

AN OVERVIEW OF JUSTICE

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Abstract

The term justice is the vaguest relative term or variable which becomes coalesced with the truth from the different philosophical perspectives, economic determinative factors, political identity, religious values, socio-cultural recognition, and the like. As the truth changes; so does the justice. Nothing is permanent in the world. Even the environment changes at its own pace, let alone other superstructures. Due to all those multifarious phenomena, the concept of justice is also found to have been understood relatively and its cycle keeps on moving accordingly as it was in the past, as it is in this present and shall be in the future too accordingly. The objective of this research is to pinpoint an overview of justice in the past and present, which becomes exclusively associated with delivery of justice in the society at large.

Keywords: Justice, Remota justitia, equity, liberty, Dikaisyne, reasoning, human virtue, Civil and Criminal justice

1. Meaning and Definition of Justice

The Latin form of the term 'Justice' is Justus or Justia and it is from these terms that the word jus is derived having varying meanings such as "truth, morality, righteousness, equality, and fairness, mercy, impartiality, rightness, law, etc" (Dhyani 149). The literal meaning of the term 'Justice' indicates the fair treatment of the people. It also relates to the fair and proper administration of law. It is believed that 'Justice is not only concerned' about the subject of jurists but also centre philosophy of moral and social philosophy" (Silwal and Pradhananga 79). According to Rawls, "it is the first virtue of social institutions, as truth is systems of thought"(3).

St. Augustine in 'Remota justitia' has stated as 'quid sunt regna nisi magna latrocinia'. It means 'States without justice are robbers' bands enlarged' and earlier Plato had taken it as the mark of the society that 'it should be free from the dissension'. In this sense, justice is the bond of society, and without it no association of human individuals could subsist. Most of the classical thinkers have sought the key to the concept of justice elsewhere, and have construed in terms of rules or utility or equality; or, more recently have been concerned simply observe and record the different usages of the word 'just', without attempting articulate an account of why the same word should be used in so many different contexts.

As justice is considered as the perfect realization of the happiness, which correlates with happiness of others concomitantly so far as justice and its due execution and adjudication is concerned. When one is in the state of sheer of happiness; others should not remain unhappy. It means the purpose of greater happiness of the larger units should not be derailed by infringing other's liberty and freedom. Access to justice for all should be always accessible and amiable. No one should be deprived of the accessibility of justice. At the same time, the delivery of justice on time is a must. If justice not delivered on time means justice denied. There is a maxim – 'Justice delayed, justice denied'. It is also reiterated that the delivery of justice should be based on the nature of cases. That's why; Aristotle rightly contemplates that equals are equally treated and unequal are unequally treated. Aristotle further says that law without justice is dictatorship and justice without law is impotent. It means due process of law and procedure established by law ought to be strictly maintained while legislating, executing and adjudicating the law. Similarly, injustice anywhere there is a threat to justice everywhere. It means an ultimate goal of the law is to distribute the fair and impartial justice

under the separation of powers and checks and balances. Either justice is corrective or distributive; its major purpose needs to maximize the pleasure and minimize the pain and sorrow. So, the concept of the greatest of the largest numbers of the people living in the society at large has been principled under the utilitarian philosophy of justice by hedonist philosopher, J. Bentham.

Justice is meant in Plato's eyes that a man should do his work in the station of life to which he was called by his capacities. According to Plato, justice is an idea or attribute of mind which functions in its own sphere under the guidance of reason or conscience or capacity of doing something or holding the status inherently. That's why, "Plato rightly mentions that the men of gold are to become the rulers in his ideal wealth; they must be philosophers (for until philosophy and governmental power coalesce (come together), there will be endowed with absolute power to be exercised rationally and unselfishly for the good of the state"(Rawls 5). The men of silver are to be the military guardians of the state and are to assist the rulers in the discharge of their governmental duties. This is how, the first two classes, in order to be able to devote their full energy to public duties, must renounce family life and private property; all unions between men and women in these two classes are to be temporary and to be regulated by the state for eugenic ends. Similarly the members of the third and largest class, on the other hand, will be permitted to found families and to own private property under the strict supervision of the government.

As Sangroula points out "for Plato, individually justice is a virtue that makes a man self-consistent and good"(550). Socially, it is a social consciousness that makes society internally harmonious and good. Justice is in this sense is a sort of specialization works. Imply speaking, it is the will of the society which requires everyone to fulfil the duties of one's station and not to meddle with the duties of another station. Its habitation is, therefore, in the mind of every citizen who does his/her duties in his appointed place.

Socrates vehemently opposed this idea. Attacking the idea of Thrasymachus, he threw the light on the nature of justice. Justice implies a superior character and intelligence while injustice means deficiencies in both respects, he said, "just men are superior in character and intelligence and are more effective in action"(Sangroula 554). As injustice implies ignorance, stupidity and badness, it cannot be superior in character and intelligence. A just man is wiser because he acknowledges the principle of limit, he added. Socrates further contended that unlimited self-assertion is not a source of strength for any group organized for a common purpose. Unlimited desire and claims essentially lead to conflicts.

1.1 Concept of Justice in Greek Civilization

Greek civilization is considered to have been emerged from the Greek Dark Ages of the 12th - 9th Centuries BC. In ancient Greece, leaving aside the views of Sophists, the justice was derived from categories relating to the cosmos. It meant that justice was universal. Justice would not be injustice for others. And injustice would not be justice for other.

The following excerpt from writings of Anaxymander, testifies to the connection between cosmological and moral concepts:

Beings die in what in they arise from by the necessity, as they bear deserved punishment for injustice, in due course. Similarly, Beings arise from one principle (arche) and entering the cosmos (physis) fight with one another for domination but finally everything, by necessity, returns to the point of departure. The necessity is not only a physical but also a moral character which proves that there exists global justice. The justice, then, is a kind of 'objective measures of things', which in contrary to chaos sets the world in order. It is believed that this 'objective measure' made possible

to determine proportions to establish equilibrium between extremes and ‘to watch the order by guarding the borders which were once laid out and fall by right’. Nothing there was instituted by man. “Anaxymander’s task was to discover, and using the discovered measures the justice to set things in the world in which he lived in the right order”(325).

i) Platonic Concept of Justice

Plato was considered to have been the mouthpiece of his teacher, Socrates. In his philosophy, Plato gives a prominent place to ‘the idea of justice’. Plato was highly dissatisfied with the prevailing degenerating conditions in Athens. The Athenian democracy was on the verge of ruin and was ultimately responsible for Socrates’s death. The amateur meddlesomeness and excessive individualism became the main targets of Plato’s attack. This attack came in the form of the construction of an ideal society in which justice reigned supreme, since ‘Plato believed justice to be the remedy for curing these evils’. After criticizing the conventional theories of justice presented differently by Cephalus, Polymarchus, Thrasymachus and Glaucon; Plato gives us his own theory of justice according to which, individually, justice is a ‘human virtue’ that makes a person self-consistent and good; socially, justice is a social consciousness that makes a society internally harmonious and good. He used the Greek word ‘Dikaisyne’ for justice that comes very near to the work ‘morality’ or ‘righteousness’; it properly includes within it the whole duty of man. It also covers the whole field of the individual’s conduct in so far as it affects others. Plato contended that ‘justice is the quality of soul’, in virtue of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object and accommodated themselves to the discharge of a single function for the general benefit. Plato asserted that justice does not depend upon a chance, convention or upon external force. It is the right condition of the human soul by the very nature of man when seen in the fullness of his environment. It is in this way that Plato condemned the position taken by Glaucon that justice is something which is external.

Plato strikes an analogy between the human organism on the one hand and social organism on the other. Human organism according to Plato contains three elements-Reason, Spirit and Appetite. An individual is just when each part of his or her soul performs its functions without interfering with those of other elements. For example, the reason should rule on behalf of the entire soul with wisdom and forethought. The element of spirit will sub-ordinate itself to the rule of reason. Those two elements are brought into harmony by combination of mental and bodily training. They are set in command over the appetites which form the greater part of man’s soul. Therefore, the reason and spirit have to control these appetites which are likely to grow on the bodily pleasures. These appetites should not be allowed, to enslave the other elements and usurp the dominion to which they have no right. When all the three agree that among them the reason alone should rule; there is justice within the individual. Corresponding to these three elements in human nature there are three classes in the social organism. Philosopher class or the ruling class which is the representative of reason; auxiliaries, a class of warriors and defenders of the country is the representative of spirit; and the appetite instinct of the communities, which consists of farmers, artisans and is the lowest rung of the ladder. Thus, weaving a web between the human organism and the social organism, Plato asserts that functional specialization demands from every social class to specialize itself in the station of life allotted to it.

1.2 Theory of Justice by John Rawls

He is an American political scientist, a libertarian, supporter of social contract theory and founder of constitutionalism. He stands on justice, who has priority of liberty for all subjects. He states that there should be regular and impartial administration of public rules which is the essence of a just

legal system. One cannot think about justice without taking a position in Rawls's Theory of Justice. No theorist has made a greater contribution to legal philosophy in modern times than the political philosopher John Rawls. So, Rawls's theory of justice is one of the most important theories of justice. It is a fountain of illuminating ideas integrated together into a lovely whole.

Rawls' main principles of justice are discussed as follows, "Maximization of liberty" (35). Maximization of liberty has limitation. Maximization of liberty remains up to the limitation of itself by what other's liberty will not get interfered. "Equality for all" (36). Everybody's liberty is protected i.e. egalitarianism. a, basic liberty of the social life b, distribution of economic resources. "Equality of opportunity" (37). Liberty for those people, who are the least well off.

According to him, fundamental rights are treated as primary goods, which provide the basic structure of the society. His first principle is related to constitutionalism. It may be the framework of constitution. Similarly his second principle is concerning to constitution but all cannot be included in the constitution. So, making separate statutes (Acts, Rules etc.) can manage it.

Basic requirements of the society are justice and what the society requires the basic structure of the society. According to him, the task of justice can be discussed as follows, "a) Just allocation of advantage & disadvantage, b) Preventing the abuse of power, c) Preventing the abuse of liability & d) Just decision of dispute." (55)

Rawls perception of benefit is quite different from the utilitarianism. Pleasure is a must in Rawls's theory so far primary goods are concerned. Primary goods will be always in good position in Rawls's theory. He emphasizes the rational pluralism. Fundamental rights are treated as primary goods according to Rawls's theory of justice.

Rawls assumes that we are to agree on these principles of 'without knowing what our position in society will be' or what our idea of the good is. The point of this 'veil of ignorance' is to ensure that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similar situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain.

Distributive justice is related with equal distribution of property, substantive, legislative, goods etc. whereas corrective justice is related with remedial justice, procedural justice, interpretative, reformatory justice etc. Injustice can be done to avoid the greater injustice. Similarly, the theory of justice of Rawls also does not meet the requirement of localization.

2. Meaning of Administration of Justice

Administration of justice means justice to be administered under the due process of law or justice according to law. The function of the judiciary is to protect and enforce the rights of the individuals and to punish the wrong wrong-doers. This function is called the 'administration of justice'. "George Washington said that administration of justice is the firmest pillar of government. Law exists to bind together the community. It is sovereign and cannot be violated with impunity" (Mahajan 128). The state may lose its sovereignty without the proper implication of justice. So, the command of the sovereign is binding to all. "Salmond defines that administration of justice as the maintenance of right within a political community by means of the physical force of the state" (Myneni 112). This is how, the administration of justice implies three things: i, the state; ii, the law; and iii) securing obedience to law by means of the physical force of the state.

In every civilized nation, the independent judiciary has been universally recognized as an imminent and inevitable organ of the state. Not only because it settles litigations between citizens or between citizens and the state but also helps to maintain perennial peace and tranquility in the society. Thus it enables the state to pay less attention to the law and order situation in the country. The history of the modern judicial system of Nepal is not much old. After the end of the Rana regime of medieval character in the year 2007/1950 the Pradhan Nyayalay Ain of 2008/1951 came into force and the initial phase of the development process of modern judiciary started. Before that period judicial process of Nepal was conducted according to social structure, assumptions, custom and usages and predominantly the wishes of the then rulers. After the promulgation of the Pradhan Nyayalay Ain 2008/1951 the process of judicial administration was initiated by the Court itself and the concept of separation of power between the executive and the judiciary got its roots. Above all the concept that the judiciary should be free from control and interference by the executive was introduced and asserted. But the Act was a premature one and deficient of many elements and aspects of an independent judiciary. Since the execution of the Act alone did not contain the character of a Common Law System. It was felt everywhere that the Act was unable to meet the growing aspirations of complete justice. As a result, the Act was annulled and the existing Supreme Court Act 2013/1956 was promulgated which included the Concept of the independent judiciary, rule of law, and the worldwide recognized Common Law System for the administration of justice. Since then the developing age of the modern judicial system started in Nepal.

On the basis of above mentioned conceptual framework, the administration of justice in Nepal is going to be discussed, which are as follows:

3. Kinds of Administration of Justice

There are different types of administration of justice like administration of administrative justice, administration of environmental justice, administration of medical justice, administration of martial justice and so on. But specifically speaking, administration of justice can be discussed under the two categories i.e. 1) Administration of Civil Justice and 2) Administration of Criminal Justice.

1) Administration of Civil Justice

The procedure which is run to administer the nature of civil justice is known as the administration of civil justice. In other words, this is the process of administration of civil justice under the civil procedure in case of violation of all those civil rights conferred by the civil law of the state. In a civil case there are issues as to whether civil rights (arising out of contract, quasi-contract, tort or innominate obligation) were affected or violated, whether the plaintiff is entitled to any relief, and if so, about the nature and quantum of the relief, which are administered in civil courts. Basically, the administration of civil justice takes place in order to restore all those infringed rights of natural persons and legal persons relating to proprietary or monetary matters. According to Salmond, the enforcement of the sanctioning rights is 'sanctional enforcement'. Sanctioning or remedial rights are those rights which come into being after the violence of a (primary) right. For an instance if one makes a contract with a man for some purpose, then he has the right to get the contract fulfilled and this is a primary right. But if the other party does not fulfill the contract and makes a breach, the contracting party has a right to receive damages from him. This is a sanctioning right. If the primary right is enforced, there is no question of sanctioning right.

National Civil Procedure (Code) 2074/2017 has also described about the concept of administration of the civil justice. The definition of civil case has envisioned about the nature and scope of civil proceedings.

Civil case means a case related to a legal right, obligation, status, post, family relation or property, other than a case defined by law as a criminal case, and also includes a case on any of the following matters:

- (1) Establishment of relationship, or divorce,
- (2) Fee, remuneration, salary, allowance or wage,
- (3) Partition, succession, donation, gift, guardian, curator, paternal authority, adoption,
- (4) Any right or claim under any contract, quasi-contract or unjust enrichment,
- (5) Any right or claim relating to tort, quasi-tort or defective product,
- (6) Servitude,
- (7) Compensation and
- (8) Any other matter of civil nature. (Government of Nepal 76)

2) Administration of Criminal Justice

As it is known that the scope of the administration of criminal justice is very wider than administration of civil justice. In case of before occurrence of crime or after the crime if the juristic arrangement is made so as to ensure security, peace and tranquility in the society by charging penalty against the criminal or wrongdoer, such judicial administration is known as the administration of criminal justice. The prime objective of administration of criminal justice is to prevent crime in the society and state by giving coercive sanction to the criminals and wrong doers. It is believed that an act of severe punishment to the criminals, others are deterred by fear from infringing the penal law. Similarly, the punishment minimizes the crime by reforming the character of the criminal. According to Bentham, the main ends of punishment are prevention and compensation.

To understand more pertinently about the crime, theory of punishment and criminal law, it is better to go through the definition of J.C. Smith and Brain Hogan. According to them:

The criminal law assumes... that people have it in their power to choose whether to do criminal acts or not and that he who chooses to do such an act is responsible for the resulting evil. The law further assumes that the evil which might result from particular crimes can be nicely measured and graded, so that we have an elaborate scale of permissible punishments, varying from life imprisonment to a mere fine. (5)

The punishment is found to have been determined as per the gravity of the crime and mens rea of criminal. This is how, it also discovered that “in the case of the administration of criminal justice, the judgment of the court relates to the punishment only which may range from the death penalty to fine with an objective of punishing to evil-doer” (Aggarwal 71).

In a criminal case, the accused is on trial for the offense under the criminal court. The Country Criminal Procedure (Code) Act 2074/2017 has specifically mentioned the criminal case by defining it. According to that statutory provision of Criminal Code, Criminal Case means a case relating to an offense under Schedule-1, Schedule-2, Schedule-3 or Schedule-4, and this term also includes any other case, except a case on the following matter:

- (1) Case relating to legal right, status, post, family relationship or property,
- (2) Establishment of relationship or divorce,
- (3) Fee, remuneration, salary, allowance or wage,
- (4) Partition share, inheritance, donation, gift, will, guardianship, patronship, authority, adoption,
- (5) Any right or claim under any contract, quasi-contract or unlawful enrichment,
- (6) Any right or claim relating to tort, quasi-tort or defective product,
- (7) Servitude,
- (8) Damages, or
- (9) Any other right or liability of civil nature. (Government of Nepal 75)

Conclusion

Justice is an abstract variable that varies according to the multidisciplinary concepts and interests of society. Broadly speaking, justice remains oscillated with the different scholastic notions of jurisprudence. That's why justice is perceived as a metaphysical or virtuous matter under the natural school of law whereas it is known as a-posteriori recognition under positivism. Historical perspective regards justice as customary or conventional values and sociological school of thought describes justice as balancing the heterogeneous interests within little friction and little waste. Similarly, it is termed as an economic determinative factor under the socialist school of law whereas it is believed as judicial values under court activism and so on. The idea of justice is found to have been associated with multi-faceted dimensions from classic to modernity. The modus operandi of justice differently becomes preceded under civil and criminal justice. Hence, the idea of justice is to be dealt with the law as a means and society as an end.

Works Cited

- Aggarwal, Nomita. *Jurisprudencr (Legal Theory)*, 11th Edition, Central Law Publication, 2019.
- Dhyani, S.N. *Fundamentals of Jurisprudence The Indian Approach*. 3rd Edition, Central Law Agency, 2004.
- Government of Nepal. *National Civil Procedure (Code) 2074*. Law Book Management Committee, 2074.
- Government of Nepal. *The Country Criminal Procedure (Code) Act 2074*. Law Book Management Committee, 2074.
- Mahajan, V.D. *Jurisprudence and Legal Theory*. 5th Edition, Eastern Book Company, 1996.
- Myneni, S.R. *Jurisprudence (Legal Theory)*. 2nd Edition, Asia Law House, 2017.
- Rawls, John. *A Theory of Justice*. Universal Law Publishing House Pvt. Ltd., 2008.
- Sangroula, Dr. Yubaraj. *Jurisprudence, the Philosophy of Law*. Lex and Jurist Publication Pvt. Ltd., 2018.
- Siwal, Kisor and Ranjitbhakta Pradhananga. *General Outline of Jurisprudence*. 5th Edition. Ratna Pustak Bhandar Publication, 1993
- Smith, J.C. and Brain Hogan. *Criminal Law*. 7th Edition. Lexis Law Publication, 1992.