Jurisprudential Dimension of Justice

* *Shreemanshu Kumar Dash*

Justice may be divided into four types i.e. commutative, distributive, legal, and social. Justice is a concept on ethics and law that means that people behave in a way that is fair, equal and balanced for everyone. In view of the Western Theories of Justice, it is one of the most important moral and political concepts. The word comes from the Latin jus, meaning right or law. Aristotle says justice consists in what is lawful and fair, with fairness involving equitable distributions and the correction of what is inequitable. Justice in a civil society is important because it makes life possible in our complex, civilized society. According to Plato, 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. Respect for the rule of law is an important requirement to safeguard justice in a democracy. It ensures that all decisions and actions of individuals are in line with a country's laws. It also ensures that people with power do not make decisions about our lives in an arbitrary and unpredictable manner, based on their personal hatred, prejudice or beliefs and not on what the law allows. The rule of law protects us by ensuring that laws apply equally to all of us; that those who exercise government power do so guided by the law and not by their own views, and that no one has absolute power over our lives. The rule of law can only function properly when courts act in an independent, fair, public and transparent manner. It is important that we citizens know our rights within the entire system of the rule of law, so we are able to uphold them, as well as detect failures and demand change. After all, countries where the rule of law is upheld vigorously are often also the countries with the highest national prosperity, peace, liberty and freedom from corruption, and last but not least justice. This paper addresses the distinct branches of thought in general jurisprudence.

Keywords: justice, law, theory, grundnorm, analytical, positivism, equitable, jurisprudence.

Law and society are just like the two sides of the same coin. Law is, in fact, a means to an end and not an end by itself. In view of the same, law is a means to justice where a state is ruled by law. It necessarily follows there from that proper implementation of law is giving it a right direction towards justice.

Philosophers of law ask "what is law, and what should it be?" Jurisprudence or legal theory is the theoretical study of law, principally by philosophers but, from the twentieth century, also by social scientists. Scholars of jurisprudence, also known as jurists or legal theorists, hope to obtain a deeper understanding of legal reason-

* *Assistant Prof. Kishorilal Shukla Low College, Rajnandgaon (C.G.)*

ing, legal systems, legal institutions, and the role of law in society.

Modern jurisprudence began of late in the 18th century and was focused on the first principles of natural law, civil law, and the law of nations. General jurisprudence can be divided into categories both by the type of query scholars hunt for response and by the theories of jurisprudence, or schools of thought, regarding how those questions are best answered. Contemporary philosophy of law, which deals with general jurisprudence, addresses problems internal to law and legal systems and problems of law as a social institution that relates to the larger political and social context in which it exists.

Ancient natural law is the ideology that there are rational objective limits to the power of legislative rulers. The basics of law are accessible through reason, and it is from these laws of nature that human laws gain whatever force they may have. Analytical jurisprudence (Clarificatory jurisprudence) rejects natural law's fusing of what law is and what it ought to be. It espouses the use of a neutral point of view and descriptive language when referring to aspects of legal systems. It encompasses such theories of jurisprudence as "legal positivism", which holds that there is no necessary connection between law and morality and that the force of law comes from basic social facts; and "legal realism", which argues that the real-world practice of law determines what law is, the law having the force that it does because of what legislators, lawyers, and judges do with it. Normative jurisprudence is concerned with "evaluative" theories of law. It deals with what the goal or purpose of law is, or what moral or political theories

provide a foundation for the law. It not only addresses the question "What is law", but also tries to determine what the proper function of law should be, or what sorts of acts should be subject to legal sanctions, and what sorts of punishment should be permissible.

The English word 'jurisprudence' is derived from the Latin maxim jurisprudentia. Juris is the genitive form of jus meaning law, and prudentia means prudence (also: discretion, foresight, forethought, circumspection. It refers to the exercise of good judgment, common sense, and caution, especially in the conduct of practical matters. The word first appeared in written English in 1628, at a time when the word prudence meant knowledge of, or skill in, a matter. It may have entered English via the French jurisprudence, which appeared earlier.

HISTORICAL PERSPECTIVE:

Ancient Indian jurisprudence is mentioned in various Dharmasastra texts, starting with the Dharmasutra of Bhodhayana. Jurisprudence in Ancient Rome had its origins with the (periti)—experts in the jus mos maiorum (traditional law), a body of oral laws and customs. Praetors established a working body of laws by judging whether or not singular cases were capable of being prosecuted either by the edicta, the annual pronunciation of prosecutable offense, or in extraordinary situations, additions made to the edicta. And judex would then prescribe a remedy according to the facts and circumstances of the case.

The sentences of the Judex were supposed to be simple interpretations of the traditional customs, but—apart from considering what traditional customs applied in

each case—soon developed a more equitable interpretation, coherently adapting the law to newer social exigencies. The law was then adjusted with evolving institutions (legal concepts), while remaining in the traditional mode. Praetors were replaced in the 3rd century BC by a laical body of prudentes. Admission to this body was subject to competence or experience.

Under the Roman Empire, schools of law were created, and practice of the law became more academic. From the early Roman Empire to the 3rd century, a relevant body of literature was produced by groups of scholars, including the Proculians and Sabinians. The scientific nature of the studies was unprecedented in ancient times.

After the 3rd century, juris prudentia became a more bureaucratic activity, with few notable authors. It was during the Eastern Roman Empire (5th century) that legal studies were once again undertaken in depth, and it is from this cultural movement that Justinian's Corpus Juris Civilis was born.

CONCEPT OF NATURAL LAW:

In its broad-spectrum, natural law theory may be compared to both state-of-nature law and general law understood on the basis of being equivalent to the laws of physical science. Natural law is often contrasted to positive law which asserts law as the product of human activity and human volition. Another approach to natural-law jurisprudence generally asserts that human law must be in response to compelling reasons for action. There are two readings of the natural-law jurisprudential stance. The Strong Natural Law Thesis holds that if a human law fails to be in response to compelling reasons, then it is not properly a "law" at all. This is cap-

tured, imperfectly, in the famous maxim: lex injusta non est lex (an unjust law is no law at all). The Weak Natural Law Thesis holds that if a human law fails to be in response to compelling reasons, then it can still be called a "law", but it must be recognised as a defective law.

Notions of an objective moral order, external to human legal systems, underlie natural law. What is right or wrong can vary according to the interests one is focused on. John Finnis, the most important of modern natural barristers, has argued that the maxim "an unjust law is no law at all" is a poor guide to the classical Thomist position. Strongly related to theories of natural law are classical theories of justice, beginning in the West with Plato's Republic.

CONTRIBUTION OF ARISTOTLE:

Aristotle who is said to be the father of natural law, like his philosophical forefathers Socrates and Plato, posited the existence of natural justice or natural right (Latin jus naturale). His association with natural law is largely due to how he was interpreted by Thomas Aquinas. This was based on Aquinas' conflation of natural law and natural right, the latter of which Aristotle posits in Book V of the Nicomachean Ethics. Aquinas's influence was such as to affect a number of early translations of these passages, though more recent translations provide them more literally.

Aristotle's theory of justice is bound up in his idea of the golden mean. Certainly, his treatment of what he calls "political justice" derives from his discussion of "the just" as a moral virtue derived as the mean between opposing vices, just like every other virtue he describes. His longest discussion of his theory

of justice occurs in Nicomachean Ethics and begins by asking what sort of mean a just act is. He argues that the term "justice" actually refers to two different but related ideas: general justice and particular justice. When a person's actions toward others are completely righteous in all matters, Aristotle calls them "just" in the sense of "general justice"; as such, this idea of justice is more or less coextensive with virtue. "Particular" or "partial justice", by contrast, is the part of "general justice" or the individual virtue that is concerned with treating others equitably.

Aristotle budges from this ill-equipped discussion of justice to a well-equipped view of political justice, by which he means something close to the subject of modern jurisprudence. Of political justice, Aristotle argues that it is partly derived from nature and partly a matter of convention. This can be taken as a statement that is similar to the views of modern natural law theorists. But it must also be remembered that Aristotle is describing a view of morality, not a system of law, and therefore his remarks as to nature are about the grounding of the morality enacted as law, not the laws themselves.

The best substantiation of Aristotle's having thought there was a natural law comes from the Rhetoric, where Aristotle notes that, aside from the "particular" laws that each people has set up for itself, there is a "common" law that is according to nature. The context of this remark, however, suggests only that Aristotle thought that it could be rhetorically advantageous to appeal to such a law, especially when the "particular" law of one's own city was adverse to the case being made, not that there actually was such a law. Aristotle, moreover, considered cer-tain candidates for a universally valid, natural law to be wrong. Aristotle's theoretical paternity of the natural law tradition is consequently not clear-cut.

CONTRIBUTION OF THOMAS AQUINAS :

Thomas Aquinas was an Italian philosopher and theologian in the scholastic tradition, known as "Doctor Angelicus, Doctor Universalis". He is the foremost classical proponent of natural theology, and the father of the Thomistic school of philosophy, for a long time the primary philosophical approach of the Roman Catholic Church. The work for which he is best known is the Summa Theologica. One of the thirty-five Doctors of the Church, he is considered by many Catholics to be the Church's greatest theologian. Consequently, many institutions of learning have been named after him.

Thomas Aquinas was illustrious about four kinds of law: eternal, natural, divine, and human: Eternal law refers to divine reason, known only to God. It is God's plan for the universe. Man needs this plan, for without it he would totally lack direction. Natural law is the "participation" in the eternal law by rational human creatures, and is discovered by reason. Divine law is revealed in the scriptures and is God's positive law for mankind. Human law is supported by reason and enacted for the common good. Natural law, of course, is based on "first principles":

This is the first precept of the law that good is to be done and promoted, and evil is to be avoided. All other precepts of the natural law are founded on this idea. The desires to live and to procreate are counted by Aquinas among those basic (natural) human values on which all other human val-

ues are based.

SCHOOL OF SALAMANCA:

Francisco de Vitoria was conceivably the first to build up a premise of jus gentium (the rights of peoples), and thus is an important figure in the changeover to modernity. He extrapolated his ideas of legitimate sovereign power to international affairs, concluding that such affairs ought to be determined by forms respecting of the rights of all and that the common good of the world should have primacy over the good of any single state. This meant that relations between states ought to pass from being justified by force to being justified by law and justice. Some scholars have upset the standard account of the origins of International law, which emphasizes the seminal text De jure belli ac pacis by Grotius, and argued for Vitoria and, later, Suarez's importance as forerunners and, potentially, founders of the field. Others, such as Koskenniemi, have argued that none of these humanist and scholastic thinkers can be understood to have founded international law in the modern sense, instead placing its origins in the post-1870 period.

Francisco Suarez, regarded as among the greatest scholastics after Aquinas, subdivided the concept of jus gentium. Working with already well-formed categories, he carefully distinguished jus inter gentes from jus intra gentes. Jus inter gentes (which corresponds to modern international law) was something common to the majority of countries, although, being positive law, not natural law, it was not necessarily universal. On the other hand, jus intra gentes, or civil law, is specific to each nation.

THOMAS HOBBES:

Hobbes, in his composition, Leviathan (1651), communicates a perspective on characteristic law as a statute—or general principle, established on explanation—by which a man is illegal to do what is damaging to his life, to remove the methods for safeguarding the same, or to discard that by which he figures it might best be protected. Hobbes was a social contractarian and accepted that the law had peoples' implicit assent. He accepted that society was shaped from a condition of nature to shield individuals from the condition of war that would exist in any case. As per Hobbes, without an arranged society, life is, "solitary, poor, nasty, brutish and short". It is often said that Hobbes' perspectives on human instinct were affected by his times. The English Civil War and the Cromwellian tyranny had occurred; and, in responding to that, Hobbes felt that outright power vested in a ruler, whose subjects submitted to the law, was the premise of an enlightened society.

LON FULLER:

Composing after World War II, Lon L. Fuller safeguarded a common and procedural type of characteristic law. He stressed that the (natural) law should meet certain conventional prerequisites, (for example, being unbiased and openly comprehensible). To the degree that an institutional arrangement of social control misses the mark regarding these prerequisites, Fuller contended, we are less disposed to remember it as an arrangement of law, or to give it our regard. Consequently, the law should have an ethical quality that goes past the cultural guidelines under which laws are made.

JOHN FINNIS:

Refined positivist and natural law specu-

lations once in a while take after one another and may share specific focuses for all intents and purpose. Distinguishing a specific scholar as a positivist or a natural law scholar in some cases includes matters of accentuation and degree, and the specific effects on the scholar's work. The natural law scholars of the far off past, for example, Aquinas and John Locke saw no difference amongst analytic and normative jurisprudence, while present day natural law scholars, for example, John Finnis, who maintains to be positivists, actually contend that law is moral commonly. In his book Natural Law and Natural Rights (1980, 2011), he provides a reiteration of natural law doctrine.

ANALYTIC JURISPRUDENCE:

Analytic or "clarificatory", jurisprudence means taking an unbiased perspective and utilizing distinct language when alluding to different parts of overall sets of laws. This was a philosophical improvement that dismissed characteristic law's combining of what law is and what it should be. David Hume contended, in A Treatise of Human Nature, that individuals perpetually slip from portraying what the world is to attesting that we in this manner should follow a specific game-plan. Yet, as an issue of unadulterated rationale, one can't reason that we should accomplish something only in light of the fact that something is the situation. So breaking down and explaining the manner in which the world is to be treated as a carefully discrete inquiry from regularizing and evaluative inquiries of what should be finished.

The main inquiries of logical law are: "What are laws"; "What is the law"; "What is the connection among law and force/sociology"; and "What is the connection among law and morality." Legal positivism is the predominant hypothesis, despite the fact that there is a developing number of critics who offer their own understandings.

HISTORICAL SCHOOL:

Historical jurisprudence came to conspicuousness during the discussion on the proposed codification of German law. In his book On the Vocation of Our Age for Legislation and Jurisprudence, Friedrich Carl von Savigny contended that Germany didn't have a lawful language that would uphold codification in light of the fact that the conventions, customs, and convictions of the German public did exclude a confidence in a code. Supporters of this thought advocate that law starts with society.

SOCIOLOGICAL JURISPRUDENCE:

A push of methodically to enlighten jurisprudence from sociological experiences created from the start of the 20th century, as sociology set up itself as an unmistakable social science, particularly in the United States and in mainland Europe. In Germany, crafted by the "free law" scholars (for example Ernst Fuchs, Hermann Kantorowicz, and Eugen Ehrlich) empowered the utilization of sociological experiences in the advancement of lawful and juristic hypothesis. The most globally compelling support for a "sociological law" happened in the United States, where, all through the initial half of the 20th century, Roscoe Pound, for a long time the Dean of Harvard Law School, utilized this term to portray his legal philosophy. In the United States, numerous later essayists took cues from Pound or created particular ways to deal with sociological

jurisprudence. In Australia, Julius Stone firmly safeguarded and built up Pound's thoughts. During the 1930s, a huge split between the sociological jurists and the American legal realists arose. In the latter half of the 20th century, sociological law as a particular development declined as jurisprudence came all the more emphatically affected by analytical legal philosophy; however with expanding criticism of predominant orientations of legal philosophy in English-talking nations in the succeeding century, it has pulled in revitalized attention.

LEGAL POSITIVISM:

Positivism simply means that law is something that is "posited": laws are validly made in consonance with socially accepted rules. The positivist view of law can be seen to be based on two broad principles:

Firstly, that law may seek to enforce justice, morality, or any other normative end, but their success or failure to do so does not establish their legality. Provided a law is properly formed, in accordance with the rules recognized in the society concerned, it is a valid law, not considering whether it is just by some other standard. Secondly, that law is nothing more than a set of rules to provide order and governance of society. No legal positivist, however, argues that it follows that the law is therefore to be obeyed, no matter what. This is seen as a separate question entirely. What the law is (lex lata) - is determined by historical social practice (resulting in rules). What the law ought to be (lex ferenda) - is determined by moral considerations.

BENTHAM AND AUSTIN:

One of the earliest legal positivists was Jeremy Bentham. Along with Hume, Bentham was an early and staunch supporter of the utilitarian notion, and was an enthusiastic prison reformer, advocate for democracy, and firm atheist. Bentham's analysis about law and jurisprudence were popularized by his student John Austin. Austin was the first chair of law at the new University of London, from 1829. Austin's utilitarian answer to "what is law" was that law is "commands, backed by sanctions, from a sovereign, to whom people have a habit of obedience". Contemporary legal positivists, H. L. A. Hart particularly, have long discarded this view, and have criticized its generalization.

Hans Kelsen:

Hans Kelsen is considered one of the outstanding jurists of the 20th century and has been highly influential in Europe and Latin America, even though less so in common-law countries. His Pure Theory of Law describes law as "binding norms", while at the same time refusing to evaluate those norms. That is, "legal science" is to be separated from "legal politics". Central to the Pure Theory of Law is the concept of a "basic norm" (Grundnorm)'—an imaginary norm, presupposed by the jurist, from which all "lower" norms in the pecking order of a legal system, beginning with constitutional law, are understood to derive their authority or the extent to which they are binding. Kelsen maintains that the degree to which legal norms are binding, their specifically "legal" character, can be understood without tracing it ultimately to some suprahuman source such as God, personified Nature or—of great importance in his time—an embodied State or Nation.

H. L. A. Hart:

In the English-speaking world, a key writer was H. L. A. Hart, professor of jurisprudence at Oxford University, who argued that the law should be understood as a system of social rules. Hart rejected Kelsen's views that sanctions were essential to law and that a normative social phenomenon, like law, cannot be grounded in non-normative social facts. Hart revived analytical jurisprudence as an important theoretical debate in the twentieth century, through his book The Concept of Law.

Rules, said Hart, are divided into primary rules (rules of conduct) and secondary rules (rules addressed to officials who administer primary rules). Secondary rules are divided into rules of adjudication (how to resolve legal disputes), rules of change (how laws are amended), and the rule of recognition (how laws are identified as valid). The "rule of recognition" is a usual practice of officials (especially barristers and judges) who categorize certain acts and decisions as sources of law. In 1981, Neil MacCormick wrote a crucial book on Hart (second edition published in 2008), which further refined and offered some important criticisms that led MacCormick to expand his own theory (example is his Institutions of Law, 2007). Other important critiques include those of Ronald Dworkin, John Finnis, and **Joseph Raz:**

In recent years, debates on the nature of law have become increasingly fine-grained. One important deliberation is within legal positivism. One school is sometimes called "exclusive legal positivism" and is connected with the view that the legal validity of a norm can never depend on its moral correctness. A second school is labeled "inclusive legal positivism", a major proponent of which is Wil Waluchow, and is associated with the view that moral considerations may, but do not necessarily; determine the legal validity of a norm.

UTILITARIANISM:

Utilitarianism is the view that the laws should be crafted so as to produce the best consequences for the greatest number of people. Historically, utilitarian thinking about law has been associated with the philosopher Jeremy Bentham. John Stuart Mill was a pupil of Bentham's and was the forerunner of utilitarian philosophy throughout the late nineteenth century. In contemporary legal theory, the utilitarian approach is frequently championed by scholars who work in the law and economics tradition.

JOHN RAWLS:

John Rawls was an American philosopher; a professor of political philosophy at Harvard University; and author of "A Theory of Justice" (1971), "Political Liberalism", "Justice as Fairness: A Restatement", and "The Law of Peoples". He is widely considered one of the most important English-language political philosophers of the 20th century. His theory of justice uses a method called "original position" to ask us which principles of justice we would choose to regulate the basic institutions of our society if we were behind a "veil of ignorance". Imagine we do not know who we are—our race, sex, wealth, status, class, or any distinguishing feature—so that we would not be biased in our own favour. Rawls argued from this "original position" that we would choose exactly the same political liberties for everyone, like freedom of speech, the right to vote, and so on. Also, we would choose a sys-

tem where there is only inequality because that produces incentives enough for the economic well-being of all society, especially the poorest. This is Rawls's famous "difference principle". Justice is fairness, in the sense that the fairness of the original position of choice guarantees the fairness of the principles preferred in that position. He emphasized on how justice could be politically achieved and dreams of a society of free citizens holding equal basic rights and collaborating within an egalitarian economic system.

CONCLUSION:

Legal profession is said to be a noble profession for one of the reasons that people working in this field are participatory in determining the rights and duties of people towards doing justice which virtually is the task of almighty. Law made by men for men cannot do absolute justice for the simple reason that nothing could be absolute in the material world. Law can at best do procedural justice. But law, may be substantive or procedural, does have an objective of its own. It is always constructive and never destructive. But the poor fellows who have been running the system assume the dead letters of law as everything of law without allowing the ability to come to their mind and spirit to discern the objective to do their respective duties religiously. In countries like India, laws are obeyed but vitiated are the objectives. Laws are obeyed not for the sake of justice but as if law were the end by itself. The law-makers are the worst law breakers. The bureaucrats take for granted their legal duty as their moral ones and creating a situation thereby for common people for whom justice always as a thing remains a will o' the wisp. To conclude in the words of Alladi Kuppuswamy, "If the parliamentary system has not functioned satisfactorily, it is not due to any defect in the system but due to the incompetence or inefficiency of those who have been running the system."

Reference:
1. Dr. N. V. Paranjape – "Studies in Jurisprudence & Legal Theory"
2. Prof. [Mrs.] Nomita Aggarwal – "Jurisprudence (Legal Theory)
3. V. D. Mahajan – "Jurisprudence and Legal Theory"
4. P.S.A. Pillai – "Jurisprudence and Legal Theory"
5. Salmond - On Jurisprudence, 12th Edn. Indian Economy Reprint (2010)
6. Dias Jurisprudence (2013)
7. www.google.com
8. www.civicsacademy.co.za/video/justice/
9. https://www.iep.utm.edu/justwest
10. https://en.oxforddictionaries.com/definition/justice
11. www.businessdictionary.com/definition/justice.html
12. https://en.wikipedia.org/wiki/Justice
13. https://www.iep.utm.edu/justwest/
14. www.newworldencyclopedia.org/entry/Justice
15. https://www.jstor.org/stable/pdf/1327078.pdf
16. www.scribd.com/doc/23041149/Jurisprudence
17. https://books.google.co.in/books?isbn=1859416233
18. https://books.google.co.in/books?isbn=0198253885