UNIT 15  JUDICIAL PROCESS

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15.1 INTRODUCTION

Adjudication process that comprises of several sub – processes such as taking cognizance framing of charges hearing prosecution and defense rides funding of guilt and sending etc. is the core function of CJS. The Court as in adjuratory agency has to separate truth from the falsehood, relevant from the irrelevant and finally filter the admissible evidence for application of the law in force at the time of commission of the crime. In this process a number of segments of the justice system are involved, however, the main agencies being police, prosecutor and the defense counsel. The judiciary has to strike a balance.

The courts in India ply a key role in the judiciary process has been vested with the difficult responsibility of balancing the interests of the society, and victim on one hand and the interests of the accused on the other. This is to be done while upholding the Rule of Law and dispensing justice to the accused or the victim or the society.

The prosecution has to represent the state on behalf of the victim and the defense counsel represents the accused person. Both the Prosecutor and the defense counsel have to assist the court in analysing the facts in the light of the existing laws. In this Unit an attempt has been made to discuss the adjudicatory process, its historical perspective hierarchy and role of the Courts and rights of the accused person during the adjudicatory process.

15.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the concept of adjudication;
- know about the long journey through which the Indian Judiciary has traveled from the Ancient India;
- discuss the concept of ‘justice’ under different judicial systems;
• explain the perception of the speedy and fair trial;
• describe the role and hierarchy of the Courts in India; and
• discuss the legal and constitutional rights of the accused persons.

15.3 ADJUDICATION PROCESS

Whenever a crime is committed, the adjudication process cannot come into motion unless someone reports the incident. It is true that police is the first agency in the Criminal Justice System and is expected to extend protection to every individual and record information about every crime that is committed with their jurisdiction. But due to the vast and diverse dimensions of their jurisdiction coupled with population explosion and migration of people from one area to another, it is practically not possible to protect every individual. Moreover, police is not known to come to know about each and every incident which takes place within their jurisdiction.

In order to make the judicial process effective and meaningful, it is essential that the complaint, witnesses rather than the community/society as a whole, has to come forward and provide the relevant facts to the court through the investigating agency i.e., police. It may be noted here that filing of F.I.R. is an important first step to initiate the judicial process and therefore, the community support and cooperation is very important in the entire adjudication process.

Adjudication process includes the legal battle which in the criminal cases takes place between the prosecutor and defense counsel, in the court of law, under the supervision of the judicial officer i.e., Judge. The basic purpose of the judicial process is to separate truth from the bulk of the cooked up stories with exaggerated facts. The witnesses support the system by reporting what is within their knowledge regarding the event and the court plays a very vital role in the entire judicial process.

15.4 HISTORICAL PERSPECTIVE

A brief historical review of the Indian judiciary reveals that justice in the Ancient India was fast and economical. It was within the reach of every individual. The judiciary in India has crossed through many stages. The present judicial set-up, in way is by and large replica of the judicial system which was in vogue during the governance by Hindus and Muslims, modified by the English regime in the British Raj in India. Almost all the terms concerning the court nomenclature like Adalt (Court), Foujdari (Criminal), Dawa (Suit), Gawah (Witness), Muddai (Complainant), Mudda-elahe (Defendant), Zammanat (Bail) and Vakil (Lawyer) are in vogue in the present judicial process.

The customs and rituals play a very important role in any society to coin as to what ‘act’ does or does not amount to a deviant behaviour and also lays down the mechanism to determine as such. Misra (2004) has pointed out that criminal justice structure and justice process has a intimate connection with the social structure. Social structure is not a static phenomena nor can it said to be equal to the normative prescriptions of a sanctioned system, because many values are adopted locally and followed by the people as scrupulously as the sanctioned values. Law either leads or lags in prescribing or approving a social behavioural
norm. Law criminology sati falls within the category of ‘Lead Statutes’, as it restructures the social norms on rational reformatory limes. On the other hand where law simply recognise certain value patterns, already existing in the society and are in vogue with-out any operational difficulty, fall within the category Lag statutes. The concept of crime and punishment is a relative terms which is directly linked with moral values, ethical background and social mores of the society.

Witnesses are the other key players in the process Weston (1967) has pointed out that the judge’s role is to insure that the issues are joined within the legal system and in the three-sided interaction, the court must become place where a fair balance is struck, between the rights of the State and rights of the individual.

Glueck and Glueck (1939) have observed that in the adjudication process, the courts are the mouth of a great hopper, into which the police pour thousands of thousands cases of the alleged criminals. The judicial process, is logically the process to filter our the guilty persons from the huge bulk of the accused persons.

Self Assessment Question
1) Describe the concept of lag-statues.

15.5 HIERARCHY AND ROLE OF THE COURTS

The hierarchy of the Criminal Court in India is based on the English pattern of judiciary. Section 6 of the Criminal Procedure Code 1973, provides that besides High Courts and the Courts constituted under any law, other than Code, the hierarchy of the Courts shall be as under:

i) Court of Sessions;

ii) a) Metropolitan Magistrate in any Metropolitan Area, and
    b) Judicial Magistrate of First Class

iii) Judicial Magistrate of the Second Class;

iv) Executive Magistrate

The Courts mentioned above are the Courts constituted under the Criminal Procedure Code. In addition to there special courts may be constituted under the special legislations as well as the Juvenile Justice (care and Protection of children) Act, 2000 that provides for constitution of juvenile Justice Boards.

The law relating to the administration of criminal justice is contained in the Criminal Procedure Code, 1898 amended from time to time. The important amendments were introduced by the Central Legislation in 1923 and 1955. The
amendments introduced by these legislations were extensive and directed to simplify the procedure and speed up trials as far as possible. The amendments in question could not bring the desired results as the basic age old Code remained uncharged. There was general feeling among the law makers and legal fraternity that the basic Code needs tremendous changes. However, no serious effort could be under-taken till Central Law Commission was set up in the year 1955.

A comprehensive review of the laws pertaining to the administration of Criminal Justice was undertaken by the Law Ministry. A systematic examination of the Criminal Procedure Code was undertaken by the Commission and after in-depth examination of all the provisions of the Code the Commission submitted its report. The Government on the basis of various law reform recommendations enacted the Criminal Procedure (Amendment) Act, 2005 and the Criminal Procedure (Amendment) Act, 2006 and is in the process of notifying the Criminal Procedure (Amendment) Act, 2008.

Self Assessment Question
2) Describe briefly hierarchy of the Criminal Courts in India.

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15.6 CONCEPT OF JUSTICE

Justice is a relative term and every one looks at it from his own perception, out justice in its general terminology means justice as perceived by an impartial arbitrator/presiding officer/judge who has no interest, whatsoever in the case. It is rightly said that law is blind but justice is not blind. Justice should be transparent, rather justice should not only be done, but should appear to have been done.

To Ancient India the idea of justice was associated with fairness and expedition. Justice during Hindu period was short and swift. The basic tenets of criminal justice were compensation to injured, tax to the State and imposition of certain conditions, if the offender was not dealt with death or banishment. Justice in the Muslim period was cheap and within the reach of every individual irrespective of his/her status and resources. The courts were held in the Mosques and the Judges were asked to treat the parties politely and without a frown on their faces. The Moghul rulers were very much interested in the cheap and speedy delivery of justice. Emperor Akbar asked his Judges and Governors that those who apply for justice, be not inflicted with delay and expectation. He further, asked the Judges let them shut their eyes against the offences committed and accept the excuse of penitent and there be no discrimination on account of sect or religion. This system of administration of criminal justice was in vogue when East India Company spread its domain in India.

Judiciary in India during British period maintained status quo in respect of the administration of justice, both civil and criminal. However, with the extension
in their domain and sphere of activities, East India Company confronted operational difficulties and in order to overcome the operational difficulties and to serve their vested interests, they started to rely upon English law initially for information and guidance. However, with the passage of time a new social order and administration was set-up on the western pattern. The system was changed from one man administered justice to that of the multi-institutional machinery, through a long-drawn procedure of apprehension, detention and trial, leading to the judgment.

Self Assessment Question

3) a) Describe concept of justice in the Ancient India.
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b) Describe the concept of justice during the Moghul period.
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15.7 SPEEDY AND FAIR TRIAL

The speedy and fair trial is essential for delivery of justice to the concerned. It is rightly said that justice delayed is justice denied. In the civilized societies, it is an accepted principle of law and natural justice, that a person accused of a crime cannot be punished unless he has been given a fair trial and fair trial means that the accused must be in a position to defend his case in the court of law with the assistance of a competent lawyer, if he is not in a position to engage a lawyer, he is to be provided one at the cost of the State exchequer.

A judicial trial can’t be fair, unless both the parties i.e. prosecutor and defense are given an opportunity to explain their stand in a free atmosphere on equal footing. Kelkar (1972) in respect of the fair trial has pointed out that the notion of fair trial, like all other concepts incorporating fairness or reasonableness, can not be explained in absolute terms. Fairness is a relative concept and therefore, fairness in criminal trial could be measured only in relation to available time, resources and the prevailing human values in the society.

The fair trial no doubt is a relative concept, but the essential basic attributes of fair trial are enshrined in Article 10 of the Universal Declaration of Human Rights, which have been adopted and proclaimed by the General Assembly on Dec. 10, 1948 which reads as under:
“Every one is entitled in full equality to fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations of any criminal charge against him.”

The Supreme Court of India in *Talib Haji Hussain’s Case* (1958) pointed out that the primary object of the criminal procedure is to ensure a fair trial of the accused. The law provides fair opportunity to the accused to defend his case and subject to certain exceptions starts the criminal proceedings with the presumption of innocence. This gives birth to the legal between the prosecutor and the defense counsel. The judge more or less acts like a umpire between the two contestants. In other words, the adversary system of criminal justice system provides that the prosecution, defense counsel and judge are to work together to find out the truth.

‘Due process of law’ and ‘procedure established by law’ in the criminal justice system is just like a combative pattern, in which the prosecution and defense counsel ‘fight it out’ in the open court in the interest of truth and justice. But the harsh reality of the criminal justice system is some what different from the image projected. The public prosecutor usually works with the extraneous considerations and in most of the cases is keen to fight the battle for the acquittal of the offender, irrespective of the fact whether he has actually committed the crime or not. The trial is indeed a battle between or wits between the prosecutor and the defense counsel, and both want to built up their reputation among the litigants to make them seem indispensable.

**Self Assessment Question**

4) Describe concept of speedy and fair trial.

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15.8 RIGHTS OF THE ACCUSED

The Constitution of India, the Indian Penal Code and the Code of Criminal Procedure prescribe the rights and duties of the people to ensure their life, liberty and dignity. The judicial process in India as discussed has crossed a number of stages right from the ancient India to the present stage. In this long journey the laws have been amended from time to time and judicial activism has also played a vital role in expounding the law. Activism has identified the rights of the accused persons for the speedy and fair delivery of the justice. Some of the important rights in this regard are identified as under:

a) Notice of accusation:

The fair trial demands that the accused person must be informed of the precise nature of the charge, so that he can prepare his defense accordingly.
b) Arraignment:
All charges which are against the accused must be explained to him in the terminology, in which he understands it. Arraignment must be done at the earliest possible opportunity.

c) Definiteness of Penal Statutes:
The charges must be clear and under definite and clear penal Statutes. A criminal Statue must establish a normative standard which is definite and un-ambiguously clear, to which one can adhere structuring his conduct.

d) No self-incrimination:
The accuse has a right that he will not be subjected to self-incriminating questions.

e) Un-reasonable arrest, search and seizure:
The accused has a right that he will not be subjected to un-reasonable and illegal searches and seizures. He has also the protection against the arbitrary arrest.

f) Near Relations to be Informed:
The accused has a right that his near relatives shall be informed about his arrest. The Government has a bounden and fundamental obligation to inform the near relatives of the accused, where he is being taken and where he shall be lodged.

g) Impartial Judge:
The accused has a right that he shall be heard by an impartial judge. The impartiality of the judge is very important, as justice should not only be done, but it should appear to have done.

h) Impartial prosecutor:
The accused has a right of impartial prosecutor, who is expected to serve both the State as well as accused.

i) Competent Defense Counsel:
The accused has a right to be represented by a competent defense counsel. The indigent accused has a right to the defense counsel at the expenses of the State exchequer.

j) Right of Speedy and Fair Trial:
The accused has a right to speedy trial in the court of law. He has a right that court will ensure the fair and impartial trial.

k) Presumption of innocence:
The accused person has a right that he shall be presumed innocent unless proved otherwise in the court of law. The benefit of doubt, if any shall be given to the accused person. The Malimath Committee has recommended that the concept ‘beyond reasonable doubt’ in respect of ‘presumption of innocence’ under the present system be replaced by with the lower standard of ‘the court’s conviction’. This recommendation has been also subjected to the criticism.
l) Right to call witnesses:
The accused has a right to call witnesses and confront the adverse witnesses through cross-examination.

m) Right to Reasonable Bail:
The accused has a right to be released on reasonable bail, subject to the provisions of the procedural laws. This feature of criminal justice has a special cogency because majority of the persons processed in the criminal court are poor.

n) Right to ‘set-off’:
The accused has a right that the period of detention already undergone by him during the trial is to be adjusted against his sentence in the same class.

Self Assessment Question
5) Describe important rights of the accused person.
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15.9 SUMMARY
• The judicial process is a mechanism to determine the guilt of the accused person in the alleged crime. It means to bring law into motion against the accused person in order to establish his guilt or otherwise, in accordance with what is legally called ‘due process of law’ or ‘procedure establish under law.’

• The judicial process brings the prosecutor on behalf of the victim through the state and the defense counsel on behalf of the accused person together to present their case before a impartial person, who is well versed in the law of the land.

• The judicial process in India has a long historical background, it has traveled from the Ancient India to the present position through many stages and has been influenced by the Hindu law during the Hindu period, Muslim law during the Muslim period and English law during the British era.

• The lower judiciary up to the District and Sessions Courts, broadly speaking is divided into Civil (Dewani) court and criminal (Foujadri) Court. At most of the places same court enjoys both civil as well as criminal jurisdiction.

• The hierarchy of the Criminal Courts in India is based on the English pattern of judiciary. The hierarchy of the Criminal Courts in India is provided under Section 6 of the Criminal Procedure Code, 1973.
The Prosecutor, the Defense counsel and the Court play very important role in the dispensation of the justice. All the segments of the Criminal Justice System are expected to work in close co-ordination with each other.

The different segments of the Criminal Justice System are by no means exclusive of one another, but are inter-dependent upon each other. What is done in one sub-system has a direct bearing upon another and they interact with each other at many points in the Criminal Justice Process. In the adversary Criminal System all the segments of the system have a very vital role in the judicial process.

The State being the Guardian has to ensure speedy and fair trial. It is rightly said that justice delayed is justice denied.

The judicial process cannot be effective unless there is quick disposal of the cases, but it is a matter of fact that there is inordinate delays in the disposal of the cases, and the judgments are delivered when the event stands washed away from the memory of the people.

The community support is very important for the speedy justice, but people generally hesitate to come forward to assist the criminal justice authorities unless compelled by the personal considerations or compelling circumstances.

The accused has legal and constitutional rights, which are being hardly adhered to during the trial. In order to ensure just and fair trial, the rights of the accused person should be given due recognition at every level.

15.10 TERMINAL QUESTIONS
1) Give a brief historical perspective of judicial process?
2) Explain the concept of justice as was prevalent in the Ancient India?
3) Describe speedy and fair trial in the present scenario?
4) Briefly explain the basis rights of the accused person?

15.11 ANSWERS AND HINTS
1) Refer to Section 15.4
2) Refer to Section 15.5
3) a) Refer to Section 15.6 b) Refer to Section 15.6
4) Refer to Section 15.7
5) Refer to Section 15.8

15.12 REFERENCES AND SUGGESTED READINGS
1) Glueck; S. and Glueck; E.T. (1939), 500 Criminal Careers.
2) Kelkar; R.V .(1977), Outlines of the Criminal Procedure.
3) Sharma; R.A. ed (1984), Justice and Social Order in India


8) Joel Smaha; (1988), Criminal Justice.


12) Misra; R. and Mohanty; S. Police and Social Change in India.


14) Pillai; P.S.A. (200), Criminal Law (eds.) Suresh; V. and Nagasaila; D.


17) Sharma; B.R. (1990), Constitutional Law and Judicial Activism.

18) Sharma; R.A ed. (1984), Justice and Social Order in India.


Case Law

1) Hussain Ara Khatoon V. Hoe Secretary, State of Bihar 1979 S.C. 1360.


4) Powel V. Alabama (1932) 847 u.s. 45.

5) Talib Haki Hussain Case V. Madhukar Pursuhotom Mondkar 1958 Cr. L.J. 701.