

Course Name- B.A.L.L.B. IVth Sem.

Subject- Political Science

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Topic Concept of Justice

Concept of Justice

Introduction

The concept of justice is as old as the origin and growth of human society. A man living in society desires peace and, while living in he tends to experience a conflict of interests and expects a rightful conduct on the others part. And this is why jurists like Salmond and Roscoe Pound have emphasized the importance of justice.

Through the instrumentality of law regulated by the state, the concept of justice became more clear. As the law grew and developed the concept of justice walked parallel and expanded its tentacles into different spheres of human activities. The essence of legal justice lies in ensuring uniformity and certainty of law and at the same time ensuring the rights and duties duly respected by all. The notion of justice is the impartiality imbibed in it. The violation of justice which is enforced by the law results in state sanction as 'punishment'.

In the words of Chief Justice Coke it has been rightly said that 'wisdom of law and justice is wiser than man's wisdom,' thereby legal justice represents the collective wisdom of the community which Rousseau called as 'General Will' of the people.

Definition

The term justice has been derived from the Latin word 'Jungere' which means to bind or tie together, thus in this way it can be stated as justice is the key ailment which ties the individuals in the society together and harmonizes a balance between them and enhances human relation.

In the words of jurists-

- Blackstone- "Justice is a reservoir from where the concept of right, duty, and equity evolves."
- Salmond- "Though every man wants to be righteous and just towards him, he himself being 'selfish' by nature may not be reciprocal in responding justly." According to him, some kind of external force is necessary for maintaining an orderly society, and without justice it is unthinkable.

Types of Justice

Justice represents itself in kinds mainly:-

- **Social Justice**

In the words of Chief Justice, P.B.Gajendragadkar-social justice means ending all kinds of social inequalities and then provide equal opportunities to all.

Commenting on social justice Mr. M.C. Chagla, the former Chief Justice of the Bombay High court observed in the case of **Prakash Cotton Mills v. State of Bombay, 1957 II LLJ 490 (Bom)** that “ we are no longer living in the laissez-faire..... it is true that social justice is imponderable and we 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 labor legislation can be considered by the court without applying the principles of social justice in interpreting these related provisions of law.”

While in the case of **State of Mysore v. Workers of Gold Mines 1958 II LLJ 479 (SC)** the Supreme Court observed that the concept of social justice is a living concept of revolutionary impact: it gives substance to rule of law and meaning and significance to the idea of welfare of the state.

Thus, the concept of social justice aims to uplift the underprivileged section without unduly and unreasonably affecting the interests of the upper section of the society. The concept of social justice finds its expression in Articles 14(equality before law), 15(prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth), 16(equality of opportunity in matters of public employment) and 39 (b) and (c) [(b) ownership and control of the material resources and its equal distribution, (c) operation of the economic system not resulting to the concentration of wealth and means of production to the common detriment], of the constitution of India.

It also determines the concept of Processual Justice based on natural law which is the very basis of not only substantive law but also the remedial justice. Legal maxims like **Nemo Judex In Propria**

Cause (no one can be a judge in his own case); **Audi Altrem Partem**(here the other side or party) plays a vital role.

- **Economic Justice**

It demands that all citizens should have adequate opportunities to earn their livelihood and get equal pay for equal work, which could substantially help them in fulfilling their basic needs. From financial inclusion to better health care the state government should create opportunities for them by generating employment opportunities, following MNREGA, RSBY and so on. No person or group of person should indulge themselves in exploitation and be exploited. There must be a fair and just equitable distribution of wealth and resources, and the gap between rich and poor should get abridged.

- **Political Justice**

It means granting of equal political rights and opportunities to all citizens to take part in the administration of the country. The legality of the right to vote and contest election free and fairly.

- **Legal Justice**

It has two dimensions as the formulation of just laws and then to do justice according to it. While making laws the will of the rulers must not be used on ruled. Laws should be based on public opinion and public needs considering the core of social values, morality and the concept of just and unjust must be considered. It simply means rule of law and not the rule of person. Objective due dispensation of justice by the courts of law is an essential ingredient of legal justice

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Administration of Justice

Origin

The administration of justice in modern civilized societies has evolved through 4 stages:-

1. Primitive stage- when society was primitive and private revenge and self-help were only the remedies available to the wrongdoer, one could easily get the wrong redressed with the help of his friends and relatives, 'an eye for an eye, a tooth for a tooth and a limb for a limb.'
2. Elementary/Infant stage- it has been considered that law and state were at infancy level during this stage, and the feeling of security as a responsibility by the state towards its individual and his property was absent. It didn't have the enforcing power through which it could punish the wrongdoer.
3. The growth of Administration of Justice- a change was about to witness where a sought of tariff schedules were fixed for different kinds of injury and offenses. And up to that time justice mold as private in nature without the compulsive force of the state.
4. The modernization- it was the developmental stage where the state geared its authority and took upon itself the responsibility of administering justice and punishing the wrongdoer using its force whenever necessary. This stage owes its origin and growth to the gradual evolution of the state and its political power. And with its transformation, private revenge and self-help got substituted by the administration of criminal and civil justice through law courts.

Concept

"Men being what they are-each keen to see his own interest and passionate to follow it-society can exist only under the shelter of the State, and the law and justice of the state is a permanent and necessary condition of peace order and civilization."(**Salmond**)

Driving from the words of Salmond it is clear that administration of justice means justice according to law. Physical force of the state is the sole or exclusive factor for a sound administration.

Administration of justice is the firmest pillar of government, and granting justice is said to be the ultimate end of law and the goal of society, which the 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 as ordained in the constitutional document. Access to justice for the people is the foundation of the constitution. **[State of Haryana v. Darshna Devi, AIR 1979 SC 855, per Justice Krishna Iyer]**

Classification

Under the purview of administration of justice it is classified into two kinds:-

1. Civil justice

Blackstone called it as 'private wrong'. It has been defined as civil injuries where violation or infringement of civil or legal rights of an individual is taken into consideration. A civil case may result in an award of compensation or dismissal of the case. In jurisprudential term, the right of justice is enforced through the administration of civil justice which connotes enforcement and protection of rights as opposed to the punishment of wrongs.

The rights to be enforced under it may either be primary rights or secondary rights. Where the enforcement of **Primary rights**; is also called specific performance wherein the defendant is compelled to do the very act which is agreed upon to be done. For instance, payment of debt, or to perform a contract or restore land or property wrongfully taken or detained. It also connotes remedial rights under it, where the purpose may be either imposition of a pecuniary penalty upon the wrongdoer; or providing for pecuniary compensation to the plaintiff in respect of the damages which he has suffered from the defendant's wrongful act.

And on the other hand is the **Sanctioning rights**; where the right to receive pecuniary compensation or damages from wrongdoer may be of two kinds:- (i) restitution- here the defendant is compelled to give up or restore the pecuniary value or some benefit which he has wrongfully obtained. (ii) The penal redress, where it's not only

restoration of all benefits which the wrongdoer has achieved through his wrongful acts, but also a full redress for the plaintiff loses.

Section 9 of the Civil Procedure Code, 1908 defines a civil suit. The civil courts in India have the power to try all suits of civil nature excepting those the cognizance of which is expressly or impliedly barred. These courts can grant declaratory, prohibitory and momentary reliefs.

2. Criminal Justice

Blackstone stated it as 'public wrong'. The main purpose of administration of criminal justice has always been to punish the offender, while in certain general exceptional cases the accused may get acquitted. The nature of the violation of public rights and duties which affects the community as a whole is called a crime and a criminal proceeding results in applying on punishment varying from sentence of death to a mere fine or binding over the lawbreaker to keep the peace or his release on probation after admonition.

Under this, the magistrate has to decide the guilt of the accused on the basis of the evidence before him.

Theories of Punishment

Various theories are advanced in justification for punishing the offender. The view regarding punishment also kept changing with the changes in the societal norms. They are of following kinds:-

1. Deterrent theory

The term 'Deter' means to abstain from doing an act. While the main purpose of this theory is to deter the criminals from doing the crime or repeating the same in the future. Under this theory, severe punishments get impose upon the offender so that he abstains from committing a crime while it would constitute as a lesson to the other member of the society.

In the words of Salmond- punishment is before all things deterrent and the chief aim of the law of crime is to make the evil-doer an example and warning to all who are like minded as him. He further stated that offenses are committed by reason of conflict of interest of the offender and the society.

While this theory concept could be determined in the words of Manu from ancient India. According to him punishment or "dandh" are the

sources of righteousness because people abstain from committing wrongful acts through the fear of punishment.

2. Retributive theory

This theory is based on the principle-‘An eye for an eye, a tooth for a tooth...’ here, retributive means to give in return. The object of the theory is to make the criminal realize the sufferings of the pain by subjecting him to the same kind of pain, as he had imposed on the victim. The theory has been regarded as an end in itself as it only aims at revenge taking rather than sound welfare and transformation. Salmond puts his words stating that to suffer punishment is to pay a debt due to the law that has been violated. Revenge is the right of the injured person and the penalty for wrongdoing is a debt which the offender owes to the victim and when the punishment is given the debt is paid.

While this theory was never recognized as a just theory because it plays a role in self-motivation for committing a crime on the ground of justice for injustice. Overall it could be stated as it was a kind of abatement prompted by society to victims.

3. Preventive theory

The preventive theory is founded on the idea of preventing the repetition of crime by disabling the offender through measures such as imprisonment, forfeiture, death punishment, etc. In the words of Paton, ‘this theory seeks to prevent the prisoners from committing the crime by disabling him.’ It pre-supposes that need of punishment for crimes simply arises out of social necessities, as by doing so the community is protecting itself against anti-social acts which are endangering social order.

However, this theory was also not a just method as stated by jurist Kant and others that merely by awarding a term of imprisonment is not going to reduce the crime unless reformatory efforts are made to integrate him in the mainstream of society through the process of rehabilitation.

4. Expiatory theory

This theory is solely based on the concept of morality, rather being much more concerned with legal concepts. It emphasizes more on ancient religious perceptions regarding crime and punishment when prisoners were placed in isolated cells to repent or expiate for their crime or guilty from their core of the heart and the one who succeeded in doing so were let off.

This theory is based on ethical considerations due to which it lost its relevance in the modern system of punishment.

5. Reformatory theory

This theory emphasizes the reformation of offenders through the method of individualization. It is based on the principle of humanistic principle that even if an offender commits a crime, he does not cease out to be a human being. And an effort should be made to reform him during the period of incarceration. This theory is based on the principle of 'hate the sin, not the sinner.'

The focal point of the reformist view is that an effort should be made to restore the offender to society as a good and law-abiding citizen. The Supreme Court in the case of **T.K.Gopal v. State of Karnataka AIR 2000 SC 1669(1674)** stated that- the law requires that a criminal should be punished and the punishment prescribed must be meted out to him, but at the same time, reform of the criminal through various processes, despite he has committed a crime, should entitle him all the basic rights, human dignity, and human sympathy.