INTRODUCTION

An humble attempt will be made through the chapters of the dissertation to explore and analyse the concept of justice. The main thrust is not an empirical investigation but a conceptual exploration. Further our objective is not to prescribe a juristic, moral or legal standard. It is not to prescribe or recommend an ideal form of justice. It is to show, among other things, the conceptual links between justice, liberty and morality and certain other neighbouring concepts. Besides, it is partly expository and partly analytical. To do this I will present my views (if at all any) through exposition and examination of different theories of justice.

The concept of justice can be studied from various stand-points. One can make an empirical study of it. One can raise such questions as how did the concept of justice originate in human society, what is the impact of this concept on other allied and related concepts and how has the concept influenced life and society in the human world at large?

One comes across the earliest account of justice in the Rg Veda and in the writings of the ancient Greek thinkers. The earliest Vedic conception of Rta as the divine principle of an organised universe finds its counterpart in Greek philosophy. Rta has been treated as the cosmic principle
which pervades the universe. The concept of cosmic justice as contemplated by Anaximander and Heraclitus may be likened to the Rta of the Rg Veda. According to these philosophers, there are three basic elements in the world. These are: fire, earth and water. But each of the elements perpetually struggle to dominate the other.

"The inexorable law of nature is busy, out of necessity, with redressing the balance. The primordial substance, which is the reservoir of this balance, is charged with the duty of obviating a chaos, by keeping each element within its bounds so that a complete victory of one over the other is precluded."

It will be argued out in the course of the dissertation that justice is a value-concept as opposed to a descriptive one. Being a value-concept it is related to ideologies.

Like equality, liberty and right, justice has sometimes been regarded as a social value. The contractualists like Hobbes, Locke and Rousseau maintain that a society logically presupposes the concept of justice. It is debatable whether the civil society evolved out of the state of nature. But the fact remains that the concept of society cannot be explained without the concept of justice. It can be said that the depiction of the state of nature is not historical but logical. The social contract theory may be regarded as a logical assessment of the concept of society.
but not an historical account of it. Social contract may be interpreted as the restatement of the conceptual point that contract, justice and society are interlinked.

To men living in the state of nature justice has no meaning. Justice and injustice are meaningful only in the context of a society.

"In a natural state there is nothing which can be called just or unjust, but only in a civil state."

The idea of contract by the people portrays the limits to human liberty and right which depict a sense of justice. The concepts of justice and civil society can be said to go together. It may not be out of place here to quote John Rawls:

"The various conceptions of justice are the outgrowth of different notions of society against the background of opposing views of the natural necessities and opportunities of human life."2

The conception of social justice provides a standard of distribution. It determines the shares of different individuals in the distributive aspect of the society. It regulates the entire walks of life of man. It keeps a balance between the competing claims of individuals in the society. It harmonizes the conflicting interests and tends to bring about a balance in the society. Rawls points out:
"The concept of justice I take to be defined, then, by the role of its principles in assigning rights and duties and in defining the appropriate division of social advantages."

In course of time justice becomes the guiding principle of life of man in the society. It seeks to control the passions and emotions of man. It is used to judge the actions to be right or wrong.

Justice is sometimes conceived as a religious ideal. Religion has been construed as standing for divine justice. In the concept of divine justice, one sees the supernatural power as supreme and man as the passive recipient of favours and commands. In a wider sense, justice is not only affirmed as an attribute, but is identified with the very essence of Divinity. The justice of God must, therefore, be understood as inherent in Himself.

"In all things of nature there is traceable an order, or a series of congruencies, which as fulfillment of the Divine commands, may, in a wide sense, be called justice."

"In the oriental world, especially in the Jewish Christian world, dominated by a monotheistic and ethical conception of the universe, the quality of justice is ascribed above all to God Himself, to denote the infallible proportion and intrinsic harmony of His will."

The gospels of Christ are regarded as the gospels of justice. "You shall not kill", "You shall not commit adultery", "You
shall not bear false witness against your neighbour" etc. are regarded at the same time as the gospels of religion and of justice. One comes across plenty examples in which religion and justice are fused together. The Bible is an instance to the point: "He that ruleth over men must be just"; "Defend the poor and fatherless, do justice to the afflicted and needy"; "Masters, give unto your servants that which is just and equal" etc.

God is considered as the absolute. So it is argued that divine dispensation must be justice absolute in nature which is eternal and unchangeable. Divine justice is transcendental in nature. It is sometimes argued that the transcendental God and His divine justice are inaccessible to human knowledge of ordinary kind. It is amenable only to faith. Divine justice, though incomprehensible to rational consideration, is not so to religious faith.

"Justice is a mystery, one of the many mysteries - of the faith."5

God's wisdom which implies his justice - is a mystery. It is only through faith that we realise this justice which is beyond rational consideration.

Providential justice has a better representation in the Hindu theory of Karma. It is the singular feature of
this doctrine that it leaves the individual as an active and free agent. The individual is not considered as a tool in the hands of God. He is the architect of his own fate. Man is his own retriever and retributor and the mechanism of justice operates in an impersonal manner without reference to any external God. The Nishkāma Karma of the Gītā is a fine example of such a type of justice. Man is free to choose the course of his life. Accordingly, he is the sole maker of his own destiny. As a necessity, his good actions reap a better future for him and bad actions a worse one. The idea that man is ultimately responsible for the consequences of his own actions is singularly found in the Hindu thought.

The fusion of religiosity and justice are also found in the Dharmasūtras of Manu, Jājñavalkya, and Kautilya. 'Dharma' is derived from the root dhr (to uphold, to support, to nourish). Sometimes, the word has been used in the sense of 'upholder', 'supporter' or 'sustainer' as in the Rg Veda. In most cases, dharma stands for religious ordinances or rites. 'Dharma' has also been used to stand for the specific duties of the āshrama or station in life. 'Dharma' was also used sometimes to stand for the privileges, duties and obligations of man, his standard of conduct as a member of the Aryan community, as a member of one of the castes and as a person in a particular stage of life. This sense of 'Dharma'
is also found in the Bhagavadgītā (Svadharme nidhanam sreyah), it is better to court death while performing one’s duties. Jaimini defines 'Dharma' as "a desirable goal or result that is indicated by injunctive (Vedic) passages". The Vaiṣesika Sutra defines dharma as "that from which results happiness and final beatitude." "ahimsā paramo dharmah" "ācharah paramo dharmah". The Vanaparva of Mahābhārata and the Manu Smriti define dharma as non-injury and good conduct respectively. It is argued that performance of one’s duties leads to Dharma (Justice) and dereliction of it leads to Adharma (injustice).

Justice is sometimes conceived as a legal ideal. When taken in a narrower sense it is considered as a subjective expression. It is pointed out that the subjectivity in relation to justice is untenable. It leads to conflict and contradiction. Attempts have been made to give a foothold to it in an impersonal order.

"This change of meaning of the concept of justice goes hand in hand with the tendency to withdraw the problem of justice from the insecure realm of subjective judgements of value, and to establish it on the secure ground of a given social order."  

In this sense, justice is regarded as an impersonal legal norm. Justice, in this sense of legality, refers not
to the contents of a positive legal order, but to the application of it in the society. Any positive legal order is just if it is in accordance with the legal norm and is unjust if it is not in accordance with it.

Some representatives of the positivist school of jurisprudence identify justice with legality. John Austin, for example, has said,

"By the epithet just, we mean that a given object, to which we apply the epithet, accords with a given law to which we refer it as to a test. By the epithet unjust, we mean that the given object conforms not to the given law." 12

This positivist school of jurisprudence accepts law as the standard of justice. Hans Kelsen argues that justice, in any scientifically meaningful sense, must be adjudged a quality that relates not to the content of a positive order, but to its application.

"'Justice' means the maintenance of a positive order by conscientious application of it." 13

This idea is also advocated by Alf Ross, who declares:

"The idea of justice resolves itself into the demand that a decision should be the result of the application of a general rule. Justice is the correct application of a law, as opposed to arbitrariness." 14
This sort of interpretation of justice is at variance with the usual meanings and ideas which mankind has associated with the term justice. It seems very difficult to agree to the proposal to equate law with justice. There are laws which are unjust and should be repealed. Political and social revolutions have taken place in the history of human civilization in the name of a higher justice.

"The entire history of the law, including the rise of equity jurisprudence as an antidote to the strict, formal law of the state, and the struggle for progress and law reform, would be incomprehensible and meaningless if justice and status quo legality were synonymous." 15

Thus we see that justice and legality cannot be treated as identical. This does not mean that they are contradictories. Justice cannot be derived from law, for justice is

"an undervived, primal order of things established by no human law-givers." 16

Justice has also been treated as a moral ideal. Morality is concerned with the question as to what is good and bad, right or wrong, in the conduct of human beings. A moral standard approves or disapproves human actions according to a particular normative standard. The problem of justice also evaluates the conduct of man and it also approves or disapproves human actions. This shows that justice and morality are connected in some way or other.
When we say, for instance, that a given law is bad; or that one judicial decision is unjust or better than another, we naturally refer to something moral. The final justification of laws or governmental actions lies in morality.

Justice is treated as a moral ideal in the ancient Greek Philosophy. Philosophers like Plato and Aristotle have treated justice as co-extensive with morality. To them, justice is nothing but morality itself. Justice without morality or righteousness is inconceivable.

"No one can fail to recognize the breadth and profundity of this doctrine which makes justice one with harmony, with perfection and with beauty."

Indeed, the Platonic conception of justice has been construed as controlling all the walks of life and acting as the regulative principle of the whole of life.

"In Plato the moral and the juridical valuations are fused. Politics is not distinguished from Ethics, nor even from Psychology. ...'just' is applied alike to the inner life of the individual and to his social interconnections."17

Aristotle also considers justice as the whole of virtue. He argues that in its abstract ethical conception, the whole of justice is the whole of virtue, and he quotes the proverb,
"in justice is all virtue together."¹⁸

The objective of fusing justice with morality by the Greek thinkers perhaps was to uphold the social equilibrium. Throughout history, men have set up ethical systems with the aim of creating tolerable conditions in social relations. Men have to live together and to solve many problems common to them. The tenets of morality are designed to curb and subdue those physiological and emotional tendencies which could, in the absence of these, disturb the harmony of the society. It is the goal of morality to substitute peaceful behaviour for violence, good faith for fraud. In this way, morality teaches us to

"moderate our impulses and adjust our demands so as to reconcile them as far as possible with those of our fellows."¹⁹

Thus we see that morality acts as an adhesive which keeps men of varied temperaments united. It upholds a civilization and culture. It prolongs human relations and keeps a chain of connection among various cultures.

"Morality enjoins men to live with that degree of wisdom and justice and kindliness without which life, in any age or in any society, is intolerable."²⁰

The tenets of the Dharmasāstras are considered as the gospels of morality and at the same time of justice.
Any violation of the social customs and traditions makes one unjust, illegal and immoral. Some of the injunctions set forth in the Ten Commandments are typical examples of normative prescriptions which have moral as well as legal significance. "Thou shalt not kill," "Thou shalt not steal" etc., are imperatives whose infringement makes one subject to moral as well as legal censure. The forbidden acts are at the same time considered unjust, unlawful and immoral.

Such is the domain of morality with its far stretching roots which engulfs the whole of human life.
REFERENCES

3. Ibid., p. 10.
6. Rg Veda, I. 187.11 and X. 92.22.
7. 13 - Purva Mimāṃsā Sutra 1.1.2.
8. 14 - Vaisēsikā Sutra.
9. Vana Parva of Mahābhārata 373.76.


