

Resolving dilemma of Justice and Insaf

In modern days, justice is administered in accordance with the rule of law and not independently. Invariably, the Judge/Court will dispense justice by following set principles of law as contained in different laws of the land, and we will call it “Justice”. However, often it may not confirm or live up to the common expectation of the people at large that “Justice” will be or should be fair, equal and just to all concern at all times - something which is very solemn, divine, morally acceptable and adheres to principles of ethics and thus based on honest conscience and common social belief, I mean 'Insaf'. Supposing in a criminal case, X is charged with Y's murder and he voluntarily makes a clean breast of the whole affair to a police officer, who is an extremely honest man. There is no other evidence in that case except the confession of X and the law as contained under the Evidence Act, 1872 is that a confession however sincerely made to or before a police officer cannot be used as honest and trustworthy evidence in criminal trials. In the result, X will be discharged (unless pleads guilty).



In such a case like this, however willing the Judge may be to do real justice, his hands are tied by law and the accused offender will be released. Many such cases may also be cited from civil law jurisdiction, where honest litigants are defeated owing to law being against them (cases where parties sue after the period of limitation is over and the Court cannot decree the plaintiff's legitimate claim, since it is time-barred) and one cannot term them as cases of injustice.

In the above two situations, principles of justice underlying them are that it is dangerous and unsafe to convict on the strength of a confession to the police and that law should not help litigants to sleep over their rights and thereafter seek Court's assistance to redress them, once the period of limitation run out, for law is for the vigilant and not the indolent respectively. In common parlance of law in both the above cases, legal justice is done and one cannot term them as cases of injustice but cases of legal justice or justice according to fixed rules.

Question may arise whether Courts can function and administer justice not following the fixed rules always. It is perhaps possible for the Courts to function without fixed rules at all, as there could be a "Tribunal" which would administer justice according to the conscience and natural justice and not in terms of previously fixed or accepted general principles.

In fact, history of development of the English Common Law reveals that a time came when Common Law Courts in England were found to be scanty to address different situations of the

society to provide justice to all concerns, because there were no Common Law principles to be relied upon by the Judges and they used to feel constrained (though could understand and realise that a wrong has been committed and justice is required!). That was the reason behind the creation of a new set of Courts, known as Chancery Courts of England, where Judges used to function and administer Justice by their good conscience and natural justice.

Across different countries and societies, the modern trend in general is to follow the 'fixed rule principle' and confirm justice accordingly considering the advantages contained therein (vis-à-vis the defects) that (a) fixed rules of law would impart, to a considerable extent, uniformity and certainty towards administration of justice; (b) they would provide protection against improper motives on the part of those entrusted with the judicial functions; (c) they would secure freedom from the errors of individual judgment, since law serves to protect the administration of justice from the errors of individual judgment and the required need of guidance from the experience and wisdom of the world at large, of which, the law is the record; and (d) they would be reliable since law is more reliable than individual judgment, because human mind is not infallible and the judges are no exception. Therefore, it is safer and more reliable, to rely on the wisdom of the legislature and sagacity of the legislature, than the momentary fancy of an individual judge trying the case.

However, despite benefits of doing justice conforming to fixed rules, such benefits are not obtained without incurring cost. Law brings with it evils of its own, such as, (a) rigidity, (b) conservatism, (c) more reliance on formalism/technical requirements than to substantial rights and wrongs, and lastly (d) complexity of law. Though the benefits of law are great, evils thereof are also not insignificant.

In this regard, judicious use of discretion by the Judges can increase fairness and promote an equitable legal process thereby allow judges to take into consideration individual instances and situation where the law is silent or insufficient. Moreover, legislation simply cannot address all situations, whereas the judges being present during proceedings of trials and also by hearing evidences, places themselves in a unique locus/footing to appreciate the need of the hour and sentiments affecting the social conditions and general expectations.

In this backdrop, applying discretion by the judges can be a way out to overcome the “dilemma”- whether justice done by following fixed rules/justice will be enough to live up to the common expectation, or ways need to be pursued to mitigate the gap in between.

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