

NEED TO FIX DAYS FOR DECISION OF EVERY CIVIL CASE

By-

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Abstract

Investigating the civil procedure regulation as a set of interrelated tools & techniques (imperative, dispositive & determinative) providing legal impact on the behaviour of civil procedure participants, this article is to substantiate that the method of civil procedure is a set of techniques (imperative, dispositive & determinative), methods (permissions, regulations, prohibitions, sanctions) & means (the consequences of failure to comply with civil procedural rules) of regulation implemented in the administration of justice in civil cases. However, determinative method of civil procedure regulations is a kind of methodological system of weights and balances, where the dispositive will of the parties & the imperative discretion of the court dialectically transform themselves in a new quality representing a symbiosis of the ways & techniques of civil procedure regulations. Moreover, summarizing the comparative aspect of the conducted research, it is proved that there r more than enough reasonable grounds to state that despite some discrepancy in the scientific approaches of theoretical legal proceedings, the litigation in practice requires the usage of simultaneous methodological techniques for procedural regulation in different countries.

Keywords

1. & - and
2. r - are

Research outcome

The need of the hour is an efficient judiciary that is not only committed to meet the needs and interests of the citizens, but also communicates this commitment by modifying their practices to suit the needs of the country.

Being "overburdened" is a relative term. Armed Forces officers who take the oath of obeying all orders to the peril of their life get a maximum of 80 days as holidays. Scientists at ISRO work a lot round the year and not a mere 210 days. During lockdown, healthcare professionals are working round. When there is a staggering backlog of cases, it is high time that the law makers intervene. A minimum of 6 hours a day, and 250 days a year is what Judges and Courts should work. . Do Judges in other countries anywhere else in the world enjoy so much time off? I appeal to the elected representatives of the country not to adjourn the "final hearing" on this important matter. The interests of crores of citizens of the country should be paramount.

A better approach is to fix working conditions of the judge by determining their optimal workload each day and the total number of cases a judge can deal with at any given point of time so as to ensure that a judge is able to function properly and efficiently.

Introduction

The period of limitation is prescribed by the Limitation Act, 1963 (Limitation Act). Typically, the period of limitation for instituting civil suits is three years from the date on which the cause of action arose. There are exceptions: the limitation for a suit to recover possession of immovable property is 12 years, and the limitation for a claim founded on tort is ordinarily one year. Suits relating to contracts must be instituted within three years from accrual of the cause of action. In suits of a description not covered by the Schedule to the Limitation Act the period of limitation is three years.

The period of limitation for an appeal to the High Court from any order is 60 days, unless the appeal is from an Order of the High Court to an appellate bench of the High Court, when the limitation is 30 days. The period of limitation for special leave to appeal to the Supreme Court is 90 days. However, if a High Court issues a certificate of fitness to appeal to the Supreme Court, the limitation is 60 days. For all other appeals, the limitation is 30 days.

The period of limitation for filing a suit may be extended in limited circumstances. These include part-payment, acknowledgement of liability in writing or where the person suffers from a legal disability (ie, minority or insanity). In calculating the period of limitation, certain periods may be excluded, such as where the plaintiff has been prosecuting a case bona fide and with due diligence in a court without jurisdiction.

Any suit instituted, appeal preferred or application made after the period of limitation is not entertained, although if sufficient cause is shown to explain the delay in filing an appeal or an application (but not a suit) the court may condone the delay.

The question of limitation may be tried as a preliminary issue.

Suits in relation to immovable property must be instituted in the court within whose territorial jurisdiction the property is situated. Suits for compensation for wrong done to a person or to movable property must be instituted, at the plaintiff's option, in the court within whose territorial jurisdiction the wrong was done or where the defendant resides, carries on business or personally works for gain. Other suits are to be instituted in a court within the local limits of the jurisdiction where the defendant resides or where the cause of action, wholly or in part, has arisen.

When a part of the cause of action has arisen outside the court's territorial jurisdiction or a part of the immovable property is situated outside the territorial jurisdiction of the court, leave of the court must be obtained prior to institution of the suit.

The plaint must be framed as per the rules of the CPC (as far as practicable) and supported by an affidavit of the plaintiff verifying the correctness of the facts.

Review on literature

Courts have a huge backlog of over 30 million pending cases, with over 30 per cent of these cases being over five years. A primary reason for such a heavy caseload is the shortage of judges; the Allahabad High Court has an approved bench strength of 160 judges but has vacancies for 60 judges. Similarly, the Kolkata High Court has a sanctioned strength of 72 judges, but has 39 vacancies. While the cumulative approved strength of the 24 High Courts is 1,079 judges, 38 per cent of the posts remain vacant. Even the Supreme Court has a vacancy of six judges which may go up to 12 in 2018 as six judges are due to retire. Another reason for the backlog is inadequate infrastructure. Courts lack facilities for e-filings and live transcription, and case management is poor. The government is the biggest litigant and the most significant contributor to the backlog of cases.

The government of India has allotted 12.28 billion rupees to improving the infrastructure and administration of justice. The legislature's avowed intent is to give primacy to arbitration. Moreover, special tribunals with exclusive jurisdiction have been set up to reduce the burden on courts. Sectoral regulators and appellate tribunals such as the Real Estate Regulatory Authority and Appellate Tribunals and Electricity Regulatory Commissions and Appellate Tribunals have been established

Result and Discussion

Once a plaint has been presented, the summons is issued to the defendant to appear and answer the claim and file his or her statement of defence within 30 days from the date of service of summons. A summons is usually delivered through an officer of the court, but the court may permit service by registered post with acknowledgment due, approved courier services, fax or email. Every summons must be accompanied by a copy of the plaint and must be signed by the judge or other officer appointed by the judge and sealed with the seal of the court.

The defendant upon receipt of the summons must appear before the court either in person or through an advocate on the date stipulated in the summons. In the event the statement of defence is not filed within 30 days of receipt of the summons, the defendant may be granted an extension, but not later than 90 days from the service of summons. These timelines have been held not to be mandatory by the Supreme Court and, if sufficient cause can be shown, courts may extend the timelines.

In the event the defendant refuses to accept service of summons or cannot be found, service may be affected by affixing a copy of the summons on the outer door or other conspicuous part of the house where the defendant ordinarily resides, carries on business or personally works for gain.

If a defendant does not appear before the court on the returnable date indicated in the summons, the court may proceed to hear the plaintiff and proceed to pronounce a judgment in the absence of the defendant.

Conclusion

The CPC provides that all persons may be joined in one suit as plaintiffs where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and if such persons brought separate suits, any common question of law or fact would arise. The CPC also provides for representative suits, ie, where there are numerous persons having the same interest in one suit. In such a case, one or more of such persons may, with the permission of the court, sue on behalf of or for the benefit of all persons so interested. Where permission is granted by the court, notice of the institution of the suit to all interested persons by personal service or by public advertisement must be given. Similarly, no part of the suit can be abandoned, withdrawn or settled unless such notice has been issued by the court.

However, a more common form of class action is by way of 'public interest litigation', where the High Court's constitutional jurisdiction is invoked against the state's irregular acts or the state's inaction where it is under a duty to act.

Class actions have been recognised under section 245 of the Companies Act, 2013, where shareholders can file proceedings before the National Company Law Tribunal alleging that the management or conduct of the affairs of the company are prejudicial to the interests of the company.

Correlation with Ancient Indian Literature

In order to have adequate insights into fair trial functionally rather than structurally it is imperative to have an indepth study of trial courts. Such a study would dispel the complaint against the judicial system of the country. As such complaints are based on facts that, "higher courts are right because they are superior, not superior because they are right." The trial judge, in fact, handles the bulk of judicial business. It may however, be not conceived that the justices do not want the people to

understand the judicial function; unfortunately, there are relatively few people to understand, interpret and explain the court's role in wider terms. In a sense people know less about the case than they do about the Parliament or the political parties. Trial judges handle the bulk of judicial business because they preside over trials among other things including management of case processing, approval of plea bargaining, supervision of the settlement process, monitoring remedial decrees--they as such experience the drama of the adversary process. This inevitably influences judicial decision-making and behaviour. A trial judge is not a mechanical scale or computer but is a human being. So the trial judges vary in their respective qualities of intelligence, perspective, attentiveness and other mental and emotional characteristics of operation while they are listening to and observing witnesses. Fatigue of the trial judge, that is, after how many cases the trial judge cannot function at ease and the cases heard and tried in fatigue may hamper or affect the fair trial, may be one assumption amongst others to make an indepth study of trial courts in order to have an assesment of fair trial in criminal proceedings that is functional.

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