

Justice as a Body of Norms: A Comparative Jurisprudential Approach

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Abstract

There are so many views on the concept of justice. Justice is the administration of what is due. The existence of wise and absolute discretion in the administration of justice and the absence of fixed law and procedure is a negation of the concept of justice according to law. The concept of justice is accepted as an instrument of social change and ideological basis, for counter-acting the totalitarian tendencies by the Communist World as well as highly developed societies of United States of America and England. Due to the increasing favorable public opinion this concept has established its deep roots in the political ideas in these countries. But developing countries like Africa, and countries in Asia including India, are confronting with the problems of planning social justice and economic development. A good government is one which governs best. However, in the Indian situation, an endeavor is going on for reconciling legal justice and social goals of the Indian community within the framework of the Constitution.

Keywords: Community, democratic system, norm, particular justice, status quo, universal justice

INTRODUCTION

The cardinal question as to what justice is difficult to be defined in absolute terms. Salmond made an endeavor to conceptualize it though he could not specifically define the term of justice. He says that the purpose of law is securing justice to all according to law of the land. The phrase “Justice according to law” is used by him in the sense that decision of the courts of law with respect to disputes should be based on legal principles and the judges should apply established rules and principles of law in the administration of justice.

VARIOUS VIEWS

There are so many views on the concept of justice. Plato regarded justice as the supreme virtue by which individual is doing the task appointed to him by the need of maintaining the social order.

Aristotle distinguished universal justice from particular justice. Universal justice meant for laws and requirements of life in society. Particular justice meant a special kind of virtue characterized by regard for equality. Hence the main feature of distributive justice was equality according to merit. Subsequently justice was equated with *status quo* to keep each man at his right place in order to maintain peace in society. The condition of perpetual strife necessitated the maintenance of social *status quo* which in other sense meant justice.

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Hence, Kant, Rousseau, Marx and Pound viewed justice differently in terms of their social goals and philosophy. As stated above justice cannot be defined rigidly what has been considered to be just at one time has frequently not been so considered at another. If we agree with Lord Wright, that justice is what appears to the

reasonable man, the reasonable man evidently has different views on the matter at different times and places, and there may even be important differences in point of views on the matter of different times and places and there may even be important differences in point of view between different reasonable men within the same community. Therefore, justice is relatively changing and even growing concept which cannot be defined in strict sense.

According to Justinian, “Justice is an ideal like truth. Just as a sculptor tries to achieve beauty with his mallet and chisel, so law is the tool of a judge in the pursuit of justice” [1].

View of Salmond

In the view of Salmond justice cannot be established without law. In other words, Judge requires authority to settle all disputes that come before him. But judges can decide a dispute without law according to their hunches, discretion or whims irrespective of the merits of the situation. This type of justice is called executive justice or arbitrary justice like that of Court of Star Chamber and Court of Equity in England and the Court of Allaudin Khilji or Jehangir or Ranjit Shing of Punjab in India.

Salmond tries to make justice strictly impersonal and certain, leaving no chance for judge's whim or hunch. Accordingly, justice of law is possible in a politically stable society where people have established political organs to achieve the desires of the community through law and law courts. According to law, justice means that people should be treated alike unless there is reason for treating them differently. It means that all persons are subject to the same law. But in British and Indian Constitutions, varying but similar concepts are found, which provide the concept of “equality before law”. Accordingly, Articles 20, 21 and 31 of the Indian Constitution show that Fundamental Rights to person and property are secured against arbitrary executive or legislative justice.

English Position

The existence of wise and absolute discretion in the administration of justice and the absence of fixed law and procedure is a negation of the concept of justice according to law. This existed during the times when the Court of High Commission and the Court of Star Chamber had absolute discretion to administer justice without law. The same is the case with respect to the Court of Chancery and to some extent the modern administrative agencies and bodies which resolve individual claims on basis of expediency and not law. In England *Magna Carta* and Petition of Right aimed at the establishment of justice according to law.

Indian Position

In Indian law, the concept of justice is enshrined in the system of society and in the Constitution itself. The Alien Rulers also followed this concept in the administration of justice. When the supremacy of the Constitution is brought into effect, special guarantee was given to Fundamental Rights of the citizens along with limitations on the powers of the government, parliament and lower tribunals. The Supreme Court and the High Courts have the power to review the acts of these various bodies with a view to administer justice according to law.

In *J.K. Lron and Steel Co. v. Mazdoor Union* [2], the Supreme Court observed that Under the Constitution the ultimate authority is given to the courts to restrain all exercise of absolute and arbitrary power, not only by the executive and by officials and tribunals but also by the Legislatures and even by Parliament itself [3].

In *M.R. Venkataraman v. Commissioner of Police, Madras* [4] also, the S.C. indirectly supported the concept of justice according to procedure established by law of the land, which does not offend or is indecent, unconscionable or repugnant to civilized beliefs.

Thus, no one is to be deprived of life, liberty and property in disregard of those fundamental rules of procedure which are well established in the Indian legal system. To save from arbitrary interference

by the executive and the legislature, such fundamental principles of procedure which are well recognized as the principles of justice are made the object of justice according to law.

In *Golak Nath v. State of Punjab* [5], the Supreme Court has re-established the supremacy of the rule of law and of Justice according to law by laying down the doctrine of prospective overruling.

U.S. Position

In *Dartmouth College v. Woodward*, the U.S. Supreme Court also expounded the philosophy of justice according to law, without which the administration of justice would be an empty form, an idle ceremony.

In short, the philosophy of justice according to law is adopted in all democratic systems of United States of America, U.K. and India.

Justice as a Body of Norms

Justice is the administration of what is due. According to Justinian it is the wish to render every man his due [6]. Every human action is prompted by a desire for happiness. From the standpoint of society, happiness has two aspects, happiness of the individual and happiness of the generality of the society. Normally, an individual would act in such a way as to promote his own happiness.

In the present world, the means of happiness is not adequate for all to have all they desire, and this state of affairs causes a mass of conflict among people in social life. So, a fair adjustment of conflicting interest has to be made to determine, what is one's due. The administration of what is so fixed as one's due is called justice.

According to Salmond justice consists in giving to every man his own. The rule of justice determines the sphere of individual liberty within the limits which are consistent with the general welfare of mankind [7].

Friedmann observes that the conception of justice depends on current notions of ethics and social morality.

Ethics denote the body of norms of ideals accepted by a given person or by a given society. Such norms are called 'values. The choice of a 'value' depends on personal discretion and is a matter of conscience. One may set sex as his ideal in life, while another may set celibacy as his ideal and a third may set chastity as his ideal. As the ideal varies, values also vary with individuals [8].

A norm of social morality gets transformed into a legal norm when it is absorbed in legislation or approved by the Court. Sometimes law may set a norm for social observance and watch its effect in practice and in the light of experience gained, change it to suit the best interests of the society. For instance, after the First World War, American politicians set a norm of avoidance of liquor for social acceptance and made the XVIII Amendment to the Constitution to bring it into force. After a few years, its social effect was found to be not good because of the consumption of illegal and often lethal alcohol, bootlegging, gang warfare and a general increase in criminality. Consequently, it was abandoned under the XXI Amendment. This is a clear instance of a change in value goal resulting in a change of law.

Change in the notion of justice have, also been caused by scientific investigations. For example, the test of insanity laid in *McNaughten's Rule* is to see whether at the time of committing the act, the accused was labouring under such a defect of reason as not to know the nature and quality of his act or if he knows it whether he did not then know it to be a wrongful act. Modern psychiatry has revealed that, even with a capacity to know right and wrong, one might be labouring under a serious

mental derangement. A man, who is under a strong delusion that everybody near him is seeking an opportunity to strangle him to take his wealth may, misunderstand the movements of another nearby and attack him violently. It would be justice to treat him as a subnormal and give him the benefit of diminished liability. Investigations have also revealed that criminality often arises from bad social conditions or upbringing in bad environments. This led to a greater emphasis on reformation than deterrence, and the adoption of probation and conditional suspension of sentences in the place of immediate jailing.

The (English) Criminal Justice Act, 1967 directs that a first sentence of not more than six months imprisonment must be suspended except in certain specified circumstance, and a sentence of about six months to two years may be suspended at the discretion of the Court. In India, the matter is governed by the Indian Probation of Offenders Act.

Lord Denning's observed: "The ultimate justification of any punishment is not that, it is deterrent, but that it is the emphatic denunciation by the community of a crime". This observation seems to lay stress, not on the aspect of *mens rea* or violation at the time of committing a crime, but on the aspect of social discipline against anti-social tendencies. Certain modern developments in Criminal Law make anti-social acts, like adulteration, offences of absolute liability without any regard for the blame of innocence of the individual accused and prescribed compulsory prison-terms for such acts [9].

Justice, Legal and Natural

Justice viewed in the light of the Positive Law of the state is called legal justice. Justice according to the natural law (or law of moral conscience) is natural justice. Natural justice represents the ideal to which the legal justice tries to approximate. Whatever be the merits of Natural Law as compared with Positive Law, it is admitted by most jurists that for practical administration in courts, legal justice is better suited than natural justice.

ADVANTAGES

Following are the important merits of justice:

Uniformity and Certainty

The same law has to be applied in all cases. Certain legal principles are enunciated only for the sake of certainty, uniformity and consequent expediency, e.g., the Rule of the road. English and Indian Laws prescribe that vehicle shall move by the left side of the road; Egyptian and American Laws prescribe the right side of the road; both are equally good.

Security Against Bias

The existence of known and fixed rules is a protection against arbitrary, biased and dishonest decisions.

According to Locke "the Legislative or Supreme Authority cannot assume to itself a power to rule by extemporary, arbitrary decrees, but is bound to dispense justice and to decide the rights of the subjects by promulgating standing law and known, authorized judges".

Similarly, Cicero opined that "we are the slaves of the law that we may be free".

Impartiality

Aristotle observed that "to seek to be wiser than the law is the very thing which is by good laws forbidden."

Salmond remarked that "the establishment of the law is the substitution of the opinion and conscience of the community at large for those of the individuals to whom the judicial functions are

entrusted. The law is not always wise, but on the whole and in the long run it is wiser than those who administer it.”

Freedom from Errors

Law represents the considered opinion of the society at large. Hence, a decision according to law is likely to be more correct than a decision left to the discretion of the individual judge (More reliable).

DEMERITS

Following are the important demerits of justice:

Formalism

Justice according to law is very cumbersome and expensive and has no corresponding advantage in terms of content or public need.

Rigidity

Rigidity shows want of capacity to mould according to circumstances and needs. Judicial justice is not the expression of popular will or feeling. It provides very slow and dilatory process for quick and peaceful social reform and change.

Facility for Evasion

If the rule of law is let known, it may be possible for ingenious men to devise ways and means to evade or to defeat the rule, without offending its expression. Further, once the maximum limit of the sanction of law is fixed and announced, the awe and respect shown to law in its unwritten stage is likely to be lost.

Undue and Needless Complexity

Since the law is to reflect all the complex activities of civilized life, a great deal of elaboration to inevitable consequence. The laws in modern state have assumed uncontrolled dimensions.

The oxygen of modern administrative law and administrative tribunals for solving conflicts in society is a proof of the failure of the Law Courts in satisfying the urgent needs of the community. Justice delayed is justice denied.

CONCLUSION

The concept of justice is accepted as an instrument of social change and ideological basis, for counter-acting the totalitarian tendencies by the Communist World as well as highly developed societies of United States of America and England. Due to the increasing favorable public opinion this concept has established its deep roots in the political ideas in these countries. But developing countries like Africa, and countries in Asia including India, are confronting with the problems of planning social justice and economic development. A good government is one which governs best. However, in the Indian situation, an endeavor is going on for reconciling legal justice and social goals of the Indian community within the framework of the Constitution.

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