign had the most legitimate authority to rule a particular territory and they were considered the sole minister of justice, as was believed by the scholars of that era that God himself has granted them the divine right to rule. This was assumed because the Indian society in its budding age was classified on the basis of the occupation (**Varna**). It was derived from the Ancient Vedic Texts; this was very flexible noble form of division of the society, allowing people to change their social stratum in relation to their proclivity toward a particular line of occupation permitting mobility in their social conditions. This comprehensive system of division of labor and social status promoted harmony and order in the society. This form societal structure also laid down certain moral and theological procedures provisions to resolve conflict in the society if any which were called the rules according to the **Dharma** or the way life.

Over the period of time this system of governance of society and administration of justice became rigid and lacked rationality and the coerced a strict division of society with respect to their birth in a particular descent which were committed to a certain line of profession even though they have interest in any different profession. This made the system of Dharma incompetent to govern the society. The administration of justice in this form of society was arbitrary and ignorant about the pressing needs of the society which led to discontent and angst among the people of society. Due to these reasons and the consistent invasions, this form governance was discarded and The Medieval form of Judiciary came to prominence which was dominated by the Sharia laws and the Mansabdari system( Feudal system) which had slightly evolved form of judiciary than its predecessor. There were officers (Qazis) who represented the ruler in different regions, interpreted laws and served justice on behalf of these Islamic rulers. These

laws were based arbitrary and prejudicial toward a particular members of society and allowed repressive interpretation due to which after the fall of Mughal Empire these laws were discarded and the Modern judiciary which imagined a view of egalitarian society had codified laws and a systematic and comprehensive penal and adjudication system was adopted and enforced by the virtue of the Colonial effect. This system was sophisticated and had a clear modus operandi which helped to maintain law and order in society. However this systematic, sophisticated and codified legal document are not completely devoid of fallacies which burdens the justice administration and the fallacies are to be discussed in the paper below

- Failure to revise laws and statutes with respect to Inflation

In the Indian legal context, punishments, fines, penalties, and other charges are governed by the Indian Penal Code, the Code of Civil Procedure, and various other statutes that

require regular revision. This is essential due to the increasing value of money as a result of inflation. When legislative bodies fail to carry out these revisions, it results in inconsistencies within the law. Consequently, these provisions may lose their intended purpose, leading to their becoming unreasonable and unjust. When the Penal Code was enacted in 1860, the fines specified as alternatives to imprisonment were designed to deter offenders from committing similar offenses in the future. These fines were viewed as equivalent to imprisonment for the crimes committed, with other forms of punishment including death, life imprisonment, simple imprisonment, or property forfeiture. For instance, Section 276 of the Bharatiya Nyaya Samhita stipulates a punishment of imprisonment (of either description) for a term that may extend to one year, or a fine of up to Rs 10,000, or both, for any individual who adulterates drugs or sells them through rash or negligent means. Similarly, a person who inflicts grievous hurt through rash or negligent actions is punishable under Section 125B of the Bharatiya Nyaya Samhita with imprisonment of either description for a term that may extend to three months, or a fine of Rs 2,500, or both. These examples illustrate the use of fines as alternatives to imprisonment, with the intention that the fines serve as a punishment equivalent in severity to the prescribed period of imprisonment. The purpose of imposing such fines is to instill a similar deterrent effect in the minds of potential future offenders. In situations where courts opt to impose fines instead of imprisonment, this occurs when the accused is found guilty. When the imposed fine is minimal or insignificant, such as Rs 2500, and is applied as an alternative to imprisonment for a duration ranging from six months to two years, it fails to serve as an effective punishment or a deterrent for future offenders. Instead, it may encourage perpetrators to believe they can evade consequences for their actions, thereby contributing to an increase in crime rates within society. Since 1860, the value of currency has been consistently declining due to inflation.

Despite significant time passing and revisions to the procedural manuals of civil and criminal codes, these codes have not successfully integrated fines and penalties as effective deterrents. The current value of Rs 2500 does not equate to the worth of Rs 2500 in 1860. The disparity in value is remarkable. This difference can be illustrated by examining the purchasing power of money then compared to now. For instance, a plot of land could be purchased for less than Rs 100 in 1860, whereas it now costs approximately Rs 40-50 lakh. Additionally, a gram of gold that was priced at a few rupees in 1860 now costs around Rs 10,000. A rupee in 1860 possessed greater value than it does today. If a criminal was fined Rs 2500 in 1860 for the same offense, a contemporary offender would face a penalty of no less than Rs 2,50,00,000. When the fine provisions were established in 1860, the amount was set high enough to serve as a viable alternative punishment, preventing many offenders from being able to pay the fine, which resulted in them serving their sentences. The fine amount was also inadvertently sufficient to compensate the victim or the victim's family. Therefore, when the penal code was enacted centuries ago, the fine was designed to be a suitable punishment for the crime and an effective deterrent against future offenses. However, over time, as the value of money diminished, the deterrent effect of the fine amount established in 1860 has also diminished and arguably has become negligible today.

If the state's intention was to impose a fine of Rs 2500 in 1860, then more than a century later, if the same fine is enforced, it effectively allows the offender to escape punishment. The failure of the legislative body to update these fines and penalties in accordance with rising inflation rates will lead to the following consequences:

- i. It undermines the integrity of the law in question.
- ii. It compels the judiciary to incarcerate the offender to establish a deterrent effect.

- iii. It depletes the state's valuable resources, which could be better utilized for various noble causes within society.

In its 156th report in 1997, the Law Commission of India acknowledged that fines established in 1860 have lost their relevance and deterrent effect in contemporary society, and their severity should be increased. A comprehensive overhaul of the sentencing framework under the penal code could significantly enhance the judiciary's effectiveness, address crime in society, maintain order, and deliver justice to victims or their families. The remedy for this ongoing issue is to implement a systematic and periodic review of these provisions and the prescribed fines for specific offenses, taking into account the inflation rate. Another approach is to establish a protocol for the regular review of sentencing provisions and the amount of fines to periodically assess the impact of inflation on statutory provisions.

▪ **The Conundrum of Separate Adjudication For The Same Cause Of Action**

The management of liabilities under both civil and criminal law operates independently of each other. This indicates that, even concerning the same subject matter or cause, multiple proceedings may occur. Typically, this situation arises in relation to causes of action that lead to criminal liabilities for a criminal offense and civil liabilities for a tort under civil law. For instance, in cases of forgery, the matter is addressed by the criminal court through criminal proceedings, while the compensation claim from the plaintiff or the plaintiff's family must be resolved by an adjudicator in civil proceedings. Another illustration is the dishonoring of cheques, which initiates a criminal prosecution but necessitates a civil suit for the recovery of the owed amount or interest. Other offenses, such as motor accidents resulting from rash and negligent driving, defamation, cheating, and misappropriation, give rise to both civil and criminal liabilities, which are adjudicated through separate civil and criminal proceedings. The primary issue arises when two

conflicting binding judgments are issued based on the same facts or cause of action in both civil and criminal cases. Often, the criminal court may find the driver of a vehicle not guilty of rash and negligent driving, while the civil court, concerning the same incident, may determine the driver to be negligent and award compensation. Indeed, statistics indicate that in approximately 98% of motor vehicle accidents, the victim or the victim's family receives compensation from the driver or vehicle owner in civil proceedings, even though the criminal courts may not find the individual guilty of negligent or rash driving, misappropriation, or breach of trust, often granting the benefit of the doubt. The primary reason for such discrepancies lies in the differing standards of proof required under civil law compared to criminal law.

. In civil law, the standard of probabilities suffices as proof to establish liability, whereas criminal law mandates proof beyond a reasonable doubt. Additionally, the criteria for constituting an offense under criminal law may differ from the legal standards that lead to liability in civil law. Consequently, the outcome of one proceeding (for instance, a criminal case that reaches a final verdict) may not be regarded as binding or unappealable in another proceeding that shares the same cause of action.

The Supreme Court aptly highlighted this distinction by stating,<sup>541</sup>

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standards of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that

<sup>541</sup> Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC370ar pp. 389-90 para 32

the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein”

Litigants often find themselves perplexed, questioning why a single proceeding for both civil and criminal matters arising from the same cause does not yield the same liability.

The optimal solution to this dilemma would be the establishment of a unified forum capable of adjudicating both criminal prosecutions and civil proceedings, possessing the authority to impose penalties in accordance with criminal law while also providing remedies under civil law, thereby effectively addressing this complex issue.

▪ Delay Caused due to Generality of laws

The Indian Constitution embodies the principle of Equality as outlined in Article 14<sup>542</sup>, which asserts that "Equals must be treated equally, and unequals must also be treated equally." This principle fundamentally asserts that all individuals are equal before the law, and the administrators of justice are required to refrain from distinguishing between citizens on any grounds, ensuring uniform application. As a law that is consistently and generally applied, it does not discriminate based on wealth, power, education, or lack thereof. However, this can lead to a paradox that results in injustice in certain situations. For example, an offender is subjected to the same penalty for an offense, such as a fine of 1000 for providing false information to a public servant under Section 225 of the Penal Code<sup>543</sup>, regardless of whether they are a daily laborer earning 15,000 a month or a businessman earning ₹15,00,000 monthly. By disregarding evident financial or economic distinctions, those who are unequal are treated as equals, thus creating an anomaly. When the punishment involves imprisonment, offenders, irrespective of their wealth, are treated equally by having their liberty revoked for the same duration. However, when the punishment is a

fine, and it remains constant regardless of the offender's financial status, it leads to disproportionate penalties, as the fine may represent a day's income for a wealthy individual but a year's income for someone less affluent. Consequently, numerous countries have implemented income-based fines, which are determined by the offender's income, in contrast to the non-structured uniform fines system utilized in India. For instance, France has enacted legislation that allows for fines to be imposed in relation to the offender's income. This system involves two steps to determine the fine: (1) it establishes the number of "day fine units" (for example, defining the fine as equivalent to one month's income or 15 days' income, etc.) based on the severity of the offense; and (2) it quantifies the value of these units in relation to the offender's daily or monthly income and other relevant factors.

**[NOTE.]**—The offender may also be made to suffer revocation of some rights and privileges (that is, prohibition to drive a motor vehicle or use of credit card or closure of business, etc.) and/or mandated to perform certain community service). The structured fines are designed to be punitive, with the severity of the punishment varying according to the seriousness of the offence. This system compels the offender to literally repay their debt. For instance, an offender incurs the same fine for an offence, such as ₹1000 for providing false information to a public servant under Section 225 of the Penal Code, regardless of whether they are a daily laborer earning ₹15,000 a month or a businessman with a monthly income of ₹15,00,000. By disregarding the evident financial or economic factors, those who are unequal are treated as equals, thus creating an anomaly. When the punishment involves imprisonment, offenders, irrespective of their wealth, are treated equally by having their liberty taken away for the same duration. However, when the punishment is a fine, and it remains constant regardless of the offender's financial status, it leads to disproportionate punishment, as the fine may represent a day's

<sup>542</sup> Constitution Of India, 1950

<sup>543</sup> Bhartiya Nyaya Sanhita, 2023

income for a wealthy individual and a year's income for someone less affluent. Consequently, numerous countries have implemented income-based fines (that is, fines determined by the offender's income), in contrast to the non-structured uniform fines system utilized in India. For example, France has enacted legislation that allows for fines to be linked to the offenders' income. This system involves two steps to determine the fine: (i) it establishes the number of "day fine units" (for instance, defining the fine as equivalent to one month's income or 15 days' income, etc.) based on the severity of the offence; and (ii) it quantifies the value of these units in relation to the offenders' daily or monthly income and other relevant factors. [The offender may also face the revocation of certain rights and privileges (such as being prohibited from driving a motor vehicle, using a credit card, or closing a business, etc.) and/or be required to perform community service). The structured fines are intended to be punitive, with the severity of the punishment varying according to the seriousness of the offence.

#### ▪ Injustice Caused From Judgments "per incuriam"

Judgments referred to as Per Incuriam essentially denote decisions that lack proper consideration of the law or the facts, or those rendered without awareness of the provisions of a statute or rules that possess statutory authority or binding effect. This term is frequently utilized when courts have relied on an incorrect precedent or have failed to apply the most recent precedent, specifically the binding decisions of The Supreme Court or those from larger or coordinate benches of the high court. The phrase per incuriam is typically a euphemistic or more dignified way of indicating that the judge has overlooked the law or has disregarded certain statutory provisions and procedural rules. A Per Incuriam decision is issued by an adjudicator who is not well-versed in the law; however, such decisions are as binding as general decisions, and compliance is expected from all parties involved. Interestingly,

a per incuriam decision remains binding on all courts until it is officially recognized as per incuriam by a coordinate or larger bench of The Supreme Court<sup>544</sup>. These per incuriam decisions are often imposed on high courts or other subordinate courts, leaving them with no choice but to recognize these rulings, despite the clear evidence that procedural and statutory guidelines have been neglected. Such per incuriam decisions can result in disorder and may lead to chaos, as citizens may begin to question the integrity of the justice delivery system. It may take years for the system to acknowledge the offense and to establish a bench of equal or greater strength to rectify the errors stemming from per incuriam decisions. The ruling of the Supreme Court in S.R.Chaudhari vs. State of Punjab <sup>545</sup> serves as a quintessential example of a per incuriam case, as it has yet to be declared per incuriam by a coordinate or larger bench of the Supreme Court. In this instance, the matter before the court was whether a non-member appointed as a minister under Article 164(4) of the Constitution of India could resign prior to the completion of six months. The court determined that appointing an individual as a minister for a second term during the same legislative period, without them being a member, contravenes constitutional provisions. However, the Supreme Court made the following observation regarding the privileges of non-member ministers: "The right to vote in the House is granted solely to Members of the House of the Legislature of State (Article 189). This right does not extend to ministers who are not elected. While they may address the House, they cannot vote as an MLA. None of the powers or privileges of an MLA are applicable to that individual. Although Article 177<sup>546</sup> grants the individual the right to speak and participate in the Legislative Assembly's proceedings, they do not possess the usual 'free speech' legislative immunity as outlined in Article 194(2). The individual cannot receive any

<sup>544</sup> State of A.P. v. B. Satyanarayan Rao, (2000) 4 SCC 262; State Of Bihar v. Kalika kuer, (2003) 5 SCC 448.

<sup>545</sup> (2001) 7 SCC 126 at p. 145, p. 37

<sup>546</sup> Constitution Of India, 1950

benefits of an MLA without being elected." The fundamental flaw in the Supreme Court's assertion did not consider Article 194(4), which states that clauses 1, 2, and 3 of Article 194 apply to members who, by constitutional right, are entitled to speak and participate in the legislative proceedings, just as they do for members of that legislature. This essentially means that immunity concerning free speech and other privileges would be accessible to non-member ministers under Article 194(2) for a duration of six months. Nevertheless, the Supreme Court's incorrect interpretation has led to non-member ministers being deprived of the privileges and immunities they are entitled to under Article 194(4) of the Constitution. These court observations remain binding law, as they have not been declared per incuriam by a coordinate or larger bench of the Supreme Court. Likewise, discrepancies may also occur due to judges' failure to adhere to binding precedents, either due to incorrect interpretation of previous rulings or by willfully disregarding a binding decision, resulting in inconsistent judgments. In instances of such conflicting rulings, the public involved in litigation faces uncertainty regarding the legal standing, making it difficult for them to organize their affairs based on a definitive legal framework. The lower courts, which are obligated to adhere to these decisions, find themselves in a quandary as the conflicting judgments have created ambiguity in the law, necessitating extensive and time-consuming deliberations to determine which of the two opposing decisions should be enforced. The remedy for these types of discrepancies (decisions per incuriam and conflicting judgments) lies in increased diligence from Judges to ensure that they do not overlook any pertinent legal provisions or binding authorities when making their rulings. Additionally, lawyers must take responsibility to ensure that they present all relevant legal provisions and binding decisions to the court. Judicial Academies, Law Schools, Bar Associations, and indeed, members of the judiciary, should identify those decisions

from the Supreme Court and High Courts that have either neglected or contradicted specific statutory provisions or binding decisions, and communicate these to the appropriate court for corrective action. To prevent individuals with ulterior motives from irresponsibly claiming that a well-founded decision is per incuriam, a suitable procedure should be established (for instance, by the Supreme Court or the relevant High Court forming a committee to assess and provide opinions on whether any decision is per incuriam) to facilitate the review and correction of such decisions. This same procedure could also be applied in cases where there are conflicting opinions from coordinate Benches, which lead to confusion.

#### ▪ Conclusion

In the contemporary times where laws have very crucial role in the society where people crave for loopholes in laws to exploit them for personal gains and such exploitation leads to dilapidation of the entire structure of law which was envisaged for the maintenance of order in society. The above mentioned are some issues which require immediate review and revision from the law making authorities and the ministers of justice their solution require a comprehensive framework which incorporates the solutions of the these anomalies with least amend to the current structure. The main objective of this paper to identify the discrepancies in the current legal structure in order to ensure everyone enjoys a fair and just trial and help in meeting the ends of justice.