

Law and Jurisprudence:

Let law win the case, not the lawyer

Achieving justice

Only a fair and just law can dispense justice. If the law is not fair, an accused would get punished unfairly (but legally). Having a fair and just law is only a necessary condition. A sufficient condition relates to its proper implementation and existence of impartial judiciary to adjudicate the disputes promptly. This completes the process of justice.

Additionally, the laws have to be simple, clear and concise. If there are grey areas or ambiguity, then adept lawyers can twist the provision to serve the cause of their clients, not necessarily justice. In a fair and just society, justice should not depend upon the skill of the lawyers but the merit of the case. Towards this end, the laws are required to be limited in numbers, fair and just, simple to understand, clear & unambiguous and concise.

Rule of law lends dignity to human beings. Our model has identified five elements of the rule of law which can be applied to every law to know its conformance with the rule of law. One of the elements of the rule of law is fair and just quality of a law.

Test of a fair and just law

Our model has designed a test for evaluating fair and just quality of any law or provisions of law. This test is a logical extension of the three norms of justice explained under the section 'Science of Governance'.

Our test of a fair and just law will help nations to evaluate their laws and remove any unfair prescriptions/ provisions that they may have. Such an evaluation will provide an assurance that the nation is treading the path of justice.

Miscarriage of justice

Miscarriage of justice doesn't happen just on account of delay; it takes the following five forms. A caring state has to eliminate their causes:

- Law not fair and just
- Difficult or expensive access to legal system
- Delay in dispensing justice
- Judgements not fair and just
- Tardy enforcement of justice

Pertinent issues in process of law

- Legislative jurisdiction and judicial review
- Hierarchy of laws and their applicability
- Interpreting provisions of the law (rules of interpretation)
- Role of precedent

Our Governomics model takes care of these issues and provides a clear guidance.

Due process of law

Due process refers to carefulness and fairness in deciding the legal matters according to the laws and doctrines of jurisprudence. Due process contains the following four stages:

- Trials
- Evaluation of evidence
- Delivery of judgement, and
- Enforcement of judgement

Trials

Trials have to be fair and must follow the principle of natural justice. There are a number of other issues involved in trials. Our model provides guidance in respect of the following:

- Jury system
- Fair trial (elements)
- Discipline in hearing of cases
- Written arguments in civil cases

- Witnesses: Treatment and Polygraph Tests
- Role of judges
- Stay orders/ injunctions
- Role and responsibility of appellate courts

Evaluation of evidence

Our model provides guidance in respect of the following aspects of evidence evaluation:

- Kinds of evidence
- Standards of acceptable evidence
- Production of evidence
- Onus of production of evidence
- Evaluation of evidence
- Role of doctrines of jurisprudence in evaluation of evidence

Delivery of judgement

Our model provides guidance in respect of the following aspects of judgement:

- Requirements of a fair and just judgement
- System of judicial reference

Enforcement of judgement

Our model provides guidance in respect of the following aspects of punishment and compensation:

- Types of punishments
- Types of injuries
- Criteria for imposing punishment of imprisonment
- Capital punishment
- Deciding quantum of punishment and fine
- Deciding quantum of compensation
- Injury fund of the state
- Applying discretion in punishment and compensation matters
- Co-operation of the accused with the system of justice and consequences
- Defamation cases

Administration of justice

The word of judiciary becomes final. Therefore, it has to be conservative,

studious, cautious and careful. The system of administration of justice should have its in-built checks to ensure that the judiciary actually remains neutral, objective and also assists in improving the laws to enhance the degree of justice.

Our model deals with the following aspects of the administration of justice:

- Organisational set-up of judiciary including appointment of judges, pay and code of conduct
- Transparency and Public Interest: Criteria for prioritization of hearing of court cases
- Relations with executives
- Accountability of judges

Helping a nation improve index of justice

Our model can help a nation have a proper organisational set-up of justice. It can subject each and every law to our test of a fair and just law and make amendments, if necessary. Such a process may be repeated every tenth year. Further, the index of justice in a law can be improved by making it comprehensive (dealing with all relevant and significant subject matters) through our uniquely recommended system of judicial reference. Further, several standards (evidence evaluation, quantum of punishment) recommended by us will also help attain justice.

Our model describes over 60 doctrines of jurisprudence. These doctrines are useful in drafting a new law. The doctrines are also useful in deciding the cases where the law happens to be inadequate.

As most of the countries already have judicial systems, our model can be used to evaluate the current systems for their efficacy. Deficiencies, if any, can be addressed as suggested.