

## Distributive Justice— “A Honey for the Poor”

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*“Lady justice depicts justice as equipped with three symbols: a sword symbolizing the court’s coercive power; a human scale weighing competing claims in each hand; and a blindfold indicating impartiality”*  
—Luban, Law’s blindfold

### I. Introduction:

Law as a social institution is interlinked with individual, society and the state, and always been changing with the exigencies of time and needs of the society. As we know that in a society if we wanted to grow, we have to maintain a balance between the social interest and the individual interest. In the words of R.V.Ihering, *Social* interest or good has always primacy over *Individual* interest and so he insisted on the primacy of *Social Purposes*<sup>3</sup>. According to John Rawls, “Justice is the first virtue of social institutions, as truth is of systems of thought”. The theory of justice in the modern era is considered to equivalent of the fairness principle adopted to decide the matter in hand. The trinity principle is thus where justice is clubbed with fairness and equity it not only satisfies a basic need of the people but also helpful for the upliftment of the society on the basis of distributive justice.

*Distributive justice* is directed at the proper allocation of things — wealth, power, reward, respect — between different people.

Theories of distributive justice need to answer three questions:

1. *What goods* are to be distributed? Is it to be wealth, power, respect, some combination of these things?
2. *Between what entities* are they to be distributed? Humans (dead, living, future), sentient beings, the members of a single society, nations?
3. What is the *proper* distribution? Equal, meritocratic, according to social status, according to need, based on property rights and non-aggression?

Distributive justice theorists generally do not answer questions of *who has the right* to enforce a particular favored distribution. On the other hand, property rights theorists argue that there is no “favored distribution”. Rather, distribution should be based simply on whatever distribution results from non-

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3 Dr. S.N.Dhyani, 3<sup>rd</sup> edition-2004, p.313

coerced interactions or transactions i.e transactions not based upon force or fraud.

Whether it should be on the basis of Egalitarianism where the goods should be distributed equally between—individuals, families, nations, races, species. Commonly held egalitarian positions include demands for equality of opportunity and for equality of outcome. Or we should follow the principle of Giving people what they deserve on the basis of merit, hardwork, needs or social status.

## II. Fairness- A Theory of Justice:

In his *A Theory of Justice*, John Rawls used a social contract argument to show that justice, and especially distributive justice, is a form of fairness: an *impartial* distribution of goods. Rawls's *two principles of justice* are:

- Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
- Social and economic inequalities are to be arranged so that they are both
  - to the greatest benefit of the least advantaged, consistent with the just savings principle, and
  - attached to offices and positions open to all under conditions of fair equality of opportunity<sup>4</sup>.

Rawls's theory distinguishes two kinds of goods – (1) liberties and (2) social and economic goods. Both these two concept of John Rawls are incorporated in our Indian Constitution, one under Part-III Fundamental Rights and other under Part- IV Directive Principles of State Policy and being reflected in the Preamble itself.

Various constitutional amendments (1, 4, 17, 25, 34, 39, 40, 42, 44, 86 etc.) passed by the Parliament in India for giving effect to the Directive principles have made it clear that the State always regarded directive principles as fundamental in the governance of the Country. An appraisal of various measures taken in the field of education, health, living standard, employment, agriculture, trade and business, science and technology, Public services and other social services pursued in the past years shows that a good amount of progress has been made in improving the conditions of the starving millions. This shows that the directive principles have played a very significant role in implementation of social justice to the ordinary and less privileged class of our society.

A great work has been done towards ameliorating the condition of the labour, and the under privileged by introducing agrarian reforms and initiating several social welfare schemes like NREGA<sup>5</sup>.

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4 John Rawls-Theory of Justice, p.266

5 National Rural Employment Guarantee Act

### **III. India's Awakening and the Distributive Justice:**

With the speech of Pandit J.L.Nehru- A Tryst with Destiny, India awoken and a new process begin with the adoption of the Indian Constitution embodying the social philosophy and economic value towards the attainment of egalitarian welfare state. Thus it was made clear that the function of the law is to resolve conflict between rights of the individual and the interests of the society. So in its number of decisions the honorable Supreme Court of India held that there is no conflict between fundamental rights and directive principles, as both are aimed at ushering a egalitarian society for the welfare of the nation as a whole<sup>6</sup>. In order to provide justice to common man, various legislations were enacted after India's independence. The establishment of Family courts, Lok Adalats and enacting laws relating to consumer protection, dowry prohibition, abolition of bonded labour, prevention of environmental pollution etc<sup>7</sup> are meant to provide distributive justice and to ensure prosperity of people as well of the State.

### **IV. Role of Judiciary for the Distributive Justice:**

With the 44<sup>th</sup> Amendment of the Indian Constitution, the Article 38 is aimed at for equality in all spheres of life. It would enable the state to have a national policy on wages and eliminate inequalities in various spheres of life<sup>8</sup>. According to former chief justice of India, P.N.Bhagwati, "Today a vast social revolution is taking place in the judicial process, the law is fast changing and the problems of the poor are coming to the forefront. The court has to innovate new methods and device, new strategies for providing access to justice to the large masses of the people who are denied their basic human rights and to whom freedom and liberty has no meaning<sup>9</sup>".

The Supreme Court of India while dealing with the interpretation of Article 38 held that "the aim of social justice is to attain substantial degree of social, economic and political equality which is the legitimate expectation and the constitutional goal. In a developing society like ours, where there is vast gap of inequalities in status and of opportunities, law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice<sup>10</sup>".

It was also observed by the Supreme Court that the Constitution being essentially a political document has to be interpreted to meet the "*felt necessities of the time*<sup>11</sup>".

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6 Keshavanand Bharti v. State of Kerala,(AIR1973 SC 1461), Minerava Mills Case (AIR 1980 SC 1789)

7 List is illustrative and not exhaustive.

8 Dr. J.N.Pandey- the Constitutional Law of India, p.406 (47<sup>th</sup> edtn.)

9 S.P.Gupta v. Union of India, AIR 1982 SC 49 (189)

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

11 Indra Sawhney v. Union of India, AIR 1993 SC 447(634)

## **V. Conclusion:**

Thus there are number of cases where Supreme Court of India by way of Public interest litigation like upholding the dignity of bonded labour<sup>12</sup>, for the welfare of the children<sup>13</sup> and providing free legal aid, compulsory education upto the age of 14 years etc. opened new vistas in order to provide distributive justice and protecting social interest and the social settings. So we can say that the jurisprudential concept of John Rawls relating to social and distributive justice is very well incorporated under the Indian Constitution, the need of the hour is to do fairness which is being taken care by the Indian Judiciary and in that process every stumbling block has to be removed to uplift the constitutional goal and the people's mandate.

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12 Bandhua mukti Morcha's Case, AIR 1984 SC 802

13 M.C.Mehta v. State of Tamil Nadu, (1991) 1 SCC 283