
UNFOLDING THE MEANING AND PURPOSE OF JUSTICE

Shreya Gupta, Advocate

ABSTRACT

In the early time of society, the human was troubled for the mere existence; there wasn't abundant awareness on his rights and claims. The lifetime of humans was just an animal existence. With the event of time, the man realized wrong against him and get to redress it with self facilitate or with the assistance of friend and relative. With the considerable development of time, Law and State found their connectedness however couldn't gather implementing power, slowly the State had to enable and implementing power. The various kinds of offences and wrongs were known and the system to redress started establishing. Then, the State took responsibility for administrating justice and used force and sanctions whenever necessary. The State became powerful bit by bit with political and economic power in its hands. The self facilitates and personal revenge was then substituted with civil and criminal courts established beneath the system.

The Justice delivery system is based on many factors like command, sanctions, rights, public opinion, etc. Manner and mechanism of delivering justice are crucial to its effectiveness and establishing desired goals. The aim of justice differs from society to society and from time to time. Among all, the foremost and popular aim of justice is to create peace and security in the State and among people. For any society it is very essential, especially at present times of diverse and conflicting needs of people, otherwise, the existence of the person in society would not be less than animal life in jungle.

Keywords: Justice, Law, Sanctions, Rule of law, Administration of Justice, Justice delivery system.

OBJECTIVE OF STUDY

The researcher in this text has discussed the meaning of justice which has evolved from time to time and its grown importance for subsistence of society, which has become from mere term of acknowledgment to the most recognized and comprehensive fundamental as well as human right in National as well in International law.

RESEARCH METHODOLOGY

The researcher has used qualitative as well as analytical research method in the text.

INTRODUCTION

Justice literally means ensuring righteous conduct in consonance with law, rules, order, custom, or tradition. It is an essential feature of the State to serve Justice. Serving of Justice by the State is commonly known as “administration of justice” or “justice delivery system”.

The secular scriptures recommend the idea of Hindu deity and Nyaya existed that was the method of cosmic energy of the universe instead of the institution by the State. It was absolutely believed person himself is the sole director of this own act (karma), the good or bad deeds of one decide its future ahead and in another birth until he attains salvation (moksha). The person reacts to the universe and if he's true, he would attain salvation. At this point, morality regulated the principle of justice and God was the only real authority (cosmic energy).¹

Man in the ancient Republic of India might expect good equity as he interacted either consciously or unconsciously inside his cosmic setting. It was believed that man reaps what he sows, as the vicinity of nature. The natural power of his deeds affects his behavior. The dangerous deed of someone is reattributed to him in different birth, per se person born-again within the lowest class whereas smart deeds result on birth within the higher class. There are four groups (varna system); Brahman is that the highest Varna whereas Sudhra is that the lowest. The past deeds in previous birth decide the group within which person is born-again.²

The universal Indian philosophy of destiny was used at the same time to demonstrate the

¹ Underwood, Frederic B: “Aspects of Justice in Ancient India” 5 *Journal of Chinese Philosophy* 271 (1978)

² Underwood, Frederic B: “Aspects of Justice in Ancient India” 5 *Journal of Chinese Philosophy* 273 (1978)

whole ethical equity and system of justice also; it provided an incentive for moral behavior in hopes of self-advancement.

In this period, Dharma, Nyaya (justice), religion, and law were no distinct terms. Dharma is a righteous act which one should pursue to do just (Nyaya). The source of dharma was Shrutis, Smritis, Vedas, Dharmasastra, etc. Commands of Dharma were considered to be law and binding on people, any person going against dharma was considered to be unjust. The principles of Dharma enshrined the way of living, mode of dressing, religious practices, etc. Dharma derives its existence firstly from Vedas or Shrutis which means revelation by God which includes prayers, mantras, and ritual hymns; then secondly from Smritis which means what was remembered and followed as a tradition. Dharmasastra is the religious text and forms the part of Smritis. The Smritis had authoritative force owing to the idea that this text has its supply from Vedas, and these were written, transmitted by those who knew Vedas.³

Subsequently, in the ancient era, the right was determined by the king, instead of self- help and help of relatives & friends. The authoritative supply slowly shifted to one who was called king and he worked on the recommendation of his court men, and in some matters, he was the sole administrator. Also, it was the duty of the king to state the standards of Dharma, and even he has to abide by dharma otherwise he wasn't revered by folks. The king had authoritative power over folks and was subjected to guide the population to the righteous act established by the Dharma.

According to Dr. S. Radhakrishnan: "Dharma morality is that the king of kings. It's the ruler of each the folks and therefore the ruler themselves. It's the sovereignty of the law".⁴

There was no. of the kingdom established beneath varied kings, who dominated in numerous a part of India. The king's rule was religiously administered as per earlier times only. The main focus of the king was on the political and economic sector, the legal sector was seen to be mixed into the political regime of the society. The Varna system gained a lot of importance currently, and therefore the society was divided consequently as per the Varna system; the work, life, rights of any individual was dependent upon their Varna. The Varna and class structure divided folks into numerous sects of life and experiences.⁵

³ Gupta, N.C. Sen: *Evolution of Ancient Indian Law* (1954) p 336

⁴ Rao, Shiv: *II The Framing of India's Constitution* (V. 6 2015)

⁵ *Supra* note II

With time, folks became disgruntled because of the sort of life they were living and a few of them plan to renounce the fabric things of life. An outstanding example of this religious mystic is called Buddha. He selected the trail of enlightenment and practiced nirvana and arranged teachings, instructed to right understanding, right things, ethical conduct, right action, right conduct, the right focus, and energy, etc. Kings like Ashoka and Kanishka, as an example, offered lavish support for Buddhist establishments. However, over time, the contributions of merchants, women, and folks from the lower group became even as vital. Not like religious writing Brahmanism, which privileges the Brahmin group, Buddhism was a lot of comprehensive and less involved with birth and people. After all, in theory, anyone might become a Buddha. Ashoka followed the trail of Buddha. His administration was galvanized from Buddha's follow, which was Dharma. This Dharma of laws of moral behavior and right conduct is designed from Indian traditions of rank and his understanding of Buddhist principles. To realize his subject's willing obedience, he wanted to inspire a way of feeling by presenting himself within the role of a father looking for his kids. He told his subjects that he was appointing officers to tour his realm and attend to the welfare and happiness of all. Justice was to be impartially administered and medical treatment was provided for animals and humans. A principle of non-injury to any or all beings was to be discovered. Following this principle meant not solely renouncing state violence, however conjointly forbidding slaughtering sure animals for sacrifices or cookery within the royal room.⁶

With the advent of Mughals in the Indian Territory, the concept of law and justice came to be regulated by Muslim practices. There was a new civilization and with that, it invited a new system of religion and social interaction among people. During this time, the administration of justice was regulated under Qazi, which enshrined from Caliphate. The Qazi was in charge of being just, honest and impartial. In the Muslim period, Quran had the same emphasis as Vedas and Scriptures. The system of the Mughals sultanate does not last long due to chaos and confusion in the internal system. The dynasty was replaced one after the other and system of justice was much more dependent on the personality of the ruler.⁷

With the coming of British to India, who spread their legs slowly and steadily taking control all over India, foremost, the establishment of East India Company was made to promote

⁶ Underwood, Frederic B: "Aspects of Justice in Ancient India" 5 *Journal of Chinese Philosophy* 275- 279 (1978)

⁷ Dr. Rajkumar Singh: 'Judicial System of Mughals and British India' *South Asia Journal*, 2019

British interest in India; simultaneously they took control over the judicial administration of India which was much influenced from English law. Initially, the Adalat system was regulated by the Quran for Muslims (came to be known as Muslim law) and Vedas and scripture for Hindus (known as Hindu law). Slowly the system was in total control of the British and was different in different presidencies and later the uniform system was established.⁸

From the ancient period to British India, India witnessed the emerging concept of law & justice. Presently, the concept of justice and the system regulating it tries to balance the differences in the dynamic environment even today. The State has a major role in setting up and dealing with matters of conflict, impart justice, and also ensuring equality and equity.

MEANING OF JUSTICE AS PER LAW

At present justice derives its meaning from principles of law established and regulated by the State (legislature). Though the justice is not an exhaustive term, its meaning has different emphasis depending on case to case. In some cases, it means to punish the offender, in some case it refers to compensatory (monetary) orders, in some it means to adaption of new system or policy as per demanding present circumstances and foregoing old or patriarchy or static rules which are no longer useful for society, etc.

Justice and Law are two similar terms but yet the same concept having the same consonance or it can be said to have to serve the same purpose to comply with Rule of law. Law is the system through which justice is served. Justice is an act of just and fairness as per the procedure established by law. These rules to impart justice derived from human consensus and societal norms followed from time immemorial and which has developed with time and circumstances ensure that members of society are treated equally and fairly. It embodies the principle of equality and equity.

The Preamble of the Constitution guarantees the subjects of the Republic of India “Justice, Social, Economic, and Political.”⁹

The Constitution embodies the principle of Justice, which means no discrimination or bias on any basis like sex, age, color, religion, etc, equal treatment of all as per law, equal rights

⁸ *Supra* note VII

⁹ The Constitution of India, Preamble

and opportunity, fair and just procedure to all.

The system of law has instituted a stable and satisfactory system of justice. As the disputes between the parties may be of different forms and the rules and procedure to deal with differs with every kind, there are different types of justice:

Distributive Justice- Distributive justice, also known as economic justice, is based on the principle of fairness. The root of this type is based on curbing societal differences between people. So the concept of socialism and social order defines equality as the fundamental rule of justice. It aims to give a fair share of resources and benefits to society. However, economic justice is molded to distribution on basis of principle equity, equality, and need.

Procedural Justice- It is concerned with fair treatment, the rule of impartiality, unbiased decision making. Its emphasis upon the same treatment, rules, and procedure to everyone in society irrespective of class, creed, sex, nationality, color, etc. seeks to curb indiscriminate like distributive justice. The decision-making authority or those who have the power to impart justice must act as neutral and must not be influenced by personal vindictiveness in the matter. It also deals right to be represented and the right to be heard and adduce evidence to defend his case.

Retributive Justice- It focuses upon the principle of punishment; the intention is to prevent the perpetrator and others from doing future wrong. It is associated more with criminal offenses. Though one of the important principles of natural justice states that revenge should not be the motive to seek justice, the practice of punishment is about the satisfaction of victim against the wrong done to them, somewhere satisfy the feeling of revenge for a wrong done to him, or more of emotional satisfaction rather being fairness or preventive measure. As punishment is held as per procedure and provision established in law. Also, retributive justice supports the notion that people deserve to be treated in the same way they treat others. It supports infliction of punishment to those who did wrong as justice.

Restorative justice- It correctional method to restore things as they should be. It is the method in which one who is betrayed seeks from the betrayer, a restoration. It may be in the form of compensation, the performance of an obligation, or providing of substituted service. Like retribution justice is more inclined to a criminal offence, restorative justice is entrusted towards the civil wrong. Though in present times, restorative justice has marked

its importance in criminal cases like compensation to the victim of rape. It is also known as corrective justice.

On basis of type of wrong, Justice is divided into two forms:-

Civil Justice- It is concerned with enforcement against private wrong, infringement, and violation of rights concerned with the individual. A civil suit results in the award of compensation against the wrong individual. There are also other majors which can be the result of the civil suit like specific performance, restoration, substituted performance; these are classified as remedial rights while compensation or damages are classified as Sanctioning rights. Civil Justice includes the plaintiff, respondent, and courts.

Section 9 of Civil Procedure Code, 1908 defines Civil Suit, according to which civil court has jurisdiction to try all suits of civil nature except those which are expressly or impliedly barred in law.¹⁰

Criminal Justice- It is concerned with enforcement against public wrong. Even though the wrong is committed against one person, it is regarded as a wrong against society due to its implication upon the victim as well in the whole society. The purpose is to punish the offender. The punishment can be in form of imprisonment and a fine. Criminal Justice includes investigating agencies like police, prosecution, victim, accused, and the court.

The importance of Administration of Justice is as follow:

- a. It provides for uniformity and consistency in the law against its subjects. It ensures the uniform dealing of cases based on circumstances and facts of the case.
- b. It provides for equality and equity of the law, casts no bias. This confirms the consent and obedience of society for the system.
- c. It set forth a system against injustice and wrong against persons and society.

CONCLUSION

¹⁰ The Code of Civil Procedure 1908 (Act 5 of 1908), s. 9

As discussed above the justice meaning is changing as per society demands and need. The present society has more liberal approach than the earlier times which requires present system of law & justice to make changes. Though there are many remarkable and landmark changes in recent years like declaring right to privacy as constitutional right, declaring Section 377 of IPC, adultery as criminal offence, or say practice of triple talaq was declared unconstitutional by Supreme court of India, then holding the equality principle by upholding the Permanent Commission for women in armed forces, or take example of courts going virtual, as the covid-era made it essential to adapt the change as soon as possible. Presently, the proceedings in Delhi High court in relation to Validity of exception under Section 375 and to criminalize 'Marital Rape', is another ongoing step to find balance between right of husband and wife, and to define marital relation, which still has influence from patriarchal dominant thought of husband over his wife. The concept of law and justice is not about punishing people but it is about finding a balance between the rights of different people, at different circumstances, at different point of time.

There are many rules and law which are being followed since many decades and has become obsolete as per present times and demands new approach. So, the need for the present system is to enact a new law and make changes in the present system of justice delivery system. The idea of justice has evolved, the need of society is different as to earlier times, but law regulating is the same old law. It is a crucial time for the legislature to bring changes and make amendments to the old law. The balance of society requires adopting the changes, not implementing those causes heavy implication on system as well society. So, we see the backlog of cases, delays, and adjournments, etc. to overcome the stale system of law, it is a need to realize the present need.

The remark by Chief Justice of India NV Ramana "the need for the Indianisation of legal system" as the colonial setup rule is no longer serving the present complexities of Indian system and society. The recent pronouncements of Supreme courts are step forward to liberal and equal approach, the realization of static and patriarchal which instead of justice was doing more harm to the society.

"Justice does not come from court of justice only, justice starts from each person, from groups, association, society, legislature, executive, etc. Imparting justice vest on Court of justice by obligation of law, when unjust or wrong has already been committed.