

MY IDEA OF JUSTICE

Introduction

Before we delve into my personal opinions of what “Justice” is or what it should be, let us familiarise ourselves with the concept of it in the first part of this legal essay.

The term “Justice” has been derived from the Latin word “Jungere” which means to bind or tie together. To put this in context, “Justice” means to tie individuals in a society together and to harmonize a balance between them which results in an enhancement of human relations.

Regardless of the explanation mentioned above, “Justice” is considered to be a subject matter which has initiated several intellectual discussions and debates. And, even though it has been studied profusely from various perspectives, a clear and concise definition of “Justice” is yet to be settled on. The only common theme found in the vast amount of discussions and deliberations is that justice forms a broad segment of human morality and is very closely interlinked with it.

In the following paragraphs of this legal essay, I will be reiterating several theories, principles and types of justice which has been agreed upon by several learned philosophers and legal scholars. I will also be citing several judgments passed by the Supreme Court of India to further add authority on what the concept of justice is considered to be in this present day and age.

- Theories of Justice

Justice is an elastic concept which varies from people to people from time to time, according to the prevailing conditions, customs, traditions, religious beliefs, and above all philosophy of life which determines the moral sense of the community.¹ Simplifying this statement, it would mean that justice is justness and the standards for what is considered to be just are as dynamic as human society is and is not a fixed criterion.

Sir John William Salmond, esteemed professor of law and judge, has deduced that justice is the harmonious reconciliation of individual conduct with the general welfare of society.

To bring a more arithmetic concept to justice, Greek Philosopher Pythagoras considered justice as a number; it was a number multiplied into itself (i.e. a square number). A square number is a perfect harmony because it is composed of equal parts, and the number of the parts is equal to the numerical value of each part. If justice is defined as a square number, it follows that justice is based on the conception of a State, composed of its equal parts. A number is square so long as the equality of its parts remains, and in the same line of thought, a State is just so long as it is distinguished by the equality of its parts, and justice is the preservation of such equality.

Aristotle, who is considered as the father of Political Science also gave his two cents on the definition of justice. According to him, justice is the name of that great moral virtue and excellence of character which is essential for dealing with social and public relation. This has been described by Aristotle as “Complete Justice” and is based on the principle that “everyone should have his own”.

¹ S.M.N Raina, *Law Judges and Justice*, p.40 (Dialogue Publications, New Delhi, 2nd Edition, 1986)

Furthermore, one of the most important figures of the Ancient Greek World and the entire history of Western thought, Plato considered justice as the harmony of man's inner life or with body of politic.² Justice, in Plato's sense, is the power of individual concentration on duty. If a soldier is just in this sense, he is, of course, a brave man; if a man in a subordinate position is just, he, of course, accepts and maintains authority, or is 'self-controlled'. Justice, therefore, is really the condition of the existence of all the virtues; each of them is a particular manifestation of the spirit of justice which takes different forms according to a man's function in the community. In modern terms, justice is equivalent to a sense of duty.³

As we can see, the concept of justice has been debated upon over the course of history with several scholars having numerous opinions on the subject matter. However, to conclude this section, I would like to reiterate Lord Denning's definition of what justice is, as I believe it is the most basic and clearest, i.e. "What the right minded members of the community believe to be fair".⁴

- **Principles of Justice**

Equality:

The most fundamental principle of justice is that "equals should be treated equally and unequal's unequally". Equality as a pillar of justice is founded on the theological concept that all human beings, being children of God, are entitled to equal treatment.⁵ This principle has also been reiterated as follows: "Individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved".

Fairness:

Justice means giving each person his or her due. In other words, justice and fairness are terms that are closely interlinked with each other. To put it simply, fairness means what appears to be fair to a disinterested, impartial and reasonable observer.⁶

Liberty:

To explain this principle, I would be referring to the teachings of two philosophers, Herbert Spencer and Immanuel Kant. According to Spencer, the essence of justice is that "every man is free to do which he wills provided he infringes not the equal freedom of any other man" whereas Immanuel Kant has considered justice as "to act in such a way that the maxim of your actions may become a universal principle that everyone follows".

² Dr. S. N. Dhyani, *Law, Morality and Justice: Indian Developments*, p.77 (Metropolitan Book Co., 1984)

³ Nettleship, Richard Lewis, *Lectures on the Republic of Plato*, pp. 151-152 (1958)

⁴ Lord Denning, N.R., *The Road to Justice*, p.4 (1995)

⁵ S. M. N. Raina, *Law, Judges and Justice*, p.41 (Dialogue Publications, New Delhi)

⁶ *ibid*

- **Types of Justice**

Private and Public Justice:

According to Salmond, Private justice (also known as substantive justice) is the relation between individual persons and is the end for which courts of law exists whereas Public justice (also known as procedural justice) is the relation between individuals and courts of justice and is the instrument by the courts of law fulfil their functions.⁷

Civil and Criminal Justice:

According to Aristotle, Civil justice consists of giving every man his dues and is an appropriation of claims or an adjustment of disputes arising from the dealings of men whereas Criminal justice is concerned with meting out a punishment to a criminal and is a measure taken against the person who has been found guilty of offence under the criminal laws of the land.

Social, Economic and Political Justice:

The concept of social justice aims to uplift the underprivileged section of society without unduly and unreasonably affecting the interests of the upper section of society. In the Constitution of India, social justice finds its expressions in Art.14, Art.15, Art.16, Art.21 and Art.39 (b) and (c).

The former Chief Justice of the Bombay High Court, while commenting on social justice, observed that, “it is true that social justice is imponderable and we not asked not to introduce the principles of social justice in constructing legislation that comes for interpretation before us. But in our opinion, no economic, social or labour legislation can be considered by the court without applying the principles of social justice in interpreting these related provisions of law”.⁸ The Supreme Court of India also observed that the concept of justice is a living concept of revolutionary impact and that it gives substance to rule of law and meaning and significance to the idea of the welfare of the state.⁹ Further, it also observed that, “Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribal and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is a legitimate expectation and constitutional goal”.¹⁰

Distributive and Corrective Justice:

The principle of distributive justice specifies how things such as rights, goods and well-being should be distributed among a class of people whereas corrective justice is the idea that liability rectifies the injustice inflicted by one person on another which ensures that the accused offenders repairs the harm caused by apologising, returning stolen goods and/or community service.

⁷ Salmond, *Jurisprudence*, p.73. Quoted in R.G. Chaturvedi, *Natural Justice and Social Justice*, p.5 (Law Book Company 1st Edition, 1970)

⁸ Prakash Cotton Mills v. State of Bombay, 1957 II LLJ 490 (Bom)

⁹ State of Mysore v. Workers of Gold Mines, 1958 II LLJ 479 (SC)

¹⁰ Air India Statutory Corporation v. United Labor Union, AIR 1997 SC 645

Legal and Natural Justice:

Legal justice is justice that is declared by law, recognised by law and enforced in courts of law whereas Natural justice is justice that is commonsensical in nature.

Personal Opinions

As I have explained the concept of what “Justice” is by referring to the works and teachings of several legal scholars, cited cases, articles and research papers, I would like to approach the second part of my legal essay with personal opinions that I have formulated after reading the above mentioned authorities.

The courts of law in our land are often referred to as courts of justice and our lawyers as officers of justice. The administration of justice lies in the functioning of the judicial machinery of the state.

In my opinion, the supreme objective of every legal system is to secure justice. The difficulty in doing this is in giving a definition to the concept of justice and as I’ve mentioned earlier is an unenviable task. All men and women want and deserve justice, but as unique as every individual is so is their perspective of justice which often leads to repetitive misunderstandings. The concept of justice is dynamic and changes with time and with society. Every generation of humans has their own meted out version of what justice is. The times and the behaviours of people often decide what is just and unjust in a society. Hence, the search for justice is, one could say, an eternal quest. “Justice” throughout the course of history has been a perplexing problem however there is a line of commonality of what justice should be throughout the many generations of society that has passed and that is that justice is equated with truthfulness, righteousness, goodness, equality, mercy and charity.

So taking this into consideration, I would be justified in saying that since law and justice is ever changing, we, as responsible members of our society, should never fear or shy away from questioning what is just and unjust in our times. Just because something is legal doesn’t mean that it is morally right. An example of this could be that before 1865 slavery was legal and as we all know now looking back into the pages of our human history, we have come to the collective decision that it was not morally right as it deprived the slaves of a basic and fundamental right to live their lives with dignity, to be treated like a human being rather than be treated like an expendable object. To further support my claim that members of society should not fear from criticising certain rules and laws of the society we find ourselves in, I would like to refer to American Historian, William Archibald Dunning who has said, “Whether a government is lawful or unlawful, just or unjust is to be determined by the fact whether that government acts in accordance with the canons of law and the principles of justice”.¹¹

The quest for justice has always been given an exponential amount of great significance, and rightly so. It has been discussed, pondered upon, debated by every great social, political and legal thinkers and reformers one can possibly think of. The concept of justice is so unique and ancient that it came into existence even before the advent of laws. To take our country, as

¹¹ Dunning, W.A., *A Theory of Political Theories: Ancient and Medieval*, p.192 (1902)

an example, justice has been extolled as the very embodiment of God itself whose sole mission is also to uphold justice, truth and righteousness.¹²

To conclude my legal essay, I would like to say that my idea of what justice should be is that what is just and unjust should be perpetually questioned and contested. And it is through rigorous trial and error that we as a society can achieve justice, in the purest sense of the word.



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¹² Dr. S. N. Dhyani, *Law, Morality and Justice: Indian Developments*, p.86 (Metropolitan Book Co., 1984)