

A CASE STUDY

The concept of justice

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The term justice suggests the quality of being just or right or reasonable. It is opposed to what is unjust or wrong or unreasonable. The word just, right and reasonable are primarily moral attributes and hence, just is primarily a concept of morality.

As a moral concept, justice is a dynamic ideal. It is a dynamic idea because our realisation of the ideal is a continuous process.

The concept of 'justice' and to act justly is held as the fundamental aspiration of any legal system. Therefore, the concept of justice and its appeal is universal. The final goal of every legal system is to secure justice.

Man has been striving for maintenance of justice. In a democracy, justice is given the highest place. The word justice is derived from the latin word 'Jus' which means 'to bind', 'to contract'. The Greek word for Justice is 'Dike'. It gives the meaning of nearer to 'Righteousness'. Justice means following the norms. Justice stands for just conduct, fairness or exercise of authority in maintenance of right.

The concept of justice is as old as the political theory itself. There has been variety of views given to justice

from time to time. some writers regarded justice as a 'virtue', while others hold it for equality for some it is a the rule of law. The standard of justice is not something bound within the criterion of law but a criterion according to which the operation of law amongst other social mechanisms might be judged.

Meaning and concept of justice :

Different political thickness have given different views on the definition of justice.

Salmoud :

Law may be defined as the body of principles recognized and applied by the state in the administration of justice (Das, 2012).

Roscoe pound :

Law is the body of principles recognised or enforced by public and regular tribunals in the administration of justice (Das, 2012).

Digest :

Justice is a fixed and abiding disposition to give to

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every man his right. The precepts of the law are as follows:

- The live honourably
- To injure no one
- To give to every man his own.

Jurisprudence is a knowledge of thing human and devine, the science of the just and unjust (Mahajan, 2003).

St. Augustine:

A just state was one in which religion was taught under law and authority (Ibid).

Earnest barker:

The claims of liberty have to be adjusted to those of equality and the claims of both have also to be adjusted to those of co-operations. From this point of views the function of justice may be that of adjusting, joining or fitting the different political value. Justice is the reconciler and the synthesis of political values; it is their union in an adjusted and integrated whole (Mahajan, 2003).

Cephalous :

Justice consists in speaking the truth and paying ones debts (Rao, 2005).

Polemerchus:

Justice seems to consist in giving what is proper to him. (Ibid).

Historical background of justice :

In the primitive society the basic objective of justice was to inflict punishment on the offenders of a crime. The punishment was very severe. An eye for an eye and a tooth for a tooth was part of the administration of justice. The object was to prevent the future crimes. Hence, the nature of justice in the primitive society was purely negative. It is based on conventional morality or tradition or custom.

During the Greek Period, Thrasymachum, a sophist political thinker held the opinion that justice was in the interest of the strong party. It resembled the concept of 'Might is Right.' According to him, the strong man would have a say over the weak and the latter has to serve the interests of the former. The economically rich and militarily strong would make laws promoting their interests and implement them over weak and docile people.

Pythagorus, a Greek philospher also elaborated the

concept of justice. According to him, justice was nothing but harmony and mutual co-operation.

Plato, the father of political philosophy, in his 'The Republic' defined justice as one of functional specialisation. He was of the opinion that justice was ethical or philosophical and not based on conventional morality. Plato, further, viewed justice as a quality of the soul and habit of mind and aimed at an organic society. Plato regarded justice as the supreme virtue.

According to Aristotle, justice consisted in the fulfillment of one's moral duties towards community. It can be understood in two aspects. The first is distributive justice; justice gives to every man his due according to his contribution to the society it means proportionate equality. The second is the corrective justice. It is concerned with business transactions like hire etc. for Greeks there was no difference between justice and morality.

In ancient India, the Hindu caste system arranged by Varnadharm recognised the principle of division of labour and functional specialisation. Justice eliminated unhealthy competition. Therefore, justice meant to provide for the fusion of an individual with others in Society and secure an organic unity.

In Medival Age, St. Augustine, derived the concept of justice from Plato. He emphasized on right relation between man and man for the harmonious functioning of society. He interpreted justice in terms of Christianity and religious values. He considered the state as part of wider society and made it subordinate to church. He believed that church is the Supreme Authority to lay the principles of justice to the individual, society and the state.

Thomas Aquinas, for the first time separated justice from religion. By 16th Century the concept was completely secularized. Greek jurists believed that justice is based on positive law or laws of the people. This positive laws was directed for the maintenance of harmony in society. Observance of righteous conduct, leading an honourable life, not to injure others and to give every man his due.

Writers like Hobbes introduced justice with the orders of sovereign. Locke, Rousseau, Kant etc. found the justice in the synthesis of liberty and equality. Natural Justice/Law theorists helped in the development of the idea of individual justice. Socialists argued that justice should be understood from the economic point of view. The conventional concept of justice talks about the just man, the modern view talks of just society.

Major concepts of justice :

In the history of Ideas there are two major concepts of justice. They are :

Numerical concept of justice :

It gives equal share to all. The Greek city states took the rules so far that many offices were filled by lot. The holding of an office did not call for any special knowledge or qualification. This concept is expressed by Jeremy Bentham "Everyone is to count for nobody is more than one" (Myndevi, 2006). Modern liberal democracies are also based on this principle.

Geometrical concept of justice :

It is a concept of proportionate equality. It means equal share to equals and unequal to unequals it means that distribution of power and patronage should be proportionate to the worth or contribution of the individuals Plato and Aristotle favoured this. As Aristotle put it, "if flutes are to be distributed, they should be distributed only among those who have the capacity for flute playing" (Ibid). In this concept of equality benefits and responsibilities are equated with the worth of recipient. This is equated with aristocratic justice.

Views of political thinkers :

Following are the Political thinkers who spoke about Justice.

Plato :

According to Plato justice is virtue one part of human virtue and the bond which joins man together in society. Plato in his Republic on the basis of Socrates treading explained the concept of justice which covers the place of justice in a person like as well as in the state. According to Plato justice is harmony both internal and external. Internal harmony is a proper balance in the soul and external harmony manifests itself in the state. The virtuous individual possesses inner harmony, a balance among the faculties of the soul. In order to live a good life, the virtuous individual must live in a just society. Thus inner and outer just need one another; without just individuals, a just society is impossible without a just society. The life of the individuals may not be a happy one.

Plato for explanation of theory of justice, used the parable. According to him, a person's soul has three parts - Reason, Spirit and desire and the just person is the one

in whom reason commands the other two and each keeps to its task. Similarly, a city has three parts : lovers of wisdom, guardians and workers and the just city is the one in which the lovers of wisdom rule the other two and in which everyone sticks to his or her own, appropriate tasks.

Socrates uses the parable of the chariot to illustrate his point :

A Chariot works as a whole because the two horses power is directed by the charioteer. Lovers of wisdom - philosophers one sense of the term - should rule because only they understand what is good. If one is ill, one goes to a doctor rather than a quack because the doctor is expert in the subject of health. Similarly, one should trust one's city to an expert in the subject of the good, not to a politician who tries to gain power by giving people what they want, rather than what is good for them, Socrates uses the parable of the ship to illustrate this point; the unjust city is like a ship in open ocean crewed by a powerful but drunker captain. (common people), a group of untrustworthy advisors who try to manipulate the captain into giving them power over the ship's course (the politicians) and a navigator (the philosopher) who is the only one who knows how to get the ship to port. For Socrates, the only way the ship will reach its destination - the good - is if the navigator takes charge.

Aristotle :

Aristotle explained justice by categorising it as distributive, corrective and retributive justice (Ghormade, 2008). The distributive justice is related with assigning benefits and burdens. The compensatory justice is concerned with compensating people who are the victims of wrong doing and retributive justice pertains to do with the punishment of crimes.

The distributive justice is concerned with the proper allocation of social benefits including wealth, power, reward respect as well as burden among the members of the community. He was concerned with geometrical equality by which he meant the maintenance of the same proportion as between persons to be maintained. As per theory of distributive justice there should be a proper distribution of wealth and goods that means equal : no individual in the relevant group should have more or less than any other individual in that group. Distributive justice serves to secure a balance or equilibrium among the members of the society. Right to vote is one of the most

important democratic right, demands that each should count for one and no one for more than one which may be offended if the restriction of the franchise is restricted to tall man or red-haired citizens. This balance, however, can be upset. One citizen 'X' is presented by another 'Y' from exercising his right to vote. The balance is upset because one person is deprived from voting which was to be enjoyed by him, therefore, the category of justice came into picture, that corrective justice, which will correct the disequilibrium by forcing 'Y' to make 'X' some compensation. According to Aristotle the justice is operated in such a way, that distributive aspect serve to secure and in its corrective aspects to redress, the balance of benefits and burden in a society.

The distributive justice is the concern of those whose task is to enact constitutions code and make new laws by legislation; at these levels the division of social goods takes place. The function of the court is mainly that of applying justice in its corrective sense. In a just system of law, it is expected that the rules and regulations are made to secure fair distribution at general level in a society and application of corrective justice is done by the court at a specific level or case.

The retributive justice is concerned with the proper response to wrong doing. For instance the lex talionis (law of retaliation) is a theory of retributive justice which says that proper punishment should be equal to the wrong suffered : Life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, wound for wound, stripe for stripe.

Dimensions of justice :

The modern concept of justice is different from the traditional concept of justice and put emphasis on the just man. It was primarily concerned with the virtues which enhance the moral worth of a man. It consisted in the performance of the duties attached to his status determined by the prevalent law, social customs and the mode of thought.

The modern view of justice seeks to transform society itself for the realisation of certain human values.

When the modern idea of justice is applied to the various aspects of social life, we get legal political, social or economic notions of justice.

Legal justice :

Positive law as the declared will of the state is the most obvious dimension of justice. Positive law includes customary law as well as statutory law. Together it

constitutes the general body of rules recognised and enforced and in that sense, imposed by the courts. Legal codes enacted by the state and supplemented by customary rules observed by the community define the content of justice in any given society. The constitution as well as acts of legislative delimit the legal dimension of justice prevalent in any country. When Indian constitution abolished untouchability, it was a legal way of promoting justice. Law defines the right and obligations of individuals and groups in a community. The executive - branch of the government enforces these rules and the courts ensure that these rules are applied properly to all. The legal dimension of justice implies faithful adherence to declared rules. Some values are no doubt implicit in every system of positive law but a lawyer does not inquire into the ethical foundation of existing legal rules. He is concerned only with the validity of particular law in terms of its enactment by a legitimate authority. The jurist is natural regarding, the value components of any existing law considering justice as synonymous with application and adjudication of declared formal rules.

Political justice :

While the legal dimension of justice is concerned with formal rules. The political dimension of justice is concerned with actual policies through which the political process realises the norms of justice. The constitution, parliament and the courts give shape to the legal dimension of justice. But the bureaucracy and the political parties, the interest groups and voluntary association etc. try to translate the legal norms of justice into pragmatic political programmes. The law abolishing untouchability or prohibiting forced labour or fixing a ceiling on land may remain unimplemented or partially implemented due to absence of the required administrative measures. The preamble and directive principles enshrined in the Indian constitution envisage the creation of a just social order in the country. The directive principles of state policy are fundamental in the governance of the country but they remain pious ethical platitudes so long as the ruling elite lacks the political will to implement them.

Social justice :

The legal ideology and political practice reflect a given social structure. Traditional societies well hierarchical in which the division of the community into ranks, castes or orders was regarded as an expression of justice. Some were born as lords and masters destined

to rule over other who were slaves or serf by birth. This was justified in terms of God's will, reason and morality. In India, the caste hierarchy was sanctioned by the law of Karma and ordained by Dharma.

In modern times, social justice has been defined as a concept which requires elimination of all kinds of discrimination and privileges based on birth, race, caste, weed or sex. Social roles ought not be determined by status but by capacity. Social mobility between different types occupations should replace rigid stratification of roles inherited from the past. As Max Weber pointed out, capitalist society conceives social justice in terms of social relationship based on contract (Asirvatham and Misra, 2008). The actual working of a capitalist democracy has shown that though it enlarges the social dimension of justice by abolishing feudal ranks and caste distinctions it fails to remove the class character of justice as it sanctions and institutionalises the exploitation of the working class by the owners of capital.

Economic justice :

With the development of modern industry, the theory began to be advanced by utopian socialists, anarchists and Marxists that the origin of the idea of justice should be discovered in the economic structure of a given society. Poudhon (Ibid) wanted to establish a just social order by developing an economic based system based on the principle of mutual co-operation among different groups of produces following Poudhon, (Ibid) Duguit developed his theory of social solidarity as the basis of a just economic order. The basic fact of every economic system is the existence of different occupational groups, producing different commodities, but bound to one another by a system of mutual exchange. The co-operation should replace competition in order to maximise production and to achieve equitable distribution of commodities so produced among different classes of society.

Marx criticised utopian socialists, syndicates and anarchists as bourgeois social reformers and idealist whose notion of justice was a sentimental play with empty and meaningless words. Mutual co-operation and solidarity are impossible to achieve in a society divided between two hostile classes of the capitalist exploiters on one hand and the exploited proletarians masses on the other. A just socio-economic order was possible only when the proletariats put an end to all modes of bourgeois exploitation by smashing the bourgeois state apparatus

through a successful socialist revolution. Justice in a capitalist society was a narrow class oriented concept. True justice would be realised only in a classless communist society of the future.

Relationship between law and justice :

State should provide justice to the people. Justice seeks to be good. All that leads to perfection is good for humanity. Justice tries to provide rules of reason for men to follow, so that the same may lead to the highest good of all concerned, line well and let line is the aim of justice. The people must be protected by the state. Right is might, and not might is right though for the upkeeping of right, might may be necessary. It is not the justice of the jungle, but in the justice emanating from the moral or natural law in consonance with the social and rational nature of man. Justice really in values doing good not only to human brings but to all that is good in nature. Thus, justice is what is ideal, what is beautiful and true and the most proper type.

Law is the instrument of justice. Law is the principle which enunciates and declares what is just and thus, the expression 'law' and 'justice' are related. But law may be actually what is far from the ideal, actually it may be own an unjust though a good law is that is to say good as a law, Law however, seeks and should seek justice, though at times expediency might present a law from being quite just. Law is an instrument of social unity for reducing the greatest good to the largest number and avowed aim is, or should be to procure a national as well as international cosmos. Justice is a just system of law which incorporates the practicable principles of natural justice in it. Justice should be administrated according to the provisions of law.

Justice implies virtue of righteousness. It is equated with truthfulness and morality. Hence, justice is viewed as a norm to measure the good and bad conduct of man as well as the rules of society and various social institutions.

Justice implies establishment of status quo. It seeks to protect freedom, person, property of the individual. This is called conservative justice.

Justice implies keeping the general order of society as a whole one hand and on the other it protects the individual. Justice is concerned about relationship between the individuals and also relationship between the individuals and the groups.

Justice implies the dealing with principles and

procedures as laid down by the system of law prevailing in a state.

Types of justices :

The justice may be classified into the following kinds of justice :

Corrective justice :

Corrective justice is essentially negative. It is concerned both with voluntary commercial transactions like hire, sale, furnishing of security etc. and involuntary sections involving aggression on life, property, honour and freedom. It aims at restoring what one has lost due to injustice of the society. It prevents the encroachment of one on the right of others.

Aristotle divided remedial justice into two- that dealing with voluntary transaction (civil) and that dealing with involuntary transaction (Criminal law). Further Aristotle added commercial and cumulative justice to the aforesaid division of justice.

Corrective or remedial justice consists in restoring to each person the lost right due to infringement on the part of other individuals resulting in the violation of the rights of others. It is mainly concerned with the commercial transaction. It works for restoring what a person has lost due to injustice of the society. It prevents the encroachment of one over the right of others. Aristotle held the corrective justice relates to the voluntary commercial transaction like hire and sale etc. and involuntary actions involving aggressions on life, property, honour and freedom. In brief, justice is the name of great virtue moral excellence of character. This is called corrective justice.

Corrective justice is the idea that liability rectifies the injustice inflicted by one person on another. This idea received its classic formulation in Aristotle's treatment of justice in *Nicomachean Ethics* Book V. More recently it has become central to contemporary theories of private law.

Aristotle's account presents corrective justice and distributive justice as two contrasting forms of justice. Corrective justice which deals with voluntary and involuntary transaction, focuses on whether one party has committed and the other has suffered a transactional injustice. Distributive justice deals with the distribution of whatever is divisible among the participants of political community for Aristotle, justice in both these forms relates one person to another according to a conception

of equality or fairness. Injustice arises in the absence of equality when one person has too much or too little, relative to another.

Corrective justice features maintenance and restoration of the national equality with which the parties enter the transaction. This equality consists of persons having what lawfully belongs to them. Injustice occurs when relative to this baseline, one party realises a gain and the other corresponding loss. The law corrects this injustice when it reestablishes the initial equality by depriving one party of the gain and restoring it to the other party. Aristotle like us the parties' initial positions to two equal lines.

The injustice upsets that equality by adding to one line a segment detached from the other. The correction removes that segment from the lengthened line and returns it to the shortened one.

The result is a restoration of the original equality of the two lines. Corrective and Distributive justice differs in the way they construe equality.

Distributive justice :

The most widely acclaimed theory of justice, that of John Rawls (Asirvatham and Misra, 2014), is devoted to working out a general principle of distribution which will justify the class difference in life prospects which any society, capitalist or non-capitalist is bound to produce. Mc Pherson (Ibid) characterizes it as 'a general theory of distributive justice' which is 'scarcely recognizable as a theory of economic justice.' He says : for it starts from the claims of dissociated individuals, not of individuals as a numbers of society and assumes market - maximising behaviour as their innate or essential attribute, whereas the hallmark of the concept of economic justice has been its assumption that social norms and ethical values should prevail ones, or not be eroded by, impersonal market values.

It may be argued that Rawls's theory does meet the criteria for a theory of economic justice since it does propose to regulate distributive arrangements in the society by an ethical principle. This argument cannot be sustained because Rawls place a secure limit to the amount of redistribution of income allowed by his ethical norms. This limit is dictated by the market economy's. His ethical principle of distributive justice practices that transfers of income from the rich to the poor should not reach a point at which 'greater taxes interfere so much with economic efficiency that the prospects of the least

advantaged in the present generation are no longer improved but begin to decline.

The test of economic efficiency as Rawls visualizes, is to be applied explicitly in the competitive economy and it logically must be completely dominated by market in which the unfavourable reaction of the capitalist to increases in taxation reduces the productivity of the entire economy. Rawls wants to implement his distributive justice within the constraints of the classical model of the competitive capitalist market economy in which impersonal market forces to determine the level of productivity and investment.

According to Rawls, justice is the first virtue of social institutions, as truth is of system of thought. A theory however, attractive should be rejected if it is untrue. Similarly, institutions and laws however efficient or well arranged must be reformed or abolished if they are unjust. Unjust society the liberties of equal citizenship are taken as settled. The rights are secured by justice and not subject to the calculus of social interest or to political bourgeoning. A well-ordered society, he says, is efficiently regulated by a public conception of justice.

Rawls does not consider "The institutions and social practices generally" or "relation between status" as subject to which his theory of justice can apply. Rawls is interested in developing a conception of justice which can provide a standard by which the distributed arrangements of a given society can be assessed but which need concern itself with the fundamental questions of ownership of the means of production.

In anglo-saxon ethical tradition, two important schools of ethical theory were utilitarianism and institutionism. Each of these schools "has strengths Rawls point of view, but each also has fatal weaknesses. Rawls revises a version of the theory of the social contract as a way of discovering via media between utilitarianism and institutionism."

The taste of the parties to Rawl's hypothetical original position is to choose principles of justice which will play a central role in their life.

Public justice :

Public justice is that which is administrated by the state through its own tribunals. Private justice is distinguished as being justice between individuals. Public justice is a relation between the court on the one hand and the individuals on the other. Private justice is a relation between individuals.

Private justice is the end for which the courts exists and public justice is the instrument or means by which courts fulfill that end. Private persons are not allowed to take the law in their hands. Even if a wrong has been done to them, they must, refrain from helping themselves. Their can be used only in case of public justice. There is no place for force in private justice. To quote salmond it is public justice that carries the sword and the scales and not private justice (Mahajan, 2010).

The point of qualifying the justice for which the state is responsible as public justice is to indicate in a more explicit way, both the scope and limit to its legitimate authority. Many issues of justice pertaining to interpersonal relationship or within independent community or associations and many other besides, a proper deal by the agents concerned and individual no recourse to political authority.

Public justice's principled approach to public policy is captured in the concept of justice. Public justice offers a coherent approach to social issues, but respects the complexity of creation and contemporary life, rather than flattering public life to its economic alone to a majority opinion.

Civil justice :

The right enforced by civil proceedings are of two kinds primary rights and sanctioning rights. A sanctioning right is one which arises out of the violation of another right. All other primary rights are which have some other source than wrongs. Thus, my rights not to be assaulted by primary rights, but my right to obtain percuvary compensation from one who has assaulted me is sanctioning. Right to fulfillment of a contract made with me is primary, but my right to damage for its breach in sanctioning.

The administration of limit justice, therefore, falls into two parts according as to the rights enforced belongs to the one or the other of these two classes. Sometime it is impossible for the new law to enforce the primary right and sometimes it is possible but not expedicut.

A sanctioning right almost invariably consists of a claim to receive money from the wrong doer and we shall here disregard any other form as being quite exceptional.

Examples of specific enforcement of proceedings where by a defendant is compelled to refrain from committing or contriving a tress pass or nuisance, or to repay money received by mistake or obtained by fraud.

In all these cases the right enforced is the primary right itself, not a substituted sanctioning right what the law does is to insist on the specific establishment or re-establishment of the actual state of things required by the rule of right, not of another state of things which may be regarded as its equivalent or substitute.

Sanctioning rights may be divided into two kinds by reference to the purpose of the law is creating them. The purpose is either :

- The imposition of a pecuniary penalty upon the defendant for the wrong which he has committed.
- The provision of pecuniary compensation for the plaintiff in respect of the damages which he has suffered from the defendants wrong doing.

Sanctioning rights, therefore, are either :

- Right to exact and receive a pecuniary penalty, or,
- Rights to exact and receive damages or other pecuniary compensation.

Criminal justice :

The criminal justice is administered in different set of courts than that of civil courts. If successful criminal proceedings results in one of a number of punishments, ranging from hanging to fine or in a binding one to keep the peace, release upon probation or similar other results belonging distinctly to criminal law. Criminal proceeding results very in an order against the accused to make restitution or compensation. Criminal justice attempts at remedy, yet to be accurate, the distinction is more in the legal consequences of the proceedings than in the intrinsic nature of the acts.

The purpose of criminal justice is to punish the wrong doer. He is punished by the state. The question arises what is the purpose of punishment in other words what is the end of criminal justice is to protect and add to the welfare of the state and society.

Theories of punishment :

There are fine theories of punishment which are enumerated under :

Deterrent theory :

Salmound (Das, 2012) considers the deterrent aspect of punishment to be the most important. According to the deterrent theory of punishment, the object of punishment is not only to prevent the wrong doer from doing a wrong a second time but also to make him an

example to other person who have individual tendencies. The aim of punishment is not revenge but terror. The view of Mann (Ibid) was that "Penalty keeps the people under control penalty protects them, penalty remains awake when people are asleep. So the wise have regarded punishment as a source of righteousness."

Preventive theory :

Another object of punishment is preventive or disabling. The offenders are disabled from repeating the offences by such punishment as imprisonment, death etc. By putting the criminal in jail, he is prevented in committing another crime.

Reformative theory :

According to this theory the object of punishment should be the reform of the criminal. Even if an offender commits a crime he does not cease to be a human being. The object of punishment should be to bring about the moral reform of the offender.

In *Musa Khan v. state of Maharashtra* (Das, 2012). The Supreme Court observed that the probation of offenders Act, 1958 is a piece of social legislation which is meant to reform juvenile offenders with a view to prevent them from becoming hardened criminals by providing an educative and reformative treatment to them by the government.

Retributive theory :

In primitive society, punishment was mainly retributive. The person wronged was allowed to have his rearrange against the wrong does. The principle was "Eye for eye and tooth for tooth". The retributive aspects was recognised in ancient penology. Another view is that retributive punishment is an end in itself.

Theory of compensation :

According to this theory the object of punishment must be not merely to prevent further crimes but also to compensate the victim of crime. Critics of this theory point out that it tends to only simplify the motive involved in the crime.

Punishment are the ends for motive of criminal justice. There are different kind of punishment given in criminal justice are :

- Capital punishment
- Deportation
- Corporeal punishment

- Imprisonment
- Solitary confinement
- Indeterminate sentence.

Cumulative justice :

In cumulative justice two persons conflict each other as co-equals. It means justice bearing on the relations between individuals especially in respect to the equitable exchange of goods and fulfillment of contractual obligations.

Cumulative justice refers to that which is owned between the individuals such as in conducting business transactions. It calls for the fundamental fairness in all agreements and exchange between individuals or private social groups. It is distinguished from other forms of justices. Restitution is moral theology signifies an act of cumulative justice by which exact reparation as far as possible is made for an injury that has been done to another.

Any violation of cumulative justice imposes on the guilty party, the duty of restitution, that is, the duty of repairing the harm caused. In fact, strictly speaking, only violations of cumulative justice gives rise to the duty of restitution.

Cumulative justice is largely negative, meaning that it can be accomplished by not doing something.

A principle of cumulative justice specifies how individuals should be treated in a given class of actions and transaction. Thus, like rights, the term justice is a contested concept, one whose meaning is never completely fixed or finally closed and agreed upon.

Application of justice in Indian perspective :

In ancient India law and Dharma well analogous concepts constituent with truth morality and justice. The law was not vacated or made by the king but he himself was under law and governed by law or Dharma.

In the past constitutional era, the concept of justice according to law is enshrined in our democratic egalitarian polity and in the constitution itself. Even prior to the constitution the alien rules too followed the concept of the rule of law and justice according to law.

With the establishment of the supremacy of the constitution incorporating basic and incurable fundamental rights of the citizens along with the limitations on the power of the parliament government and lower tribunals the Supreme Court and the High Court have the power to review judicially the acts of these bodies

with a view to establish the rule of law and administer justice according to law.

If the constitution is the corner stone of the Nation justice is its signature true and the Supreme Court is the living example of the voice of the constitution. This is the will of the people expressed in the Preamble. Part III and IV of the constitution had the value of justice, rule of law and supremacy of the constitution aloft.

In preamble justice, social economic and political is given the first place which the court ensure executive free from discrimination and tyranny.

“Under the constitution the ultimate authority is given to the court to restrain all exercise of absolute and arbitrary powers not only by the executive and by officials and lesser tribunals but also by the legislature and even by parliament itself” (Dhyani, 2006).

The Supreme Court has observed (Singh and Borobubu, 1994) it is our constitutional duty which requires us to make laws, this order, to uphold the majesty of law and justify the confidence of the people, that no one in this country is above the law and governance is not of men but of the rule of law. It is unfortunate that this action has to be take against a person who happens to be the speaker of a legislative assembly, but that does not permit us to apply the law differently to him when he has will fully and continuously driven the court to this course. We must remind ourselves that the rule of law permits no one to claim to be above the law and it means be you even so high the law is above you. It was said long back; “to seek to be wiser than the law is forbidden by law.”

The effect of justice according to law symbolises rule of law and not rule of men. It is in no respect of despotic justice which is generally described by executive justice or even of legislature’s justice which extra judicial, political tempered by personal considerations. This is evident from the verdict of justice Jagmohanlal Sinha of Allahabad High Court in the Indira Gadhi Election which was declared void but validated by Parliament through a constitutional amendment in 1975. This amendment was struck (Dhyani, 2006) by the Supreme Court as contrary to the basic structure of the constitution. The court remarked it was a case of parliament assuring the role of the Judge and performing judicial function by means of legislation in relation to election petition filed by Raj Narain against Mrs. Indira Gandhi.

As regards the executive discretion which was exercised without any procedure that does not meet the

test of justness, fairness and reasonableness is contrary to Articles 14 and 16 of the constitution. The court observed (Dhyani, 2006) : In a system governed by rule of law, discretion when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decision should be made by application of known principles and rules and in general, such decisions should be predictable and the citizens should know where he is.

Sir Edward Coke and Justice Pandian (Ibid) said “In our democratic polity under the constitution based on the concept of the Rule of Law which we have adopted and give to ourselves and which serves as an aorta in the anatomy of our democratic system THE LAW IS SUPREME” and further the law or constitution is what the supreme court declares or says it is. It only envisages the supremacy of rule of law and justice according to law which strengthens the constitution, the legislature and democratic way of life.

Salmond (Dhyani, 2006) has brought out clearly the advantage of justice according to law. According to him it ensure uniformity and certainty in the administration of justice. It also guarantees impartiality against individual errors. Prof. Dean Pound (Ibid) has listed six advantages of the administration of justice according to law. These are:

- Law makes it possible to predict the course which the administration of justice will take.
- Law seems against the errors of individual deal judgements.
- Law secures against improper motive on the part of those who administer justice.
- Law provides magistrate with standards in which ethical ideas of community are formulated.
- Law gives the magistrate the benefit of all the experiences of his predecessors.
- Law prevents sacrifice of ultimate interest, social and individual to the more obvious and pressing but less weightily immediate interest.

Conclusion :

The term access to justice means different thing to different people what may mean justice to one may not compulsorily mean the same to another. Justice in its broadest context includes both the attainment of that which is just and the philosophical discussion of that which in just.

The concept of justice is based on numerous fields

and on may differing view point and perspectives including the concept of morality, moral correctness based on law, equity, ethics, rationality, religion and fairness.

The concept of justice differs in every culture. So in general the justice can be seeked by the instrument called law. Justice beings and sense of happiness to human being. Since human being strives for justice.

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