

## CHAPTER I

### JUSTICE AND ADMINISTRATION OF JUSTICE

One of the most important and indispensable functions of a State is administration of Justice. Justice is an attribute and characteristic of civilized society. The concept of justice is as ancient as the advent of human race though the formal dispensation of justice has undergone a constant evolution. While living in society, situations involving conflict of interest between individuals and group of individuals is bound to occur and hence right from the advent of human life the quest for justice has begun and is bound to continue as an endless process.

## I

### JUSTICE DEFINED

"Justice" is intended to be the goal of law. As SALMOND puts it,\*\*1 Law is an instrument of society, what then does the law aim to achieve is justice. In other words, as AUGUSTINE puts it "An unjust law is no law".

"Justice" however is a word, which needs to be seen in context, in a wider sense – justice is nearly synonymous with morality and in actual dispensation of justice one or more area of morality is involved. Thus, justice is done when a criminal is convicted or a person committing breach of contract is directed to pay damages because non-interference with such act will be immoral too. However, all concepts relating to "morals" automatically can not be enforced in form of justice unless it has been formalized into law.

As against this in narrower sense the concept of justice can better be understood by referring to its converse "injustice".

---

\*\*1 SALMOND ON JURISPRUDENCE, PAGE 60, 12<sup>th</sup> EDITION

While instances of injustice occur, quite often in everyday life the administration of justice as made by State can not recognize of remedy all such situation.

Justice in the context of Social Justice\*\*2 operates at two levels. Initially it is "distributive justice" where the objective is to secure balance of equilibrium among members of society, as is done by various laws. However, if such balance is attempted to be distorted then comes the "Corrective justice" aiming to redress the wrong.

PLATO\*\*3 gave basis of justice as what was right both in conduct of individual and State. According to ARISTOTLE, justice was what was fair and equitable. Thus Plato believed in distributive justice as compared to corrective justice advocated by Aristotle.

The concept of justice can not be taken on eternal and irreversible dictums. As KOHLAR states\*\*4 law and justice varies with the time and place..

"Law that is suitable for one period, place or culture is not so for the another and we can strive to provide every culture with its corresponding and appropriate system of justice".

HEINRICH ROMMAN has defined law as instrument to promote justice. According to him, "Law is based on reason and not mere will men must do that is fair and law must promote justice."

Aristotle stated "the true relation between Law and Government is secured by making the law sovereign and the government its servant.

---

\*\*2 PREAMBLE OF CONSTITUTION OF INDIA

\*\*3 REPUBLIC OF JUSTICE BY PLATO.

\*\*4 KOHLAR PHILOSOPHY OF LAW

## II

# **VARIOUS APPROACHES TO THE CONCEPT OF ADMINISTRATION OF JUSTICE**

## **A. JUSTICE AND RELIGION**

Religions, irrespective of their origin or philosophy aim at differentiating between the virtues and the vice and abhors its disciples to follow the virtuous path and assures permanent well being after death in form of "Swarga" or "Jannat".

Hinduism, with its vedic origin can be considered to be the most ancient religious philosophy. A reference to Hindu Scriptures and Scholars reiterate that one should follow the path of "Dharma" to achieve "Moksha". The word "Dharma" as explained by Dr. Shanker Dayal Sharma is derived from "Dhar" which denotes upholding, supporting – that which upholds in Dharma.\*\*5

In the Vana Parva of Mahabharata, verse 58 in Chapter – 69 is said:

"Dharma" is the stability of the Society, the maintenance of social order and general well being and progress of mankind. Whatever conduces to the fulfillment of these objects is Dharma.

Rig Veda states that the Law and Truth are eternal born of sacrifice and sublimation. CHANAKYA had stated\*\*6 i.e. Law and Morality sustain the word. KAUTILYA in his Arthashstra has described Dharma as the basis of securing and preserving power over the earth.

\*\*5 JOURNAL OF BAR COUNCIL OF INDIA 1994 ISSUE.

\*\*6 CHANAKYA SUTRAM 234

Islam believes in the concept of doctrine of servitude in the matter of good and evil. As ordinary mortal human being, one can not understand what good and evil are, unless a divinely inspired prophet guides one in the matter. One must do what is good and avoid what is evil. This is the Law of Shariat which refers to totality of Allah's commandments\*\*7. Shariat governs all human activity.

The Christianity defines Law as a gift from divinity which is written in hearts of all men, obliging them to do those things which are necessary or consonant to the rational nature of mankind and refrain from those things which are repugnant to it.

Buddhism puts stress on pursuit of divine knowledge as against the worldly affairs. As a religion, Buddhism teaches fairness to the fellow human beings and following the path of virtues. Justice and respect for justice has to come from within as a first choice and only when it does not the intervention by the State becomes necessary.

The Jainism believes in winning over conscience of other by one's own will power without inflicting violence. It firmly believes that a person can be referred by "Ahinsa" which is the superior among all the religions. Mahatma Gandhi's philosophy is deeply influenced by the same.

## **B. JUSTICE AND SOCIETY**

Law is a social phenomenon and in a civilized society the human beings are interested in maintenance of law and justice. In a civilized society, as per DEAN ROSCOE POUND\*\*8 "Men must be able to assume that all citizens will be subject to rule of law, the law being far more than a bundle of abstract norms. It is more a process of balancing of interest, by removing conflicts and for rendering greatest benefit to the society with minimum of conflicts". Dean Pound advocates the concept of "Jural Postulates" as a guiding factor.

---

\*\*7 QURAN

\*\*8 DEAN ROSCOE POUND-JURISPRUDENCE.

Law thus is a means to an end, the end being the ultimate and lasting good of largest number in the society, while preserving the basic edifice of individual's urges and aspirations. While the areas in which the society can expect the "Justice" should be done, can not be exhaustively defined, one can certainly include the most prominent of them, viz.

- (i) General Security of individuals
- (ii) Security of Social institutions like marriage
- (iii) Security of morals of community by protection from dishonesty, corruption etc.
- (iv) Preservation of Social resources.
- (v) General progress and developments of its members.

During last 3 to 4 centuries, all civilized societies have undergone drastic reforms. With growth of economy and industry new equations have emerged. The views of KARL MARX, who advocated "classless society", reflect the change. He advocated State control and distribution of wealth because classless society was the solution of most of the problems. However, the recent development in Russia and China has revealed the limitations of this concept. The law and concept of justice has to keep pace with the changes that take place in the society. The needs of the society change with the society and any efficient and serviceable legal system must be able in its development to take account of such new requirements. In such cases, if law is not flexible or unalterable, violence and chaos will impose the change and hence in a constructive sense law can be an instrument for a peaceful change and revolution.

### C. JUSTICE AND STATE

"State" is people organized for law within a definite territory.\*\*9 The social contract theory explains the emergence of State as a result of an agreement

---

\*\*9 WOODROW WILSON QUOTED IN BOOK ON JURISPRUDENCE BY V. D. MAHAJAN.

entered into by men who parted with their natural liberty to obey the laws prescribed by the Government and in turn getting certain assurances of protection from the State. Sir HENRY MAINE\*\*10 in patriarchal theory has explained State as extended notion of family.

Though the emergence of 'State' in society cannot be explained uniformly, one is more concerned with its attributes or functions. According to SALMOND protection from external aggression and administration of justice are two primary functions of the State. The State regulates the aforesaid functions for its members. The will of State is conceived, formulated, expressed and implemented through the machinery of Government. Such Government function through 3 arms namely the legislature, judiciary and executive. The State thus covers both the Government and the governed. Modern State as organization is having considerable complexity. Constitutional law is the body of those rules which determines the constitution of State, the powers of various organs of the State like executive, legislature and judiciary and lays down the demarcating line for their respective areas. "Justice" finds its place in the Constitution itself and this ultimate objective of justice is to be achieved through various laws, which creates rights and liabilities.

A mere declaration of Justice will not suffice unless it is sought to be achieved in real sense. As SALMOND\*\*11 observed:-

"However orderly a society may be and to whatever extent men may appear to obey the law of reason, the element of force is none the less present and operative. A society in which the power of the State is never called into actual exercise marks, not the disappearance of governmental control, but the final triumph and supremacy of it".

---

\*\*10 ANCIENT LAW BY SIR HENRY MAINE

\*\*11 SALMOND ON JURISPRUDENCE 12<sup>TH</sup> EDITION.

---

The State therefore, is a vital and indispensable vehicle to achieve "justice". In first instance, the State formulates various laws and policies, which aim at achieving justice or preventing injustice. In its subsequent role the State creates the machinery through which such policies or objectives of laws are to be really achieved and an attempt to distort or defeat such object is to be discouraged or punished, if required.

#### D. JUSTICE AND CITIZENS

Citizens or in a wider sense all individuals are connected with justice and its orderly administration. First of all the very concept of justice and law, inspires faith in human beings that certain situations, acts or omissions will be handled, tackled or dealt with in a particular manner by the State. As Dean ROSCOE POUND puts it "In a civilized society men must be able to assume that others will make good reasonable expectations which their promises create" \*\*12

From an individual's point of view, Justice though a dominant, cannot be only possible or desirable goal of law. The law while on one hand should have uniformity and should also have in-built flexibility. Any objective and fair system of dispensation of justice should be governed by uniform laws so that the citizens can plan in anticipation, their activities with a measure of certainty and predict the legal consequences of his or other's behavior.

On the other hand as SALMOND\*\*13 puts it "No rule can provide for every possible case". Flexibility therefore, is necessary to enable the law to adapt to changes and keep some element of discretion so that while doing justice, the very purpose of justice is not defeated. The enforcement of law from individuals point of view also assumes importance. In the words of JOHN AUSTIN "the laws are

---

\*\*12 ROSCOE POUND, JURISPRUDENCE

\*\*13 SALMOND ON JURISPRUDENCE 12<sup>TH</sup> EDITION.

commands of Sovereign, prescribing a code of conduct and can be enforced by sanction of the State". Though the imperative theory of law advocated by Austin cannot be accepted in totality, from individual's point of view there is an estoppel against State from enacting post facto laws, which will deprive him of his property or liberty. Nevertheless in its pace to achieve the larger social and national objectives such laws at times have been enacted and even upheld.

The preamble of Constitution of India also expresses a solemn resolve to secure to all its citizens Justice, Social, Economical and Political. The term "Justice" here is a guiding light to the State for all its executive actions. However, with population of nearly 90 crores, situations are bound to emerge where an individual or group may be confronted with similar other group for achieving what both of them call "Justice". The recent decision on "reservation for OBC"<sup>\*\*14</sup> sparked off lot of controversy and caste wars and Supreme Court had to do the balancing act by striking down some of the provisions of the Ordinance. As Prof. ALLEN C. CAMP<sup>\*\*15</sup> puts it, "Social Justice has no definite content and it means different things to different people".

## II

### **JURISPRUDENCE AND JUSTICE**

The law and its system today though vast and voluminous can be traced back to certain fundamental legal principles. The law in any form must have some basis. What is based on wisdom is profound and lasting, what is based in justice will be respected for ages, what bespeaks of truth will withstand all obstacles<sup>\*\*16</sup>. The things based on mere convenience or which suits a particular class will breed discontent and ultimate chaos.

<sup>\*\*14</sup> MANDAL COMMISSION REPORT

<sup>\*\*15</sup> ASPECTS OF SOCIAL JUSTICE BY PROF. ALLEN C. CAMP

<sup>\*\*16</sup> M.J. SETHNA – JURISPRUDENCE PAGE -P1



The aim of justice as per ARISTOTLE is giving each man with his just due providing equality of opportunity and equal treatment to equals. It also aims at punishing criminal or providing restitution and remedies for civil wrongs. Jurisprudence thus acts as a connecting nexus between "Natural Justice" means what is based on human nature at all times and "Legal Justice" means what the state gives to its subjects. The justice governs the State itself and that is why it commands faith and respect from all.

Thus the forms in which the law is administered or the forums which administer such law may differ. There are certain universal and well-recognized postulates, which differentiate between a right and a wrong, and if it wrong, the state is expected to correct. Such universal principles pertaining to justice finds place in jurisprudence, which is described as "Science and Philosophy of Laws and Justice". The analysis of this basic postulates is extremely useful for this thesis because the judicial system is often criticised as one which looks at form, rather than substance and sometimes it is counter productive for the very purpose of justice. As Chief Justice COKE said "wisdom of law is wiser than any man's wisdom". Rule of Law seems to be synonymous with the maintenance of civilized existence\*\*17. While jurisprudence analyses the causes and contributory factors as to how the law evolves in its present form, justice aims at providing to an aggrieved individual what is due or from the view point of the State what it should do when the law enacted by it is violated. As law comes to be regarded as a process of decisions in which men use institutions to shape norms, to interpret them and to enforce them, it becomes obvious that many gaps in our knowledge had to be filled \*\*18. Thus applying the law in a given situation, for rendering justice, also involves understanding in depth the true background of law from the view point of jurisprudence. LEO

---

\*\*17 LAW AND CHANGING VALUES, JAWAHARLAL NEHRU'S SPEECH AT INTERNATIONAL CONGRESS OF JURISTS.

\*\*18 CRIME LAW AND SOCIETY BY ABRAHAM GOLDSTEIN & JOSEPH.

---

LEO TOLSTOY observed "The seeds of every crime are in each of us", which means to an extent there is a need on part of every individual to make objective self-introspection before blaming the system or others.

## **IV**

### **EVOLUTION OF CONCEPT OF JUSTICE**

Human beings are social animals. While they live in society, situations are not uncommon that a conflict of interest will arise because every human being has to a lesser or greater extent, some element of selfishness. Thus origin and growth of justice is interconnected with the origin and growth of mankind\*\*19

The religious origin of the concept of justice is explained in greater detail while discussing "justice or religion" (page 3 of this thesis). The earliest known history of civilised mankind can be traced back to Mohenjo Daro. The excavations of Mohenjo Daro have revealed that civilisation of a very high order flourished in India at least five thousand years ago. The Vedic literature supplemented by other evidence provides the vital information as to how the system prevailing today draws its analogy from the system as it then prevailed. As observed by Shri Gopaldas Khosla\*\*20 "we have number of technical books which while dealing with political science includes administration of justice. The best known are Dharmashastra of Manu, Smritis of Narada, Brihaspati's Dharmashastra, Mahabharata, Ramayana, Panch Tantra." The principles enshrined in such scriptures hold good in today's context also. In subsequent stages the reference can be made to systems during the Gupta and the Maurya Dynasty. Megasthenes was attached to the Court of Chandra Gupta Maurya. Fa-Hein also has referred to the system in India. Later Huan-T-Siang has referred to the conditions prevailing in India.

---

\*\*19 V. D. MAHAJAN, PRINCIPLES OF JURISPRUDENCE, PAGE 156.

\*\*20 OUR JUDICIAL SYSTEM – CHAPTER ON COURTS IN ANCIENT INDIA.

The courts of law in India were held in high esteem. The court houses were looked upon as a sacred place and was open to everyone. There was a strict code of conduct even for the Judges (Kautilya – Arthashastra). "When a judge threatens wrongly or misbehaves, he shall be first punished."

With the growth of other civilization Ancient India's lead in contributing to the process slowly diminished. England, France and Greece became the major countries to contribute in the process. The growth of common law and equity in England, the views of Plato and Aristotle have indeed made significant contribution to mould and share the system in its present form.

With specific reference to India, the Britishers dominated and ruled India and several other countries. The prevalent system in India owes its origin to them. With independence, the dimensions of justice have undergone change. The preamble of constitution has provided for economic, social and political justice to all citizens and hence new concepts like "Public Interest Litigation"<sup>\*\*21</sup> have emerged.

The evolution of Justice is a constant and ongoing process.

## **V**

### **RELATIONSHIP OF LAWS WITH JUSTICE**

All laws aim at the goal of justice but it is an ideal abstract statement if one is confronted with many of the situations today. As per Prof. W. FRIEDMAN<sup>\*\*22</sup> "The law must aspire at certainty, at justice, at progressiveness but these objectives are constantly in conflict with one another. What the great judges and jurists have taught is not infallible knowledge, or a certain answer to all legal problems but an awareness of the problems of contemporary society and needs reforms accordingly".

---

<sup>\*\*21</sup> JUSTICE GULAB GUPTA-BOOK ON PUBLIC INTEREST LITIGATION.

<sup>\*\*22</sup> LAW IN A CHANGING SOCIETY BY PROF.W. FRIEDMAN.

Justice Krishna Iyer\*\*23 observes "The framers of our Constitution conceived of the Indian Judiciary as an instrument of peaceful revolution. To fall short of that profound expectation is to fail the Justice".

Justice Beg\*\*24 observed:

"Our Judges are the constitutionally authorized exponents of what may be described as the "religion" of Secular State, summed up by the word "justice". There is therefore on one hand call for caution and carefulness on their part in expressing their views. On the other hand, there is a much greater need for them than there was in the past, to be conversant and concerned with problems of national welfare in all departments of life."

Law thus acts as an arm of the State to achieve justice. The laws thus act as a vehicle to provide justice, not on selective basis but as a duty. Article 38(1) of Constitution\*\*25 provide under directive principles of State policy:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economical and political, shall inform all the institutions of the national life."

The judicial system and laws thus have a dynamic role to act as Catalyst for process of reforms and development.

Rabindranath Tagore, also emphasized the pro-poor justice in following words:

"The weakness of the poor has so long kept the civilization weak and incomplete; they must set this right by consequence of power."

While promoting the cause of justice in its present day context, one cannot be unaware of the perils involved. Rajiv Gandhi in one of his speeches stated

---

\*\*23 INDIAN JUSTICE – PERSPECTIVES AND PROBLEMS, PAGE 15.

\*\*24 SPEECH IN ALLAHABAD HIGH COURT CENTANARY CELEBRATIONS BY JUSTICE BEG.

\*\*25 CONSTITUTION OF INDIA, ARTICLE 38.

"Justice as it is accepted by the people, is what really counts. A judge can rule on the law but it is really a rebel who tests the law"\*\*\*26. The analysis of the views of the great thinkers and leaders referred above clearly reveal that:

1. Law is not a static phenomenon it has to change with the time.
2. Justice is the goal of law. What is just can differ depending on the context.
3. Justice in the first instance aims at bringing the reforms by enacting proper laws.
4. When the imbalance exists or the laws are thwarted, the justice is done by striking the balance.

### **SUBSTANTIVE AND PROCEDURAL LAWS:**

In the process of rendering justice, one has to be governed by well-defined and uniform system of laws. Substantive law is concerned with the ends, which the administration of justice seeks. Thus as Shri M J SETHNA\*\*27 observes, substantive law is the law which deals with substantive rights and remedies. For example, it tells us what constitutes a valid contract. However, a mere statement of rights and remedies will remain a dead letter till such time it is transformed into a well knit, well defined procedure which one is required to follow to achieve the goal of justice. While the substantive law deals with the subject matter of litigation, the procedural law as Salmond defines is "the law which governs the process of litigation. It regulates the conduct of affairs in course of judicial proceedings"\*\*\*28 If litigation is to be conducted and concluded, the Court of Justice must have some kind of rule or usage, which will lay down the system and manner in which the matters can be contested within a reasonable bound. POLLOCK\*\*29 is of the view that rules of pleadings and rules of evidence constitutes most important branches of law of procedure. While the former refers to the questions before the court for decision, the latter refers to its proof.

---

\*\*26 QUOTES OF RAJIV GANDHI – UBS PUBLICATION.

\*\*27 JURISPRUDENCE BY M. J. SHETHNA, PAGE 632.

\*\*28 SALMOND, JURISPRUDENCE.

\*\*29 JURISPRUDENCE AND LEGAL ESSAYS BY POLLOCK.

---

## **VI**

### **IMPORTANCE OF JUSTICE**

#### **A. JUSTICE AS INDISPENSABLE FUNCTION OF THE STATE:**

State, Law and Justice in present day context are interconnected. Administration of justice is an indispensable function of the State. When we refer to one, the other necessarily comes into picture. Thus, the State functions and expresses its policy through law, the law is an instrument to provide justice and law and justice assume importance because it has the sanction of the State. But situations are not uncommon where one wing of the State say Executive in exercise of its powers initiates certain actions, which are not in conformity with the laws. Judiciary has the role of doing the balancing act. Thus while state is superior and creator of the law, some basic concepts of justice are even anterior to State and they need to be preserved and protected. As per DUGHIT\*\*30 Social solidarity is the aim of law and State. DICEY says by "rule of law" what we mean is law is supreme and there is no arbitrary power in the State. Its fundamental law thus binds the State itself. The "basic structure" of the constitution\*\*31 is something which the State has no authority to alter by legislative action. The concept of sovereignty is based on the principle that the power of State over its subjects is absolute and there can be no limitations upon it except the matter of prudence and policy.

The modern State is the source of all laws and there can be no restrictions on such law making power, Marxist theory however, does not recognize such right and attributes partiality to the State itself. They say that the State simply reflects the dominance of one class over the other class of the society and power of State is exercised to protect the interest of dominating class. It is not true because the power of State can be constructively utilised to bring reforms which otherwise will be imposed by violent revolutions. In all the cases, a Sovereign State exercises

---

\*\*30 LAW AND STATE BY DUGHIT

\*\*31 KESHVANAND BHARTI V/s. STATE OF KERALA AIR 1973 SC 1461

its power of administration of justice through its judicial organ and the authority can not be delegated nor the duty can be abrogated.

Prof. Upendra Baxi differentiates between "Power of Justice" and "Justice of Power". According to him.\*\*32

"In the discourse of the law, justice is merely the aspect of power, Justice, according to the law is that justice which people holding power of the State may consider it necessary or justified to provide. The expectation is that when power defines justice it will enforce its definition."

Thus, the State itself has some specific goals and objectives, its own perceptions and notions of where the justice lies in a given situation and enforces it through its judicial organ.

## **B. JUSTICE – SOLEMN COMMITMENT TO PEOPLE**

Human civilization has its first and lasting intimacy with justice though the notions, dimensions and goals of justice have undergone radical changes from time to time. Justice was the highest interest of the man on earth. At any rate it is something which men seek it persistently, fight for it resolutely, expect confidently from the Ruler and the denial or absence of which they resent bitterly.

However, expressions of all men do not possess the proficiency to define it, even those who have such proficiency can not translate the term in cohesive manner. HAROLD POTTER\*\*33 has hence observed.

---

\*\*32 JUDICIAL DISCOURSE: DIALECTICS OF THE FACE AND MASK, JOURNAL OF INDIAN LAW INSTITUTE, JANUARY 1993

\*\*33 JUSTICE V/s. JUSTICES, BY JUSTICE ASHOK A. DESAI QUOTING HAROLD POTTER.

**"Most men think that they understood the meaning of justice but their notions appear to be vague."**

**Unfortunately, some people at times enjoying dominating position in public life know what justice demands but when the choice is between justice and self interest, they not only sacrifice justice but even try to impose justice as per their convenience and norms. Such colorable form of justice defeats the very purpose of justice because "Justice is the virtue by which give to every man what is his due, opposed it injury or wrong. It is either distributive, belonging to magistrates, or commutative, respecting common transactions among men."\*\*34 Justice therefore, is a commitment of the State to people, and the people in turn have reciprocal obligations to lead their life and transactions in such a manner that they do not contradict or violate the provisions of law. If it is violated, the consequence in form of penalty or punishment is bound to follow after due opportunity being given to explain or establish innocence. State exists for the individuals and not the individuals for the State. The Government must provide stability as well as progress. The Government should be run by people who are selfless, un-egoistic, scrupulously honest and capable.\*\*35**

**The above characteristics of ideal rulers are rarely seen in most of the present day rulers and hence we find that people's faith in their capacity to fulfill the solemn commitment to provide justice also is terribly shaken. Even then people have the faith in the law enforcing body, that is the judiciary that justice will ultimately be done.**

---

**\*\*34 WHARTON'S LAW LEXICON (PAGE 552)**

**\*\*35 SHRI AUROBINDO CITED IN WE THE PEOPLE BY N. A. PALKHIWALA  
PAGE NO.262.**

---



### **C. JUSTICE – A VITAL INGREDIENT OF FUNCTIONING OF STATE**

#### **(THE SYSTEM'S APPROACH)**

State is a system, a vibrant functioning system of which all countrymen are part. Various organs of the State like Executive, Parliament and Judiciary, are sub-systems of the State and systems within themselves. Notion of system is that it is a system of elements which interact or are inter-related in a more or less orderly and predictable fashion.\*\*36 Thus, judiciary and courts comprise of a system of which judges, lawyers, litigants are the elements. All systems except universe have boundaries and outside the boundary is system's environment. The legal system also functions within the boundaries laid down by the State. The boundaries of the judicial system can be defined as the allocation of authority and jurisdiction, which the courts further define by justifiability. The system to function will need inputs and will produce output. The input is in form of the demands, supports, expectations reflected in the litigation. The output in form of judgements again has an impact on a larger system including the system itself. Since the systems are interconnected, any disturbance, problems or imbalance with one ingredient of the system has the impact on all other ingredients. Thus the stresses and strains on judicial system too has an impact on the State.

The following diagram illustrates the judicial system as sub-system of the State.

---

**\*\*36 THOMAS P. JOHNGIR AND SHELDON GOLDMAN – FEDERAL JUDICIAL SYSTEM.**

**ENVIRONMENT**  
**SOCIAL, POLITICAL AND ECONOMICAL**  
**STATE**

<b><u>Executive</u></b>	<b><u>Legislature</u></b>	<b><u>Judiciary</u></b>
Exercises Powers as Per laws	Enacts the laws	Interprets the laws in context of the facts
<b><u>Output</u></b>	<b><u>Output</u></b>	<b><u>Output</u></b>
Decision to Achieve Policies	Laws to achieve the objectives of State	Judgements which make impact on litigants and others also
Feedback		

## **VII**

### **LAW, JUSTICE AND EQUITY**

"Equity" in its broad and philosophical sense means to do to all men as we would that they should do unto us. In its stricter sense it expounds and limits the language of positive laws and interprets them not according to their strict letter and words, but rather in their reasonable and benignant spirit. Equity is the correction of mere law where mere law fails on account of its universality, the correcting balance to achieve goal of justice comes in form of equity.\*\*37 Law and equity aim at the common goal namely promotion of justice and preventing miscarriage of justice.

---

\*\*37 ARISTOTLE DISCUSSION ON MORAL EQUITY AND ETHICS.

### A. COMMON LAW AND JUSTICE

"Common Law" "Lex Communies" is used in two different senses, both together explain its role in process of justice. In the first sense, it is used in contradiction to the statute law, and hence denotes written or unwritten law. Whether legal or equitable in its origin, which does not derive its force from express declaration or the will of the legislature. Even then it has the same force and effect as statute law. The sanction and authority for it depends in form of recognition given by the law courts to principles, customs and rules of conduct previously existing among the people. The recognition for common law was formerly enshrined in the memory of legal practitioners and litigants and the reported judgements which embody decisions with reasons".\*\*38 In the second sense it is compared with equity, means to law which prior to the Judicature Act was administered in three superior courts of England.

Fairness and Justice are almost synonymous. The laws do not generate justice. The law is nothing but declaration and application of what is already just.\*\*39 Since the law can not envisage all the situations that may emerge during its implementation, and lack of flexibility in applying law by thumb rule in such situation will defeat justice, equity provided the much needed flexibility and gives helping hand to achieve its avowed objective of Justice.

### B. "EQUITY HELPS THOSE WHO COME WITH CLEAN HANDS"

Equity is that idea of justice, which contravenes the written law for the cause of justice. However, under the guise of seeking equity or equitable relief, thousands of litigation are filed, to sabotage, circumvent and defeat the very purpose of law. The provisions for malicious prosecution, perjury or compensatory costs hardly grants any relief to this vicious phenomenon and it has weakened the very edifice of justice.

---

\*\*38 ODGER'S ON COMMON LAW,

\*\*39 ARTICLE DELA JUSTICE, DANS LA REVOLUTION. JOSEPH PROUNDHON

There is nothing more horrible than the murder of a beautiful theory by a brutal gang of fools. Unfortunately what is happening in the system today is that the evidence, procedure and trial cause miscarriage of justice. The need therefore is that we should not investigate facts by the light of arguments, but arguments by the light of facts. Facts do not cease to exist because they are ignored. The need of time is therefore to scrutinise at the very primitive stage of litigation whether the golden rule of "clean hand" is complied. The litigants who go for fishing expeditions, who resort to litigation to protect their own wrongs and who take shelter of the procedure and laws and tactfully frustrate the purpose of law need to be discouraged, no matter howsoever cleverly their lawyers put up the facts.

### C. DELAY DEFEATS EQUITY

The law expects the subject to be vigilant and prompt in enforcing their rights or seeking legal remedies for the wrongs they suffered. The reasons for the same are many. The courts can not be expected to wait infinitely to do justice to a litigant who is not diligent. The evidences, proofs and other details may also become obsolete or loose context. The maxim finds its place in the provisions of Limitations Act\*\*40 which say that time once it begins to run it does not stop. Nevertheless there are just and fair exceptions intended to protect genuine litigants from these provisions. The provisions for condonation of delay in the Limitations Act are the example of the same. But delays, whether litigant made, procedure made or judge made defeat equity and there can not be a discriminatory treatment between the justice seekers and justice doers in the matter of delay, After all, human lives are for a limited time span, be it years or decades and for such time the justice is delayed in the case where it promptly deserves to be done, a precious right of litigant is denied. When innocence is frightened the justice is condemned. Such delay itself promotes injustice.

---

\*\*40 LIMITATION ACT, 1963 SECTION 3.

#### D. IBI JUS IBI REMEDIUM"

Most of the Civil wrongs in general and wrongs in the nature of torts in particular are so recognised by the law and once it is a wrong, the remedy has to be provided, the term "jus" signifies legal authority to do or demand something and 'remedium' is the right of action or means provided by law.\*\*41 If a man has a right, he must of necessity have a means to vindicate or maintain it, and remedy if he is injured, it is a vain thing to imagine a right without a remedy, want of right and want of remedy are reciprocal.\*\*42 Reversely looked, does it mean that when the remedy is not provided, the act is not a wrong? The maxim means only that the legal wrong and legal remedy are correlative terms and this maxim can be more intelligently and correctly stated in reverse form, where there is no legal remedy, there can be no legal wrong.\*\*43

The maxim assumes much more importance in today's context when resorting to litigation for petty things, distorted facts and slightest excuse is phenomenally increasing. The litigation should therefore, stand these tests, at the stage of initiation before the court gives it detailed time on further stages. Of course the term "wrong" itself can not be confined to a tight jacket formula.

#### E. CODIFIED AND UNCONDIFIED LAW

In all democratic countries, justice is administered or should ideally be administered according to the law. Laws are enacted by the legislature, the legislature comprises of elected representatives of the people and hence laws reflect the urges and aspirations of people.

---

\*\*41 RATANLAL & DHIRAJLAL, LAW OF TORTS

\*\*42 CHIEF JUSTICE HOLD IN ASHBAY V/S. WHITE – 1703

\*\*43 JUSTICE STEPHEN IN BRADLAUGH V/s. GOSSETT.

The advantage of such law is that they are uniform and pre-declared. It might be ruinous to the litigant to know the law only after the ordeal of litigation is over and the court gives the judgement. Justice demands that citizens must be informed of the law beforehand and then ignorance of law is no excuse.\*\*44 For this purpose the law must be available in codified form. If the drafting is not done clumsily, ambiguously or intelligibly the law will be beneficial to the society. However, complex and complicated situations may arise where the State is confronted with different problems and law aims at finding solutions to them. Some of the present day statutes like Income Tax, Companies Act are so complex that layman apart, even those connected with the system of justice may not be quite clear about it. The need in such cases arises to find out its simplified versions, which if not in total conformity with the text, deals with most of its provisions in light of its objectives. At present great stress is being put on simplification of some of the Indian statutes like Income Tax Act.\*\*45

## **VIII**

### **JUSTICE AND CONSTITUTION OF INDIA**

India's freedom struggle in organised form relates back to 1857 and the goal of independence was achieved after 90 years of struggle and sacrifice. Thus "How the India of our dreams should be?" was a question deliberated much prior to 1947. The famous Karachi Resolution of Congress\*\*46 referred to fundamental rights in following words –

"All citizens are equal before the law irrespective of caste, creed or sex and no disability should be attached on basis of the same."

---

\*\*44 M. J. SETHNA IN JURISPRUDENCE, PAGE 167.

\*\*45 CHELLIAH COMMITTEE REPORT ON REFORMS IN INCOME TAX LAWS.

\*\*46 RESOLUTION ON FUNDAMENTAL RIGHTS DRAFTED BY NEHRU & GANDHI.

When India became independent, one of the challenges before it was as to what should the Constitution be? What the scope of the Constitution should be has long been settled. What are the fundamentals of the Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions look similar. The only new things, if there can be any are the variations to remove the faults and to accommodate it to the needs of society.\*\*47 The Constitution of India which was adopted after marathon efforts of the leaders and experts has several unique features. It is a modern Constitution. It is a lengthy, elaborate and detailed document.\*\*48

#### A. "PREAMBLE"

The preamble symbolizes the aspirations and expectations of people of India and the other provisions of Constitution and the laws to be enacted are expected to enable the people of India to march towards the cherished goal enshrined in the Constitution. It reads as follows:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens

JUSTICE, social, economic and political

LIBERTY, of thought, expression, belief, faith and worship

EQUILITY of status and opportunity.

And to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

---

\*\*47 DR. B. R. AMBEDKAR, 7<sup>TH</sup> CONSTITUTION ASSEMBLY DEBATES.

\*\*48 M. P. JAIN IN INDIAN CONSTITUTION LAW, PAGE 7.

IN OUR CONSTITUTENT ASSEMBLY this 26<sup>th</sup> day of November 1949 do hereby adopt, enact and give to ourselves this Constitution".

The words 'we the people' indicates that the people and not the institutions of the Government created by the Constitution are sovereign\*\*49

#### B. "SOCIAL JUSTICE"

One of the objectives sought to be achieved is "social justice", It was decided after SAPRU COMMITTEE REPORT, 1945 that fundamental rights and directive principles are kept separate under the Constitution and most of the provisions aiming at social justice were included in the "directive principles". Nehru advocated while replying debate on 4<sup>th</sup> Amendment Bill, 1955, that fundamental rights should sub-serve the "Directive Principles"\*\*\*50. But the term social justice by its very nature is not capable of precise definition. The Supreme Court itself expressed the view that social justice is vague and indeterminate hard to define. social justice in other words, is a question, which can be capable of objective decision or can only be decided subjectively, is a matter of individual outlook. \*\*51

Justice V. R. Krishna Iyer is known as front runner crusader of social justice\*\*52, he is one of the leading lights of India and a man with crystalised wisdom and thinking. According to Justice Krishna Iyer, social justice is a Constitutional fundamental and a Socialist order on economic imperative. There is no question of getting away with it. To him social justice is assured by the Constitution and it is ultimate command. Other laws have a secondary place. .\*\*53

---

\*\*49 T. K. TOPE, CONSTITUTIONAL LAW OF INDIA.

\*\*50 NEHRU AND THE CONSTITUTIONAL, PAGE 114.

\*\*51 AIR 1955, SC 170.

\*\*52 JUSTICE V/s. JUSTICE BY SHRI ASHOK A. DESAI,

\*\*53 LAW, SOCIETY AND CORRECTIVE CONSCIOUSNESS, PAGE 21.

---



With highest respect for Justice Krishna Iyer, it is submitted that the version of social justice due to its vagueness cannot be asserted at the cost of enacted laws. If such laws are not in conformity with the concept of social justice, it should be left to the wisdom of the legislature to enact suitable laws in conformity with social justice. The Supreme Court also upheld this position in *Minerva Mills Case*.<sup>\*\*54</sup>

### C. "ECONOMIC JUSTICE"

The concept of economic justice, in India, assumes vital importance for several reasons. Firstly, the protective discrimination or curtailment of fundamental rights is justifiable on the ground of economic justice if deemed fit by the State. Secondly, in the chapter on directive principles of State policy, several provisions exist which aim at providing economic justice. Dr.B. R. Ambedkar, explained the importance of directive principles in following words –<sup>\*\*55</sup>

"In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy."

Article 37 lays down that the provisions of directive principles are not enforceable in any court but the principles therein are nevertheless fundamental on the governance of the courts and it shall be the duty of the State to apply them in making laws. Article 39 of the Constitution enumerates several provisions aiming at economic justice in following words<sup>\*\*56</sup>

"The State shall, in particular, direct its policy towards securing –

- a) That the citizens, men and women have equal right to adequate means of livelihood.

---

<sup>\*\*54</sup> MINERVA MILLS CASE AIR 1988 SC 1789.

<sup>\*\*55</sup> DEBATES IN CONSTITUTION ASSEMBLY

<sup>\*\*56</sup> ARTICLE 39, CONSTITUTION OF INDIA, article 39.

---

- b) That the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good.
- c) That the operation of the economic system does not result in the concentration of wealth and means of production to common detriment.
- d) That there is equal pay for equal work for both men and women.
- e) That the health and strength of workers and the tender age of children are not abused and citizens are not forced by economic necessities to enter vocations unsuited to their age and strength.
- f) That child are given opportunities and facilities to develop and protected from exploitation.

During the last 46 years, Parliament and State have passed various laws to achieve this goal. Though some of the provisions of this article particularly against exploitation, deserve to be positive rights, they being directive principles can not be straightway enforced as right unless recognized under some law.

Article 39-A\*\*57 provides –

“The State shall secure that the operation of legal system promotes justice, on a basis of equal opportunity and shall in particular provide free legal aid, by suitable legislation or schemes or in any other way to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

The above provisions stipulate the dimension in which the judicial system is expected to move while providing justice.

---

**\*\*57 ADDED BY 42<sup>ND</sup> AMENDMENT OF CONSTITUTION OF INDIA.**

---

#### **D. "POLITICAL JUSTICE"**

Politics is the science, which lays down how a Government is created, functions, and changes in the same can be effected. The existence survival and achievement of any Government depends upon good laws, which are effectively and objectively enforced. A good government is not a partnership in teahouse, but a partnership in every act, every virtue, and every aspect.

Laws thus are based on social, political and economical needs of people. Laws should be for service to mankind and not to enslave them. There are several provisions enshrined in the Constitution, which aim at political justice. There are provisions for equality and equal protection by law and the same are recognized as fundamental rights\*\*58. The provisions for selective discrimination to promote justice to oppressed classes also in one way aim at providing justice. The directive principles provide for enacting a Uniform Civil Code, which will be allocable to all citizens without discrimination on ground of caste, creed etc. The concept of political justice however is not capable of precise definition and at times there are different warring groups whose perception of political justice are diagonally opponent\*\*59.

#### **E. "RIGHT TO GET JUSTICE – JUDICIAL REMEDIES"**

Justice should not only be done but it should appear to have been done. The Constitution of India makes elaborate provisions to protect the citizens even against State from injustice, Article 50 of the Constitution provides that the State shall take steps to separate the judiciary from the executive in public services of State. The Indian National Congress insisted for such separation since 1886. Article 39 A also provides that the operation of legal system should promote justice.\*\*60

---

**\*\*58 ARTICLE 14 OF THE CONSTITUTION OF INDIA**

**\*\*59 MANDAL COMMISSION REPORT**

**\*\*60 AGENDA OF INDIAN NATIONAL CONGRESS – 1886**

---

What is all the more important is the right guaranteed under Article 32 and writs available under Article 226. The right to move the Supreme Court by appropriate proceedings for enforcement of fundamental rights is guaranteed and the Supreme Court is vested with the power to issue directions, orders or writs for enforcement of such rights\*\*61 The Supreme Court is constituted as the protector and guarantor of fundamental rights and it can not refuse to entertain applications for enforcement of such rights.\*\*62 Article 226 of the Constitution confers on High Courts the power to issue writs for enforcement of fundamental rights. Even power of judicial review is very important provision of the Constitution. Power of judicial review confers a comprehensive jurisdiction but in India it has been whittle down by the application of many technical procedural doctrines.\*\*63

## **IX**

### **ADMINISTRATION OF JUSTICE**

Administration of justice is the function of the State, mainly its judicial organ to protect and enforce the rights of the individuals and to punish the wrong doers. It means enforcement of rights as are defined by law.

#### **A. MAHATMA GANDHI'S VIEW**

Mahatma Gandhi, an eminent lawyer in his early days believed that the law and legal profession should not be used for selfish motives but a sacred service to the society.

---

**\*\*61 ARTICLE 32 OF THE CONSTITUTION OF INDIA**

**\*\*62 JUSTICE PATANJALI SHASTRI IN ROMESH THAPAR V/s. STATE OF BOMBAY AIR 1950 SC 124.**

**\*\*63 K.SUBBARAO, EX CHIEF JUSTICE OF INDIA IN SOCIAL JUSTICE AND LAW, PAGE 7.**

He also believed that duty of a lawyer is always to place correct facts before the judges, and to help them to arrive at the truth, never to prove the guilty as innocent\*\*64.

Gandhiji firmly believed that the system of administration of justice at times distorts and defeats justice. His views are reproduced below\*\*65

"If we were not under the spell of lawyers and law courts, and if there were no touts to tempt us into the courts and to appeal to our beset passions, we would be leading a happier life than we do. Let those who frequent the law courts – the best of them bear witness to the fact that the atmosphere about them is fetid. Perjured witnesses are ranged on either side, ready to sell their very souls for money or friendship's sake." Gandhiji, therefore desired a lot of reforms, firstly in the conscience of the litigants and in the court system in India.

This important aspect of Gandhi's vision of India is totally neglected by even his staunch followers. Gandhi believed that law is not an intellectual's legerdemain but is has largely so remained.\*\*66

#### **B. JAWAHARLAL NEHRU'S VIEW**

Jawaharlal Nehru, the first Prime Minister of India was also from the legal profession. He was not a legal nihilist. He believed in importance of Constitution and laws in functioning of the State. He had also seen during freedom struggle that British judges misused their decisional and interpretive role to serve imperial ends. Nehru's vision of law and its role in the functioning of the State were very wide. He believed that law if properly administered could achieve social and political transformation but this can not be achieved simply by declaring the laws and leaving it to the good sense of people to implement it.

---

\*\*64 YOUNG INDIA, 22/12/27 INDIA OF MY DREAMS, M. K. GANDHI.

\*\*65 YOUNG INDIA, 6-10-26.

\*\*66 WE THE PEOPLE – N A PALKHIWALA, PAGE 350.

The courts therefore, were to act as catalyst, without being dogmatically committed to present notions. The courts were not centers of rebellion but would in sensible sort of way interpret the law and keep the various authorities from exceeding their powers\*\*65

The law must be stable, but can not standstill or be stagnant, Nehru advocated that the law and consequently the system of justice should function in a dynamic manner, so that the mission of law is achieved. Nehru however, believed that the courts or judicial system could not function in the nature of third house of correction for acts of parliament and executive. Thus the judiciary should function within self-imposed limitations.

#### C. GEORGE WASHINGTON'S VIEW

George Washington emphasized that neither the State nor the laws enacted were an end in itself but an instrument to achieve the cherished goal of justice. The citizens themselves owed the duty to respect the rights of their fellow citizens and only when there was a violation of such rights the intervention and interpretation by the courts may be warranted.

Abraham Lincoln advocated the concept of Rule - by the people, for the people and of the people and hence the courts were looked upon as temples of justice who administered laws to achieve this cherished objective. The courts are repositories of justice.

#### D. SALMOND'S VIEW

Salmond has stressed the need for a common power to keep all human beings in awe and such force was present in one form or other ever since the primitive stage of the society. However force, as an instrument for the coercion of mankind is merely a temporary incident. Hence, in all orderly societies the State declares the rights and duties of the subjects and the justice is to be administered only when deviation takes place. With the gradual growth of the power of the Government, the State ventures to suppress with strong hand the

---

\*\*65 NEHRU AND THE CONSTITUTION, PAGE 57.

violation of norms reflected in form of laws.\*\*66 Thus administration of justice is essential for the orderly governing of the subjects and the State.

#### E. RAJIV GANDHI'S VIEW

Rajiv Gandhi had the privilege of being the youngest Prime Minister of India, consequent to unfortunate assassination of Mrs. Indira Gandhi in 1984. Rajiv believed that social change can not be brought about by mere legislation. It has to be brought about in the Society itself and education and awareness was the first step in this direction\*\*67. He believed that the good of the people is the Chief law. He believed that freedom from fear and want is a universal need and the administration of justice played crucial role for this objective. Justice must prevail and it should count ultimately. He also emphasized the need for speedy justice and expected the judicial system to find the solutions to such problems.

#### F. PROF. SIDGWICK'S VIEW

Prof. Sidgwick is of the view that in determining a nation's rank in political civilization, no factor is more decisive than the degree in which justice as defined by the law is actually realised in its judicial administration.\*\*68 Thus, administration of justice is one of the most dependable and important indicators of how civilised, matured and law abiding the nation and its citizens are. The emphasis on actual realisation of justice suggests that the system should not be formal but actually functional so that the justice not only is done but also is effectively done which includes speedy justice.

---

\*\*66 SALMOND'S JURISPRUDENCE, PAGE 90.

\*\*67 QUOTES OF RAJIV GANDHI.

\*\*68 METHODS OF ETHICS, SIDGWICK.

---

### **G. HOBBS VIEW**

Hobbs is of the view that whatsoever is consequent to a time of war, where every man is enemy to every man, the same is consequent to the time, wherein man live without other security, than what their own strength, and their own invention shall furnish them with all. In such condition, there is no place for industry, because the fruit thereof is uncertain, no accounts of time, no society and worst of all, continual fear and danger of violent death. Justice is the conscience of the whole community and the subjects should be governed by it.\*\*69

### **H. ORIGIN OF ADMINISTRATION OF JUSTICE**

The origin and growth of administration of justice is identical with the origin and growth of man. The social nature of a man demanded that he would be required to live in society and in the process he will be exposed to a situation of conflict of interest. That created the necessity of providing for the administration of justice.\*\*70 In the days of primitive society every individual had to punish the wrong doers or defend himself without help of any outside agency. However, it was not a satisfactory and uniform position and consequently the need of force of the State to defend the interest of the weak and infirm was felt. The justice in its initial stage was administered by elder men who were persons of position and social status. The justice in its initial stage was administered by elder men who were persons of position and social status. The function was subsequently taken over by the King. Gradually a concept developed that the violation of the law of the State was not a private wrong but a public wrong and it was for the State to punish the wrong doers. As per Dr. Julius Stone,\*\*71 human needs require a productive system for providing justice rather than a situation of frustration and unbelief. The judicial system in its present State reflects awareness of the many facets of the search for justice.

---

\*\*69 THE LEVIATHAN, PAGE 161.

\*\*70 V. D. MAHAJAN, PRINCIPLES OF JURISPRUDENCE, PAGE 156.

\*\*71 STONE J., SOCIAL DIMENSIONS OF LAW & JUSTICES, 1966.



## **I. LEGAL AND NATURAL JUSTICE**

With the growth of society, industry and economy the human transactions have become complex and that has increased the need for administration of justice. What the Courts give to the people is the justice according to law. The judges are not the lawmakers but their function is to administer the law of the country.

As Salmond observes the development of legal system consists in the progressive substitution of rigid pre-established principles for individual judgement. To a great extent the element of conscience and discretion unless expressly vested does not exist. Thus, say a creditor may not be in a position to recover his debt after 3 years even if the equity and fairness demands that such payment should be made. Thus, under legal justice, judges are expected to give justice according to the law of the country and not according to what they consider to be just under the circumstances.\*\*72 As against this, natural justice is justice in deed and truth and mainly depends on human wisdom and power, Salmond is of the view that legal justice and natural justice represent intersecting circles "Justice may be legal but not natural or vice versa."

The advantages of legal justice are its uniformity, certainty, and pre-determinedness.

## **J. CIVIL AND CRIMINAL JUSTICE**

The term Civil and Criminal justice while referring to the objective of justice mainly differs in the kinds of proceedings initiated in the Court. The basic distinction is that in case of civil justice, it is the enforcement of a right which is material while in the case of criminal justice, it is the violation of right which is material. Thus, in civil

---

\*\*72 PRINCIPLES OF JURISPRUDENCE, V. D. MAHAJAN PAGE 159.

proceedings the plaintiff is entitled to claim a right, establish its actual or attempted violation and the court secures enforcement of such rights like payment of debt, restoring property, awarding damages, etc. As against this, criminal proceeding has its basis in the allegation of wrong committed by the accused. In this case, the court is not expected to compel the defendant to perform any duty in respect of any right but visit the accused with a penalty for the violation of duty, the duty laid down under the law.

There are several instances where the civil and criminal proceedings overlap. Thus, in case of fraud, coercion, undue influence etc. There can be criminal as well as civil proceeding. However, the basic distinction remains that the defrauder is prosecuted for violation of right in case of contract i.e. Civil Law and also for violation of duty under the Criminal law.

#### K. COURTS AS INSTRUMENTS FOR JUSTICE

Judiciary is an organ of the State through which the justice is administered. It is in this context that the courts are referred as the instruments to achieve that goal of justice. There are diverse opinions regarding the role of the courts vis-à-vis the Executive and Legislature. The recent trend of the judgement shows that the courts are expected to interpret the law as it stands and not to substitute its own wisdom or vision against the legislative enactment. Nevertheless the concept of independence of judiciary means that if the laws are ultra-vires the Constitution or there is ambiguity then the competent court is the best judge to decide about the validity or otherwise of such law.

#### L. OBJECTIVES OF CRIMINAL JUSTICE

In its very nature, criminal justice deals with a situation where a wrong has already taken place and it is established that the accused has violated the provision of existing law for which he is to be punished. Crime is a product of and a threat to the society. There are several approaches to the objectives of criminal justice. It is worthwhile to note Salmond's classifications of such objectives.

---

- (i) Deterrent
- (ii) Preventive
- (iii) Reformative
- (iv) Retributive

The purpose of punishment is to deter others from committing wrongs and the chief end of the law is to make the wrong doer an example and a warning to all that are like minded with him.

As Locke observes the commission of every offence should be made a bad bargain for the offender.

According to Manu Smruti, penalty keeps the people under control, protect them and hence punishment (Danda) has been regarded as source of righteousness. The preventive object aims at disabling the offender from repeating the offences by such punishments as imprisonment, death, exile, etc. In view of Justice Holmes, there can be no case in which the law makes certain conduct criminal without thereby showing a wish and purpose to prevent such conduct. The reformatory approach believes that even if an offender commits a crime, he does not cease to be a human being and the object of punishment should be to bring moral reform of the offender. Retributive punishment believes in allowing the person wronged to have his revenge against the wrong doer it is grounded in vengeance and was much prevalent in primitive society.

#### M. OBJECTIVES OF CIVIL JUSTICE

The civil justice aims at providing remedy for the civil wrongs. It is administered through civil courts. Civil proceeding, if successful, results in a decree for money, damages, or specific performance. It may even grant restoration of property, injunction, restitution etc. As Black Stone says, "the civil wrongs are an infringement or violation of the private or civil rights belonging to individuals and recognised by law as civil injuries. The right to be enforced in civil proceeding is either a primary right or a sanctioning right means one, which arises

out of the violation of another right. The enforcement of primary right will be in form of specific performance and for violation of sanctioning right, there will be sanctioning enforcement. Besides, civil justice system also deals with matters like matrimonial issues, succession to the property, etc. between the contending litigants.

===== 000000 =====

---