THE JURISPRUDENCE OF JUSTICE- AN OVERVIEW

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Abstract
Justice is value cherished by a society. It can never be absolute either in nature or in content. The values differ from place to place, society to society and from time to time. So does the meaning of justice. Justice is what one feels to be just. The feelings are influenced by one’s bringing up, conditioning and the environment in society all around. Law is for man and justice is cause, why the law is needed. According to Roscoe Pound, in the primitive stage, peace was the end of law. Later on, the end of law was conceived to be security and it was at much later stage that justice dominated the minds of the people as the end of law. But if we carefully analyze this progressive human approach to the concept of justice, we would notice that we cannot expect either peace or security in a society or a State where justice is denied to the people and they suffer from a sense of injustice.

INTRODUCTION
The Preamble, the Fundamental Rights and the Directive Principles “may be described as the soul of the Constitution and the testament of the founding fathers to the succeeding generations together with the later Part on Fundamental Duties. Dr. B.R. Ambedkar was the man of millennium for social justice, since he was the first man in history to successfully lead a tirade of securing social justice to the vast sections of the Indian humanity, with the help of a law. Dr. Ambedkar was the man who tried to turn the wheel of the law toward social justice for all. At the time of independence, the Constitution makers were highly influenced by the feeling of social equality and social justice”.

In D. S. Nakara v. Union of India, the Supreme Court has held that, “the principal aim of a socialist State is to eliminate inequality in income, status and standards of life. The basic framework of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis.”

Meaning of Justice
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feels to be just. The feelings are influenced by one’s bringing up, conditioning and the environment in society all around. Law is for man and justice is cause, why the law is needed. According to Roscoe Pound, in the primitive stage, peace was the end of law. Later on, the end of law was conceived to be security and it was at much later stage that justice dominated the minds of the people as the end of law. But if we carefully analyze this progressive human approach to the concept of justice, we would notice that we cannot expect either peace or security in a society or a State where justice is denied to the people and they suffer from a sense of injustice. Thus justice is necessary for ensuring peace and security and, therefore, it would not be incorrect to say that from the very outset people conceived justice to dimensions of its concept varied from stage to stage as civilization progressed.iii

According to Plato, if one is to start, the justice to him and in the society of his time meant ideal justice. He was of the view that everything and every person has its proper sphere and justice means conforming to that sphere, e.g. knife; what is its proper sphere. It is to cut. In the hands of butcher, its proper sphere is to kill, in the hands of surgeon; its proper sphere is to operate. If it does so, it is just. If it behaves otherwise, it is unjust. In a just society, only a wise man is fit to rule, if it is like that, society is just, if otherwise, it is unjust. According to Aristotle, justice consists in “some sort of equality”. If X is twice as deserving as Y, his share should be twice as large. Aristotle emphasized equality as a yardstick of justice; he was nonetheless willing to tolerate wide inequalities in the social structure. He accepted the rule of the truly superior man, if such a person could be found to govern the commonwealth. He defended the institution of slavery, although with some misgivings and qualifications.iv

J.S. Mill remarked justice:
“a) each person is to have an equal right to the most comprehensive basic liberty compatible with a similar liberty for others,

b) social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantages; and attached to offices and positions open to all the conclusions of fair equality of opportunity”v.

THEORIES OF JUSTICE

Formerly, the concept of justice was closely linked with property. Locke, who looked upon the law of nature as the principal foundation of justice and of all just order, attached a good deal of importance to property. Formerly, and even now, man’s right to property is the most valuable right in as much as his happiness depends a good deal on it. It is for this that it finds mention in the Universal Declaration of Human Rights, which is really an attempt to lay down the jural postulates of a just legal order.vi

The sociological school of jurisprudence has attempted to formulate ideals of justice. According to Roscoe Pound, the orthodox socialism of the last century was in fact a social individualism. It sought a maximum of free individual assertion through a maximum of collective action. It is needless to expect that all men can be converted to a single philosophic version of the highest good or one absolute philosophical measure of values. There are bound to be different philosophical approaches and what is necessary is to harmonies, adjust,
reconcile, and as far as possible integrate conflicting or overlapping human expectations consistently with many philosophical approaches.\textsuperscript{vii}

A Scottish Philosopher, William Sorely, He pointed out that liberty and equality may easily come into opposition, since an extension of liberty does not necessarily promote human equality. A social system fixing upon freedom from interference with private activity as the chief principle of Governmental policy may produce a highly in-egalitarian form of society. An exclusive emphasis on equality, on the other hand, might remove the stimulus for excellence which aids the progress of civilization. Sorley sought to bring the ideal of freedom into harmony with a constructive form of equality by proposing the following basic maxims of social policy:

(a) The development and direction of human mental and physical powers by a system of universal education,
(b) Providing such access to the materials and instruments of production as would give suitable employment to people,
(c) Creating physical and social surroundings which will aid, not hamper, individual development \textsuperscript{viii}.

Freedom and equality are not the only lodestars that have been proposed as the principle guiding lights for law makers entrusted with the creation of an adequate legal order. The view has also been expressed that maintenance of the general security must be the predominant thrust of legislative efforts. Such elevation to the security of the rank of a supreme legal value has, for the most part, not been advocated in the name of justice, but under some other motto, such as utility or the public interest. If justice, however, is understood in a broad sense as the endeavor to build, through the use of legal devices, a social order fit for human beings to live in, and then the achievement of security lends itself to treatment under the heading of justice \textsuperscript{ix}.

Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on”.\textsuperscript{x} It means “absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes and women.\textsuperscript{xi} Economic justice denotes on the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring in equalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as Distributive Justice.”

1. Social Justice: Social Justice means removal of inequalities nurtured by social institutions, e.g., educationally and economically backward sections of society in public services, including women, children and landless laborers’. Tribalism is a social evil and needs curtailment in the interest of the society and natural integration. Language and dialect also create social prejudices. Promotion of social justice includes, independent judiciary, guarantee of access to court, legal aid, right to work, education and fraternity. In India, reservation for women has been done at level of village Pradhan, block and district level elective offices and there is strong move for reservation in Parliament and State Assemblies.\textsuperscript{xiii}
2. **Economic Justice:** Economic justice means eradication of all institutions that foster economic inequalities or obstruct the progress of the society on economic fronts. War on poverty, indebtedness, promotion of agro-industries, small scale industries, abolition of feudal tenures, ceiling on agricultural land, ceiling on income, fair wage legislation, employment guarantee or payment of unemployment allowances etc., are steps to establish economic justice in the society. It includes promotion of planned and balanced economic development, harnessing and efficient distribution of the material resources of the community and guarantee of active participation in activities of promoting national economy and social welfare.\textsuperscript{xiii}

3. **Political Justice:** Political Justice means and includes the total the absence of any unreasonable or arbitrary distinction among men in political matters.

4. **Distributive Justice:** It was Aristotle who introduced the notion of “Distributive Justice”. According to Aristotle Justice is of two kinds. One is Distributive Justice and the other is Corrective Justice. This concept of justice has been universally accepted by almost all philosophers. In fact, it was in accordance with this concept that Bentham asserted that so far as right to vote is concerned, each should count for one and no one for more than one.

Distributive justice concerns the “nature of a socially just allocation of goods in a society. A society in which incidental inequalities in outcome do not arise would be considered a society guided by the principles of distributive justice. The concept includes the available quantities of goods, the process by which goods are to be distributed, and the resulting allocation of the goods to the members of the society. Often contrasted with just process, which is concerned with the administration of law, distributive justice concentrates on outcomes. This subject has been given considerable attention in philosophy and the social sciences. In social psychology, distributive justice is defined as perceived fairness of how rewards and costs are shared by group members. For example, when workers of the same job are paid different salaries, group members may feel that distributive justice has not occurred. To determine whether distributive justice has taken place, individuals often turn to the distributive norms of their group.\textsuperscript{xiv}

**THEORIES OF DISTRIBUTIVE JUSTICE**

Following are the theories of Distributive Justice propounded by different authors:

- **Theory of Utilitarianism Given By Bentham:** One must look to the writings of Jeremy Bentham and John Sturat Mill in order to obtain a fully elaborated and systematic view of utilitarian doctrine. “Bentham proceeded from the axiom that nature has placed mankind under the governance of two sovereign masters, pleasure and pain. Bentham emphasized, however, that the community can have no interest independent of or antagonistic to the interests of the individual, community interest meant to him nothing but the sum of the interests of the several members who compose it”.\textsuperscript{ xv} One objection that is some time made to utilitarianism is that it shows no concern whatever with questions of distribution, therefore, cannot be an acceptable theory of justice, or an adequate guiding principle for the law.\textsuperscript{xvi}
(b) **Distributive Justice by Rawls:** “Rawls theory differs from utilitarianism in three significant ways. First utilitarian’s can accept inequalities, social arrangements in which some benefit at the expense of others, provided the benefits exceeds the costs, so that the outcome is the maximization of overall welfare level. Secondly, while utilitarians defend liberty and political rights they have no objection to limiting liberty or restricting political rights, provided doing so would promote greater welfare.”

(c) **Robert Nozick's Theory of Distributive Justice:** “Robert Nozick, in his book Anarchy, State and Utopia, gives that question a negative answer. He argues that any attempt to maintain an equal or near equal distribution of resources will demand constant interference with liberty. He asks us to imagine that we have, at long last, been able to achieve an equal distribution wealth and resources in our society. The result will be that X soon has a lot more money than many other people who do not have such a fine singing voice, or other marketable talents. Transaction through which X makes this money is individually fair and freely entered into, but they have the effect of bringing about an unequal distribution of wealth. If we wish to maintain an equal distribution, we will have to interfere with such free and fair transactions.”

**DISTRIBUTIVE JUSTICE IN INDIA:** In India there are so many provisions of distributive justice in the Constitution such as Preamble itself speaks about socialism, Fundamental Rights, and Directive Principles of the State Policy.

**Distributive Justice and the Indian Constitution**

Article 39 requires the State, in particular, to direct its policy towards securing:

(a) That all citizens, irrespective of sex, equality has the right to an adequate means of livelihood;

(b) That the ownership and control of material resources of the community are so distributed as best to subsive the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

In the case of Secy, State of Karnataka v. Uma Devi, Supreme Court held that National Rural Employment Guarantee Act, 2005 was passed with the object of giving employment to at least one member of a family for hundred days in a year, on paying wages as fixed under that Act. The court refused to give relief by way of regularization of employment of causal workers in the Government service or in the service of its instrumentalities saying that in the name of individualizing justice, it is not possible to shut our eyes to the Constitutional scheme and right of numerous as against the few who are before the court. The Directive Principles of the State Policy have to be reconciled with the rights available to citizens under Part III of the Indian Constitution and obligation of the State to one and all not to a particular group of citizens.

I. **Distributive Economic System:** In this connection, SC has observed in State of Karnataka v. Ranganathan Reddy that “material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and
public sources of meeting material needs, not merely public possessions. Everything of value or use in the material world is material resources and the individual being a member of the community his resources are part of those of the community”.

2. **No Concentration of Wealth**: The Supreme Court has explained the significant of article 39 (c) in the following words: Though the expression Economic Justice is used in Article 39(c), “that Article has not the object of changing the economic system generally; but is confined to only preventing concentration of wealth and means of production to the common detriment. What this clause envisages is that the State should secure the operation of the economic system in such a way as not to result in the concentration of wealth and means of production to common detriment. Where there is already concentration of wealth and means of production which is to the common detriment, the law under Article 39c would be only to break up or regulate as may be necessary the concentration of wealth and means of production.”

**REASONS FOR THE FAILURE OF DISTRIBUTIVE JUSTICE IN INDIA**

1. **Uneven Development of Regions**: A very higher level of disparities could be seen in different regions in India. While the Central India finds a better condition of development, the North Eastern region is at the worse condition of development. Though the reason for these regional disparities may be directed to uneven distribution of natural resources but it is the wrong developmental policies of the Government which have accentuated the regional disparities. The Governments both at the Centre and the States have not bothered to bring about a balanced Economic and Social development.

2. **Inequality of Opportunity**: “The Constitution of India upholds the virtue of equality in social political and economic realms. Provisions in the Fundamental Rights and the Directive Principle of the State Policies are aimed at eradicating inequalities in India. However, an analysis to the socio – economic conditions exposes the fact that a large number of people in India have been deprived of equal opportunity in the social, economic and legal arenas. There is uneven access to economic development, particularly exploitation of natural resources and employment opportunities. However, in spite of the high rate of employment generation in the services sector, poor performance in agriculture and in some industrial sectors has brought down the overall rate of employment generation. Legal justice remains a dream untouchable to the lower sections of the society. The most important question that arises when discussing justice and the law in India is access to justice, or the lack thereof. India has had formal institutions in place for several decades, but common citizens are not able to use these institutions to ensure that they are receiving justice. The delays, the expense, and the onerous structure of the courts seem designed to dissuade those who have neither the means nor the ability to maneuver the system”.

3. **Economic Inequalities and Over Exploitation of The Natural Resources**: Economic inequalities particularly income inequalities in India is very wide. There are over ten Indians in the list of first
hundred wealthiest people of the world. At the same time there are millions of people in India who remain in acute poverty. The U N report found that inequality in the distribution of human development is distinctly pronounced in India compared to other countries. This is the latest sign that despite Government efforts, the benefits of India’s booming economy still hasn’t spread widely among the country’s population.

Justice V.R. Krishna Iyer visualizes justice as a Special concern for the backward human sector of the lowliest and the lost, and activist, affirmative State action for their advancement as a democratic imperative, plus the organization of a sensitive and creative milieu which offers, as of right, social, economic and cultural opportunities, dignity of personhood and individuality to every human, regardless of seeming or real disparities to unfold his full mental, moral and physical potentialxxv.

Conclusion

Distributive Justice means justice to all and not to a few or a favoured class. It does not introduce class conflicts, but seeks to improve and harmonize the society with a view to avoid the socio-economic imbalances. Distributive Justice demands preferential treatment of the weaker sections of the society, but that is only to correct the imbalances existing in the society and not to cause unnecessary harassment or injustice to the advanced sections thereof. Thus, it seeks to remove the imbalances in the social, economic and political life of the people. There cannot be Distributive Justice unless the society progresses in all the directions. “According to Plato, Justice consists in a harmonious relation between the various parts of the social organism. Every citizen must do his in the place where he belongs and do the thing for which his nature is best adapted. Since Plato’s State is a class State, divided into rulers, auxiliaries, and the producing class, Platonic justice signifies that members of each class must attend to their own business and not meddle with the business of the members of another class. Some people are born to rule, some to assist the rulers in the discharge of their functions, and others are destined to be farmers or artisan or traders. The rulers of the State, assisted by their aids, must see to it that each person finds his proper station in life, and that he adequately performs the duties of this station. The idea underlying this concept of justice rests on the assumption that an individual is not an isolated self, free to do whatever he likes, but a dependent member of a universal order who must subordinate his personal wishes and preference to the organic unity of the collective whole.”xxvi

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