

Salt Loosing Saltage: Judicial Prestige At Stake?

Dr. Seema Yadav

Associate Professor, H.O.D.

Department of Law,

S.V. College, Aligarh

ABSTRACT

In common parlance salt is a white substance obtained from mines, present in sea water whence obtained from by evaporation, salt is used especially for flavouring & preserving food. Sodium Chloride (NaCl) i.e. salt is a Chemical Compound of a metal and an acid. Salt may be put to enumerable uses. Its essence may be assigned various appellations and different connotations. Many maxims are based on salt e.g. sprinkling salt on wounds, salt treaties-salt petre etc. Saltage connotes anything that makes things more interesting and living.

“If salt loses its saltage, where shall it be salted”, the father of the Nation, Mahatma Gandhi has used above phrase as an adage indication that if the substance leaves its very essence, what is left thereto call it a substance? as such a thing. The same analogy applies to abstract things on terms, ‘Just’ means ‘exactly’, ‘Justice’ means ‘right and fair behaviour or a treatment’, a very quality of being reasonable and fair. But when justice is devoid of ‘Just’ what remains there to call it as such. ‘Justice’ is also a title conferred on Superior Courts judges too, as they are regarded as incarnation of justice itself. This very attempt relates to explore certain bitter tastes of a judge’s practical life (professional as well as family) tending to departure from justice itself. Now a days abuse of the process of law are consuming lives and injustice is permeating in all walls of life, may it be in the form of corruption in equalities, non-transparency, illegal discrimination on the basis of caste, creed on in the shape of any of the crimes against humanity.

I. PRELIMINARIES:

“If salt loses its saltage, where shall it be salted?”

(Mahatma Gandhi)

In common parlance salt, no doubt, is a substance, it is a fact and saltage is its essence and effect. A person tasting can only be the fittest one to assess the effects of the situation with which he under goes. One having no cracks in his heels can’t feel the pain arising therefrom. Here are the glimpses of practical experiences of this midgetry as a daughter of Judicial Officer confronted with situations tending to give expressions, where some Judges of subordinate Judiciary as well as Hon’ble Judges of High Court, exhibited seemed to have lost the flavour of Justice the very essence of Judiciary.

II. MEANING & OBJECT:

The common salt is a white substance obtained from mines, present in sea water whence obtained from by evaporation, salt is used especially for flavouring and preserving food. Sodium chloride a salt is a chemical compound of a metal and an acid. Salt may be put to enumerable uses. Its essence may be assigned various appellations and different connotations. Many maxims are based on salt e.g. an old salt humour adds salt to one’s conversation; like dose of salt, the salt of beaches, sprinkling salt on wounds salt treaties-salt petre etc.

Saltage connotes anything that makes things more interesting and living. Etimologically the term ‘loosing’ is derivative of the term ‘loose’ which means freed from not tied up, free and without restraint. The Father of The Nation has used the phrase as an adage indication that if a substance leaves its very essence, what is left there to call it a substance? as such a thing. For example a rose flower is a natural combination of water, colour acent and mineral salts. If it lets loose any of its elements there remains nothing to call it rose flower. The same analogy applies to abstract things or terms, ‘**Just**’ means ‘**exactly**’. **Justice** means ‘right and fair behaviour or a treatment’, a very quality of being reasonable and fair. Justice is also a title conferred on High Court and Supreme Court Judges as such they are regarded as incarnation of justice itself. But when justice is devoid of Just’ what remains there to call it as such. This very attempt relates to explore certain bitter tastes of a judge’s practical life tending to departure from Justice itself.

III. PERSONA OF A JUDGE AND INDIAN JUDICIARY:

Maharshi Katyayan has specified certain basic qualities of a Judge:-

दान्त कुलीनं मध्यस्थम नुद्धेग, करं स्थिरं।
परमीसं धर्मष्ठमु धुकं क्रोध वरिजितं।।

Meaning thereby a Judge should be auster and restrained impartial in temperament, steadfast, God fearing assiduous in his duties, free from anger leading righteous life and of good family values. Justice discards”, says Joseph Addison, “party, friendship and kindred and is therefore represented as blind”. But what pollutes a Judge? There are certain causes that destroy Judge’s impartiality:-

पक्ष पाताधि रोपस्य कारणानि चपंच वै,
राग लोभ भयद्वेषा वादिनोश्चरहः शुति¹

Meaning thereby five causes destroy impartiality and lead to Judge taking sides to disputes, these are attachment, greed, fear, enmity and hearing a party in private, As a human being the man dwelling on senses, objects develops attachment for them; from attachment springs up desire infatuation; from infatuation confusion of memory; from confusion of memory and loss of reason; and from loss of reason one goes to complete ruin.²

Our Judges are after all human beings, “our judges are not monks or scientists, but participants in our living stream of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other hand.” Hon’ble Justice K. Ramaswami³ repeating the version of C.J. Warrence remarked, Judges are not mere arbitrators, nor Monks nor scientists, they are participants in the living stream of our national life, steering the law between the dangers defeating the constitutional goals and protecting the rights of the individuals and the society”.⁴

In India the major polluting factor of Judges is casteism prevalent in Hindu society, is a serious vice foreigners too have recognised the caste based divisions in society. According to DE Smith, ‘The basic fact of course is that Hindu social life, for the vast majority is still based on caste divisions. Caste loyalties are still second to the family loyalties in the thinking of the Hindu masses.

During IT Word War Mr. Duff Cooper the Minister for Information in W.W. Churchill Cabinet described, “nepotism considered by us as a vice is regarded as virtue in India”. The Most generous revolutionist Lala Hardayal has termed the casteism as serious vice, “caste is the curse of India”. Caste in all its forms has made us a nation of slaves. It is not Islam, it is not England that has destroyed India, no our enemy is within us. Priest craft and caste have slain us. India can never establish and maintain a free State so long as caste rules in our society. You deliver speeches, pass resolutions sign common wealth Bills and infinitum, but Hindu castes cannot work together or establish a free State or create a victorious army.

In India especially in Bihar & U.P. state the caste ridden States Judiciary is not untouched with this vices. This is somewhat corrosive to the cause of Justice whenever judicial discretion a strongest weapon of a Judge, is ever blunted he becomes immoderate and despotic. His predilections and passions obstruct his own sense of justice and he loses the power to distinguish in between right and wrong, an eccentric attitude devoid of judicial discretion is jibe of judicial discretion rather travesty of justice itself which is against all canons of fairness, Judicial discretion is the discretion, which is formed by tradition, methodised by analogy and disciplined by system.⁵

Since every action has its reaction, a slightest tinge of unfairness in action creates a psychological scar in the mind of the perpetrator effecting unfairness. That stigma under caption of fear has been described by Bertrand Russell as “a reaction, which we share with animals. It is crude and slap dash sometimes it serves the purpose of self-preservation, but sometimes it does quite the opposite. Fear makes manwise in the three great departments of human conduct, his dealing with nature, his dealings with the other man and his dealings with himself.”⁶

Fearlessness of a judge is his very essence and ornament of his own deportment. If one’s fearness deserts nothing remains in a Judge to be called as such. It is his virtue which inculcates in him certain other exalted virtues like freedom and independence. If there is any principle of cardinal importance in the administration of justice it is that proper freedom & independence of Judges and Magistrates (judicial as well as executive) that must be maintained and they must be allowed to perform their functions freely and fearlessly and without any undue interference by anybody and even by superior courts. At the same time, it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice and restraints.

IV. ISSUE-NON IMPLEMENTATION OF JUDICIAL PRONOUNCEMENTS:

It is a well-established fact that judicial pronouncements must be judicial in nature and should normally depart from subriety, moderation and reserves. “Justice without Power”, said Baise Pascal, “is inefficient; Power without justice i.e. tyranny. Both must be combined, so that what ever is just may be powerful, whatever is powerful may be just”. The Judge even when he is free is not still wholly free. When judges of High Courts with political alliances and bent of mind with clannish traits, to be appointed and are expected to form a committed judiciary, the out come of the work assigned to them may not remain unaffected by their very traits. Some time

they adorn the chair, but some time may be adorned by the chair itself e.g. One Chief Minister of U.P. happened to visit the then Chief Justice of the State thrice to press the appointment of a person belonging to his own case as High Court Judge, avoiding the Rules of Protocol, as Chief Minister does occupy high status then the Chief Justice of the State, as per protocol Rules Chief Justice often calls C.M. but C.M. is not expected to call upon C.J.

Moreover, it is subordinate judiciary who are brought most closely into contact with the people at large and its independence should be placed beyond question.⁷ Nevertheless judicial propriety and restraints are not only meant for the subordinate judiciary, but same principles apply to Judges of Superior Courts as well rather they are expected to set examples to be followed by subordinate judiciary. As an Advocate they could have been free to negotiate with their clients, but as a Judge they can never be expected to flout the Constitutional mandates (ordains) as they liked. A Judge must be God-fearing, but his political alliance and allegiances cease as he is elevated to the Bench. Caste affinities must lose their significance, clannishness must desert in view of his new assignments and his political views need be kept within bounds, his religious sentiments and affiliation must become subservient to the dignity and decorum of the office, which he holds. Judges are not to attend politically motivated meets or receive presents, which might have created a confusion in the public mind as their creed constrains.

Justice P.A. Chaudhary of Andhra High Court has rightly observed: "We have inherited a stagnant Hindu Society where the upward mobility has been denied and forbidden for ages and where inequality has been enshrined and enforced as a rule of life. A Roman emperor could have been a former serf, a Pope could have been a former slave, but in India a man is born into a caste and dies with his caste with him is buried his abilities and aspirations".⁸

V. INDIAN CONSTITUTION:

Moreover Article 219 of our cherished Constitution makes mandatory for a person to be appointed as a Judge of a High Court to subscribe an oath or affirmation according to the form set out for purpose in the third schedule before entering upon the office namely form of judges oath or affirmation to be made by the Judges of the High Court.

"I, AB, having been appointed Chief Justice or a Judge of a High Court at or of).....do swear in the name of God/Solemnly affirm that I will bear the true faith and allegiance to the constitution of India as per law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the constitution and the Laws".

The prescribed form of oath leaves no place for clannishness, possibilities of likes and dislikes favour or disfavour, bias prejudices discrimination etc. The very preamble of our constitution sets out its purpose. Undoubtedly a judge is an exalted law giver and like a prophet. He must have extra-ordinary wisdom and moral vision and impartiality of high degree. Prof. Jafre remarked "Judge must have wisdom" of a Soloman, the intellectual creativity of Aristotel and moral vision of Isaih and analytical power of Socrates, the humanity of Lincoln and the impartiality of the Almighty. The justice as fairness rests on the assumption of a natural right of all the man and women to equality of concern and respect the right they possess not only by virtue of birth or characteristics of merit or excellence but simply as human beings with capacity to make plans and give justice."⁹

The right of equal concern and respect is the fundamental to all rights from the earliest times to which the idea of justice can be traced equality has been at its centre. Aristotal, remarked "Justice" arises when equals are treated unequally and unequals are treated equally. Treating like cases alike and different cases differently is a central element in the idea of Justice.¹⁰

The Indian State is erected on the uncleared debris of a feudal social order. As our chequered political and social history failed to ensure the growth of indigenous institutions appropriate for a modern liberal state, the task of sweeping away the medieval social and political remnants of inequality and inhumanity and erecting in their place assumed by the constitution itself. Many of our fundamental rights attempt to remove those remnants of feudal order.¹¹

VI. PROPOSITION:

Justice delayed justice denied is an old proverb. The delay occasioned in disposal of cases is often attributed to shortage of judges but it seems to be a fallacy. Strong will power of present strength and full dedication to the cause of justice could have easily clean the backlog provided justice is done to the people who are expected to impart justice to the masses. It is not only pay hike and other amenities but vices of casteism, in equalities, illegal discriminations syndroms, nepotism and likes and dislikes have to be uprooted and people involved in such corrupt practices deserve to be dealt with stern hands, whatever may be their status. "Democrats defeated tyrants, Socialists defeated capitalists and only Courts can defeat bureaucrats" said Bertrand Russel. Can this optimistic view ever survive? hopefully, YES when a judge even after swearing to

uphold the constitution does an act having even a slightest tinge of injustice oppressed lips involuntarily begin to vibrate-If salt (**Justice**) loses its essence (**Saltage** i.e. **Justice**) where shall it (**Justice**) be Salted (**attained**)? At the present juncture where justice is being made a salable commodity and injustice is being distributed free of cost, Law and life were symbiotic and realities of later moulded law accordingly. Now a days abuse of the process of law are consuming lives and injustice is permeating in all walks of life, may it be in the form of corruption, inequalities, non-transparency, illegal discrimination on the basis of caste, creed or in the shape of any of the crimes against humanity.

VII. EPILOGUE:

The very theme of this work aims at unveiling the reality of Judicial System, Mathew Arnold, rightly marked "A society of unequals materialises our upper class, vulgarises our middle class and brutalises our lower classes".¹² Means people of all sections society walks are victims of inequality in one way or the other way but for the injustice done to them. Lastly I agreed with Frank Herbert remark "No legal system can maintain justice unless every participant magisters, prosecutors legums defendants, initneses all-risks life itself in whatever dispute comes before the bar. Everything must be risked in courtarens. If any element remains outside the contest and without personal risk, justice inevitably fails". Because the judicial system is the bureaucracy of the law. If we bureaucratise popular justice then we give it the form of a court.

REFERENCES :

Thankful to legal lumanaries and authors for their valuable works, which motivated/inspired me to mention then in my paper.

- [1]. Shukrasar – Ch. 4.530
- [2]. Shrimad Bhagvat Geeta, Ch. II.S. 62-63
- [3]. Earl Warrence C.J. USA: Fortune Nov. 1955
- [4]. A.S. Shailza Vs. Principal Krunul Medical College: AIR 1986 A.P. P 209 per Justice K. Ramasami
- [5]. Aklu Vs. Ram Deo AIR 1977.2145
- [6]. Bertrand Russel: New Hopes for changing World P. 193 Black & Sons Publishers (Pvt.) Ltd. Bombay
- [7]. Chandra Mohan Vs State of U.P. AIR 1966 SC 1987 PC C.J.I. Subba Rao
- [8]. P.B. Vijay Kumar Vs State of A.P. per Justice A.P. Chaudhary (1987)2 A.P.L.J. 673
- [9]. R.D. Dwarkin: Taking Right Seriously 1977 page 182
- [10]. India Bar Vol. XVIII (I) 1991 P. 246-47
- [11]. P.V. Vijay Kumar Vs. State of A.P. per J.P.A. Chaudhary
- [12]. Citation from A.P. case A.I.R. 1967 AP 356
- [13]. Frank Herbert : The dosandi experiment, Judicial System (Gowashinlaw).
- [14]. Michal Faucault : Judicial System.
- [15]. D.D. Basu : Introduction to the constitution of India.