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Justice: Analyzing the Concept, Necessity & the Administration of Civil Justice

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ABSTRACT

Since the inception of early civilization and man started living in societies, through the period of renaissance and inception of various other civilisations, there has existed a cohort of notions upon which various contemplations and notions were devised and debated. One such notion was justice. Justice and its concept is as primitive as human society is. It existed in the smallest institution i.e. family, to the State, the highest sovereign institution. Since it existed from such a time immemorial, its forms and views upon it have evolved and came into being as what today we call justice, engendering in itself a cohort of ideas and theories. Since the dawn of early civilisations, various conceptions and different ways of its application have been learned. But the integral and common notion in all those evolutions remained constant, that is its righteousness. Talking about justice in its breadth and length is one thing and its administration is another. So, diving through a range of theories and arguments and cases upon justice, here we will also elucidate its concept given by various theories, its administration and consequently the need and practice of it.

I. INTRODUCTION

Every state performs two main functions: 1) War; and 2) Administration of justice, war to secure its people, and administration of justice so that harmony and balance among the people would prevail. In light of the later function of every constitution, be it secular, theocracy enshrines a seven-letter word "justice" as their main objective which they sought to achieve. Indian constitution in its preamble has expressly used the word justice by saying "**** to secure to all its citizens, JUSTICE, social, economic, political;" justice has also been an important element in human civilization. The concept of justice is as old as the origin and growth of human society itself.

Broadly speaking, justice means the fulfillment of the legitimate expectation of the individual under laws and to assure him the benefit promised therein. Justice tries to reconcile individual

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rights with the social good. The concept of justice is related to dealings amongst human beings. It emphasizes the concept of equality. It requires that no discrimination should be made among the various members of society. Along with the concept of justice, what is more is its administration. Justice seems like a fairy tale and fantasy in books but a state in order to create a balance between individuals and state and individual has to make enough efforts for its administration. In this paper, the author will be dealing with the concept of justice, its administration, why we need the administration of justice, and in the concluding section, the author will be dealing with justice and declaration of rights.

II. CONCEPT OF JUSTICE

Justice as the oldest human virtues in the world³. The concept is as old as the origin and growth of human society itself. The social nature of man demands that he must live peacefully in society. While living so, he experiences a conflict of interests and expects rightful conduct on the part of others. This is the reason why Salmond and Roscoe's pound have emphasized the importance of justice in their law. According to Blackstone, justice is a reservoir from which the concept of right, duty, and equity evolves.⁴

The Egyptian term "Maat" is the oldest word for justice and it means "truth, justice and righteousness" of life among men and before the gods. Given the various meaning of the concept of justice. Justice is a Latin word that means "what is rightful". Some equate it with truth, fair or right, etc. The dictionary meaning of justice is "the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments."⁵ Plato accepts justice as the basis of society and goes on to emphasize another aspect of it. "Justice is keeping what is properly one's own and doing one's job". Plato says: Justice is the requirement we laid down at the beginning as of universal application when we founded our state, or else some form of it. We lay down; if you remember and have often repeated that in our state, one man was to do one job, he was naturally most suited for.⁶ Aristotle viewed justice as a virtue that occurs within the state. He considered justice as a political virtue.⁷

Lord Wright defines justice as " what appears just to a reasonable man". Bentham agreed with Hans Kelson who said, "absolute justice is an irrational ideal, an illusion – one of the eternal

³ Ogunmodede Francis, Pantaleon Iroegbu (Ed.), 2005 "*Kpim of Morality, Ethics: General, Special and Professional*", Ibadan: Heinemann Educational Books, 2005, pp. 401-415

⁴ Dr. N.V.Paranjape, 9th Edition, 2019 "*Studies in Jurisprudence and legal theory*", CLA, page no:257

⁵ <https://www.merriam-webster.com/dictionary/justice>. Last Accessed 05-11-2021

⁶ Plato 1947

⁷ *Supra*. note 4 at 153

illusions of mankind". He held justice as primarily a quality of social order regulating the mutual relation of men.⁸ Rawls put great stress on justice and according to him a society to be well ordered should be based on justice and fairness. He advocated for the removal of bias from society. He did not view justice from a mere moral doctrine but a political conception. The concept of justice is not static. With the changes in society, the concept of justice changes as well.

It was with the growth of the state that the concept of justice became more conspicuous and was ensured through the instrumentality of the law. With the growth and development of law, the concept of justice also expanded its branches/scope to different fields of human affairs. For example, now we have civil justice, criminal justice, eco-social justice, distributive justice, and so on.

(A) Definitions of Justice

- Salmond defines justice as "*Justice means to distribute the due share to everybody.*"
- Dr. Raphael- "*Justice protects the rights of the individual as well as the order of society.*"
- C.E. Merriam- "*Justice consists in a system of understanding and a procedure through which each is accorded what is agreed upon as fair.*"
- Ulpian- "*justice is the perpetual will where everyone will get his debt*". He related it with natural law and stated if it is not based on Christianity it is not justice. Saint Augustine was also of the same view.
- Justice Krishna Iyer: In the case of All India judges association v Union of India:⁹ "*draw the relationship of law and justice by stating: the law is a means to an end and justice is that end*".

III. ADMINISTRATION OF JUSTICE

Hobbes stated that before the origin of the state the human had a selfish and chaotic nature, and there was a need for an external authority to keep them within the limits and restrain their undisturbed freedom. So with the growth and development of the state the justice became an administration of justice and the main function of the state after the security of its subjects. Lord Bryce once observed that there can be no better test of the excellence of a government than the efficiency of judicial administration. As rightly pointed out by Salmond, it is through

⁸ *Id.* at 29

⁹ (1992) 1 SCC 119

the instrumentality of law that justice is administered.¹⁰ According to him, “law is the body of principles recognized and applied by the state in the administration of justice”.¹¹

The necessity of force of the state for the administration of justice has also been emphasized by Jeremy Taylor who observed:

“a herd of wolves is quieter and moves as one than so many men unless they all had one reason in them or have power over them”.¹²

Paranjape in his book studies and legal jurisprudence talks about three stages through which justice in modern civilized societies has evolved:

- 1) Primitive and private vengeance.
- 2) The emergence of the concept of state.
- 3) Wrongs can be redressed by payment of compensation by the wrongdoer to the victim who was affected by the act.

In course of time, the state exerted its authority and took upon itself the responsibility of administering justice and punishing the wrongdoer using its force whenever necessary. This stage showed the transformation of justice as a concept from private to public.¹³

Justice Krishna Iyer In the *state of Haryana v. Darshan Devi*¹⁴ observed that:

“Justice is said to be the ultimate end of law and the goal of society, which judges of the courts have been pouring into law with new variants of justice in the form of contemporary values and need-based rights like freedom, liberty, dignity, equality, and social justice. Access to justice to the people is, therefore, the foundation of the constitution.”

Agencies are responsible for the administration of civil justice in India: Those wrongs which have been caused to other person resulting in damage which can be redressed in the form of monetary compensation or some other form other than the harsh punishment are known as civil wrongs and justice in such matters is known as civil Civil justice. So in other words it means tort. Indian judicial system has the following agencies for the administration of civil justice in India:

1) Civil courts

¹⁰ *Supra.* note 4 at 257

¹¹ P.J.Fitzgerald, (12th ed.)*Salmond on jurisprudence*, p.51

¹² *Supra.* note at 4 at 259

¹³ *Id.* at 261

¹⁴ AIR 1979, SC 855

2) ADR System

3) Lok Adalat

(A) Civil Courts

Civil courts are those courts that only take civil matters or civil suits. Civil courts in India have the powers to try all suits of civil nature excepting those the cognizance of which is expressly or impliedly barred.¹⁵ Writ petition related to civil matters can be entertained in case of violation of fundamental rights and the competent courts are only SC and HC, and others than these Distinct courts and sub-session courts (in case of violation of legal right)

(B) ADR System

To avoid the delay and complexities of filing a civil suit, in 2002 an amendment was introduced in CPC of 1908 to provide quick dispensation of justice in civil cases by providing recourse to the Alternative Disputes Resolutions. Even CPC 1908¹⁶ provides for the different modes of Dispute Redress, Like arbitration conciliation, judicial settlement including settlement through Lok Adalat: or mediation.

(C) Lok Adalat

It is another method of civil dispute settlement outside the court¹⁷. Here are cases that are already pending in the competent courts and whereby cases are transferred with the consent of the parties. Example; issues of loans and commercial transactions. In commercial matters parties cannot wait for a longer time, so they prefer to solve the dispute outside the court in Lok Adalat. The decision of Lok Adalat is not challengeable in any higher court.¹⁸

IV. NECESSITY OF ADMINISTRATION OF CIVIL JUSTICE

Administration of justice through courts of law has now become one of the important functions of the state. The courts administer justice according to laws framed by the legislature. Judges while giving decree and judgments must not act arbitrarily but have to keep the legal and juristic principles in mind. But the question arises why do we even need the administration of justice, what objectives does it seek to achieve?

Following are the necessities of Administration justice:

1. Equality.

¹⁵ Sec 9 of Civil Procedure Code, 1908

¹⁶ Order 10, section 89 of the Act

¹⁷ *Ibid.* at section 89(1 (c)).

¹⁸ *State of Punjab and Anr. vs. Jalour Singh & Ors. reported in (2008) 2 SCC 660*

- 2. Harmony between state and its subjects.**
- 3. Creating a balance among individuals in society.**
- 4. Declaration of rights**

(A) Equality:

It is the cardinal principle of law that all are equal before the law. Indian constitution in its very preamble mentions the word "equality" and article 14 in particular talks about equality before the law and also states equals to be treated equally and unequals unequally. In the case of *Indira Nehru Gandhi vs Shri Raj Narain & Anr*¹⁹ The Apex court held "equality as a basic structure of the constitution". John Rawls propounded two principles of justice, namely²⁰, 1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others, and 2) Social and economic inequalities are to be arranged so that they are reasonably expected to be everyone's advantage, and attached to positions and offices open at all. It is justice that creates the scene of equal opportunities. There are many backward communities in India, like STs, SCs, OBCs, minorities, and women. The Indian constitution takes a clear stand for their justice. Article 15(3) and 16(3) talk about positive discrimination and gives affirmative actions for women and children. Similarly, the reservation based on caste is another example of positive discrimination²¹. All these above-said groups are either socially or economically backward. So, by virtue of affirmative action equality is ensured through the administration of justice. For Example, if there are 3 students and 2 of them belong to the higher economic status and the other one belong to a poor family background. So by virtue of affirmative actions he is being given reservations in jobs so that all 3 would be equal.

(B) Creating harmony between state and its subjects

The absence of justice would bring chaos in society. Since the law is considered to be an instrument of harmony between the state and its subjects as it regulates the conduct of people as per the state interests. But when any situation arises, when a state (legislation and executive) and its subjects are in a tussle over an issue, then the role of judiciary comes into play. It's only the administration of justice that could reconcile the differences. Courts while resolving the issues of public interest have to look into both Fundamental rights and DPSP. Fundamental rights are attributed to citizens while fundamental duties are attributed to the state. In the *Minerva Mills case*, the court held that the harmony between fundamental rights and DPSP is

¹⁹ 1975 AIR 2299

²⁰ *Supra*. note 4 at 165.

²¹ Article 15 (3) of the Indian Constitution gives power to the government to make special provisions for STs and SCs

part of the basic structure of the constitution. Courts should ensure that the balance and harmony between the two shall persist by acting as a bridge through the administration of justice

(C) Creating a Balance among Individuals in Society

Every society is heterogeneous, different types of people live together. Which gives birth to the conflict of interests among those living together. Conflict of interest is perpetual and a never-ending phenomenon. So to reconcile these differences the principle of social justice comes into play. Many thinkers have given various connotations of the term, Rawls's theory of justice aims to constitute a system to ensure the fair distribution of primary social goods. This system requires the establishment of institutions to distribute primary social goods according to the principles of justice and fairness.²² Social justice is the view that everyone deserves equal economic, political, and social rights and opportunities. Social workers aim to open the doors of access and opportunity for everyone, particularly those in greatest need."²³ There isn't any proper definition of this term but if one tries to define it precisely it means removal of injustice in the personal relation of the people, but in broader perspective, it means removal of imbalances in the political, social, and economic life.

In *Prakash cotton Mills v. the State of Bombay*²⁴ The court held that, in our opinion, no economic, social, or labor legislation can be considered by the court without applying the principle of social justice in interpreting these related provisions of law.

So to attain social justice and to create harmony and balance among people's lives, two forms are there ;

1. Distributive justice:

It means the distribution of social benefits and burdens among community members. Its object is to secure the balance among members of society. Under the Indian legal system Article 14n, 15 16 was also read with articles 39(b) and of the constitution of India which aims to reduce the inequalities.

2. Corrective justice:

Corrective justice is yet another form of social justice. Salmond observed by applying justice in its corrective sense in the primary concern of law and courts through the process of

²² Rawls J. *A Theory of Justice*. Original. Cambridge: The Belknap Press; 2005. pp. 60–142.

²³ <https://www.sdfoundation.org/news-events/sdf-news/what-is-social-justice/> (previously accessed on 1st November 2021)

²⁴ 1957, II LLJ 490

adjudication. For instance, if an employer acts bona fide in dealing with the industrial workers, his action should be upheld by the court on the ground of corrective justice. The object is to bring the erring worker on the right path so that he can be an asset to the industry rather than a nuisance. Compensation is a form of corrective justice.²⁵

(D) Declaration Of Rights

Justice can only prevail when people are conferred with rights. If there are violations of any of the rights (civil), that person whose right has been violated can knock on the door of the judiciary to ask for the remedies. It becomes a necessity of the administration of civil justice to ensure people with rights. For example in the case of *Vishaka v. State of Rajasthan*²⁶, the Apex Court had held strongly against sexual harassment in working places. The only panacea to liberate women from the clutches of harassment and exploitation is empowering them so as to create a congenial atmosphere to develop and progress. It covers the gender perspective as well. So it was the court that had to interfere in giving the right to women at workplaces even if that right was not guaranteed by any of the statutes. Rights can be termed as the presence of justice and if people are not given the right justice cannot be assured.

V. GANDHIAN THEORY OF CIVIL JUSTICE

Gandhian philosophy was based on truth, non-violence, equality, justice, and anti-racism. His philosophy has been fully embodied in the preamble to the constitution of India, especially part III and part VI. He was of the belief that justice means fighting against inequalities and social evils. So from a constitutional point of view to a judicial point of view, the Indian legal system pays homage to his philosophy based on non-violence. Gandhi argues that for both individuals and social justice the most necessary basic is a requirement.

He considers justice as basically tantamount to fair treatment. This is explained by Gandhi in his selected works. Gandhi says justice empowers a person to enjoy certain natural rights such as equality, liberty, and equal opportunities. In Gandhi's conceptualization, justice claims certain universal, natural, inherent, and inalienable rights earned by duties. Justice constitutes natural universal justice and is based on rights. To him, justice unconditionally empowers a person to enjoy certain natural rights, such as equality of social status, equal social and economic opportunities, equal enjoyment of freedom, and so forth.²⁷

He was the upholder of non-violence and applied it supremely in his civil-disobedience

²⁵ *Supra.* note 3 at 260

²⁶ AIR 1997 SC 3011

²⁷ Inamul Haq, "Gandhi and Theories of Justice", Vol.6, Issue.1, pp.59-64, January (2020) IJSRMS

movements. He is known as Mahatma, meaning "great soul." From Martin Luther King, Jr. to Nelson Mandela has credited Gandhi as their source of inspiration in their struggles to achieve equal rights and justice for their people.

VI. ISLAMIC NOTION OF JUSTICE

Islam presses on most of the things pertaining to society and social order in which justice has an integral part. In contrast to most of the positivists who consider law is divorced from justice, Islam gives a stark view which construes as justice is the end of the law or justice is the constituent of law. *Adl* is the word used as the expression to define justice. Also in contrast to Socialism and Capitalism, Islam again takes a contrasting view regarding social justice as on one hand it allows private ownership of property and on the other, it has a system of *zakat*²⁸ levied upon affluent people and a system of *Kifalah* and distribution of state treasury equally among subjects and for public works, among other provisions in order to achieve social justice in a society. It also prohibits the accumulation of wealth in some hands but also allows private owners and businesses. Islam also exhorts in helping needy and less well-off as a way for the expiation of sins. Islam takes a whole religious and practical view in the administration of social justice. It has also a comprehensive system of criminal justice as well which is manifested in this verse of the Holy Quran:

*"Whoever kills an **innocent person** it is as if he has killed all of humanity."*²⁹

Justice is one of the most used words in the Quran and it has been made incumbent upon mankind to establish justice and welfare in the world as it is a command from ALLAH. However, on the notion of justice drawn by Austin as what he calls absolute justice is a fallacy and can not be achieved on the Earth, Islam takes a slight similar view upon that notion and for this only there is a supreme remedy in the form of Divine justice in Islam which complements this fallacy and eradicates any point of a loophole in the administration of what Islam calls *Adl*. The whole notion of life in Islamic eschatology is a test or trial which is inherent in this verse, *"He is the One` Who created death and life in order to test which of you is best in deeds. And He is the Almighty, All-Forgiving"*³⁰

It is for this reason a final judgment or the notion of divine justice is necessary to reward or punish as a result of this test of life. Islam considers divine justice as the means of administration of absolute justice.

²⁸(2.50% of the total property)

²⁹ Quran 5:32

³⁰ Quran Mulk: 02

VII. CONCLUSION

Justice is construed as righteousness, remedy, need, aspirations, moral, social, and political obligation. Justice can have different perceptions in different people but the integral idea of justice is it is something that has a corrective nature. Divine justice, which can only be absolute, is not achievable in this world so justice in this world can be termed as relative justice. It is a guiding factor for public policy to correct the laws in order to achieve justice or sometimes make or modify them. And when this duty comes before the courts, the judge is duty-bound to not let the justice attenuated from the law. In other words, justice is the end of the law.

Administration of justice has now become one of the primary functions of the state and it is dispensed through courts. It brings uniformity, equality, and fairness to society. The judge who is there to decide a case can not adjudge without keeping the cardinal principles of jurisprudence aside and cannot act arbitrarily. Laws should be drafted that citizens should have easy access to judicial bodies. Apart from the merits of the Administration of justice, there are many stances where it needs redefinition in the practical sphere. Like delay, complexities of filing suit, although measures like ADRS and Lok Adalat still aren't sufficient.
