CHAPTER -I

Origin, Meaning and Theories of Justice

1. ORIGIN OF JUSTICE

Ever since the birth of the society, justice has been one of the most important quests of human endeavour. In ancient India, the term 'law' and 'justice' had invariably been associated with the term 'Dharma',1 which passed through several transactions of meaning, in its most prominent significance. It stood for the privileges, duties, obligations of man and his standard of conduct as a member of Aryan community and so on.2

The study discloses that the word 'justice' has been used interchangeably with 'law' and appears to have been striven and controlled by the dominant classes to produce order and security.3 Justice like equality, democracy and development, is a word of ambiguous import and possesses a basic absolute meaning and plural relativist meanings dependent on specific social condition and moulded by time, circumstances and cosmic changes. Indeed, history, geography and cultural anthropology often meet, to condition these concepts, their colour and contours.4 For instance, the Greek

1. The term 'Dharma' is a sanskrit word and in most cases the meaning of Dharma is religious ordinances or rites. For detail see, P.V.Kane, History of Dharma-Sastra (1968), Vol. I, p. 1.


4. Ibid.
philosophers whose theories of justice had a genetic role in moulding western jurisprudence and notions of justice said, "Like many other sciences the science of law has its roots in Greek philosophical theories of justice and social order. The Greek word 'vovos' which we translate as 'law' was used to denote justice, ethical custom, commercial custom, religion rites, law in general, a rule of law, and social control as a whole. They held that the end of justice was an orderly maintenance of an idealized social status quo. The legal order for them was an ordering of men to keep each in his appointed place in the politically organised society of an ideal Greek city. Law and justice had their basis in a harmony of fitness involved in the nature of things. They were independent of human will and had universal validity. It was in the similar spirit that the word 'Justice' was used in India giving paramount impetus to the philosophy of status quo.

The study of the origin of the justice reveals that it has not been possible yet, to give a universally acceptable definition, and it has defied all attempts made by various jurists, thinkers, judges and sociologists. Harold Potter has rightly remarked, "Most men think that they understand the meaning of the justice but in fact their notions prove to be vague." The truth is that the word 'Justice' has been derived from Latin word 'Jus'  

4. Ibid.  
5. Id.  
which connotes the meaning 'what is ordered'. Thus a just law or the government that which possesses the quality of fairness or impartiality enabling itself to render everyone his own summae suique tribute.

The Roman concept of 'justice' is at variance with Greek the former being legalistic than philosophical. Romans identified law and justice and viewed justice as the goal of law and society. The Roman notions of justice as set forth in Justinian's Corpus Juris is based on Ulpian's definition who in turn derived the meaning of 'justice' from Cicero. According to Cicero 'Justice is the constant and perpetual will to render everyone his due'. It carries with the process of giving to each man what is proper to him in fact, what is due' to each person is not laid down in fixed terms and being relative is to change from time to time according to the requirements of different states. Ulpian opines that states without justice are the mere robber band. Justice was thus regarded as maintenance of social status quo i.e. cherish the idea of an ideal society in which everyone was put in

9. Ibid., p. 78.
10. Id.
right place, to be kept there thenceforth by the law.\textsuperscript{12}

Plato, concerned with a status society and to him a static condition based upon a nice distribution of appropriate functions represented the most desirable form of equipoise.\textsuperscript{13}

Similarly, it is interesting to pin-point here that Indian justice too has been extolled as the very embodiment of God itself whose sole mission is also to uphold, justice, truth and righteousness. In Epic Ramayana, the sage Valmiki says, "in this universe truth alone is God. Dharma lies in truth. Truth is root of all virtues. There is nothing greater than truth."\textsuperscript{14} Similarly, Lord Krishna says, "Whenever there is decline

\textsuperscript{12} See, Supra note 3, pp. 11-12. The philosophy of status quo has been lucidly illustrated by Plato in the following words; "Shall we not find that in such a city a shoe maker is only a shoe maker and not pilot along with shoe making, and that the husband man is only a husbandman and not a judge along with husbandry; and that the soldier is soldier, and not a money maker besides, and all other others in the same way," Plato further lucidly demonstrated the philosophy of status in the words; "But when the Cobbler or any other man whom nature designed to be a trader... attempts to force his way into the class of warriors, or a warriors into that of legislators or guardians, for which he is an unfitted; or when one man is trader, legislator and guardian, all in one, then I think you will agree with me that... this meddling of one with another is the ruin of the state... As there are three distinct classes any meddling of them with one another or the change of one into other is the greatest harm to the State and may most justly be termed evil doing."


\textsuperscript{14} See, विद्याधर लोके, तत्त्व धार्मिक: सन्दर्भित: I तत्त्वावलिं सर्वदार्शिन सर्वाध्यायिनिः परंपरादम: II
of righteousness and there is an exaltation of unrighteousness, then I myself come forth, for the protection of good, for the destruction of evil doers, for the sake of firmly establishing righteousness, I am born from age to age.  

Epics Ramayana and Mahabharata along with Vedas demonstrate the deep commitment and faith of our sages towards justice. The all eighteen Purans, the great sage Vyasa has said but two things, doing 'good to another is right, causing injury to other is wrong.' Similarly, all the four Vedas insist on equality and respect for human dignity as is evident from Yajur Veda which sermonises: 'You are ours and we are yours.'

In India, philosophy of 'Justice' has always been associated with 'Dharma' a term which could not be properly and appropriately translated into other languages. Dr. V.C. Sarkar rightly referred to four senses in which the term 'Dharma' has been used, viz., (i) It mean 'religion' in the category of theology, (ii) 'Virtue' as opposed to 'Vice' in the category of 'ethics' (iii) 'law' in the category of 'law' and (iv) 'Justice' and 'duty' in the category of one's actions.

15. See, supra note 8, p. 87.
16. Ibid.
18. Ibid.
In Hindu jurisprudence 'Dharmanaya' was given precedence over 'Dharma' i.e. law, whenever there was any conflict between them Dharmanaya prevailed; generally speaking there was no separation between law and religion. The term 'law' and 'Justice' were used as an inter-changeable.\(^\text{19}\)

To sum up, justice has been deemed to be an elastic and dynamic concept which varied from people to people, from time to time according to the prevailing conditions, customs, traditions, religions, beliefs and above all, philosophy of life which determines the moral sense of the community.\(^\text{20}\)

\(^{19}\) Ibid., p. 37-

II. MEANING OF DISTRIBUTIVE JUSTICE

The opening paragraph of Justinian's Institutes declares, "justitia est consians et perpetua voluntas jus suum cuique buendi."\(^{21}\) It connotes that justice is the constant and perpetual will to give every man his due.\(^{22}\) Similarly, Grotius and Leibniz believed in the concept of society as the co-operation of beings endowed with reason. They defined justice as "custodia societatis justum est quod societatum ratione utentium perfecit."\(^{23}\) This means that justice puts an end to the conflict between the individual and the universal, the microcosm and the macrocosm, and brings about the synthesis between the whole and the parts.\(^{24}\) 'Justice' thus seems to entail the conflict of competing claims and not infrequently the clash of powerful social interests with the right of individuals enshrined from time to time to the mechanism of raison'd Etat.\(^{25}\) Prof. Paul Elmore in 'Essay on

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22. Ibid.


Aristocracy and Justice,' declares that justice is the act of right distribution, the giving to each man his due.\textsuperscript{26} Likewise, Morris Ginsberg exhibits the evolution of justice and distributive justice as follows: The notions of justice is perhaps explicitly recognised in the injunction given to judges, such as we find in ancient Egypt or in early Hebrew law, to administer the law impartially, "hear the small as well as the great." Thereafter development can be traced, mainly along with the following lines. First, it is recognised that laws which impartially applied may themselves be unequal. There arises the notion that differential treatment requires justification in terms of relevant differences. In this way laws come to be changed so as to remove arbitrary discrimination, such as those based on religion, race, sex and colour. Next the notions of impartiality is extended by applying it to a wider range of rights and duties, there is a movement from equality to political rights to equality in social and economic rights. Accompanying transition there is a shift of emphasis from "communtative" justice as a sort of equivalence of exchange or balance of claims and counter claims, between individuals to distributive justice as a social responsibility assuring to all at least the minimum conditions of physical and mental well being.\textsuperscript{27}

To Plato and other Greeks of his time, the word justice conveys a meaning different from the one it carries now-a-days. The Greek word for justice is dikaiosune, which has a wider implication than the English word 'justice' and comes very near the English word 'morality'. It represents a disposition to do the right thing. The Greeks looked upon justice as 'virtue in action' and, therefore, a virtue par excellence. To both Plato and Aristotle, justice meant goodness as well as willingness to obey laws. Plato opined that justice consisted 'in giving to each individual the opportunity for the exercise of functions for the performance of which he is properly qualified by his mental, moral and physical qualities.' Justice, to the Greeks, was not a mere function of judicial tribunals. It was the spirit which animated men in the proper discharge of their duties. That form of government was just which administered justice.29

Plato saw in justice, conceived by himself, the only remedy of saving his beloved Athens from decay and ruin. Nothing agitated Plato's mind in contemporary affairs more than the amateurish meddlesomeness and political selfishness which was rampant in Athens of his

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27. See, Morris Ginsberg, on Justice in Society, (1965), p. 64.
29. Ibid., p. 6.
Men and classes must be confined to their own specific duties to the State and their selfishness must give place to utter devotion to the State which could only be done if justice reigned supreme in the State.  

Similarly, Cephalus defines justice as 'giving to every man what is due to him.' Polemarchus elaborates his theory by giving a new meaning to the word 'due'. He defines justice as consisting in doing good to one's friends and harm to one's enemies. However, Socrates does not agree with Polemarchus who points out that it is not justice that enables you to do good to your friends and do harm to your enemies. For Socrates, justice is something psychic, internal, absolute and immutable while any particular actions are external and changeable.

To Plato, justice resides in the State and is to be identified with complete virtue which is composed of four elements i.e. wisdom, courage, temperance i.e. self-control and justice. His justice consists in the will to concentrate on one's own sphere of duty, and not

30. Ibid., p. 17.
31. Id.
32. Id.
33. Ibid., p. 18.
meddle with the sphere of others; and its habitation, therefore, is in the heart of every citizen who does his due in his appointed place." Justice is the condition of every other virtue of the State and grows with specialisation of functions. 'The Justice of the State is the citizen's sense of duty.' Frankly speaking, Platonic conception of justice goes against individualism because a man must not think of himself as an isolated unit with personal desires, needs or ambitions but as an integral part of an organic whole. Plato's justice does not embody a conception of rights but of duties though it is identical with true liberty. Justice is a quality—an indispensable quality—of moral life. It is the true condition of the individual and of the State and the ideal state is the visible embodiment of justice. To Plato, justice postulate an ideal State and is identifiable with it. Justice, like the ideal state, therefore, demands division of society into three classes representing the elements of reason, spirit and appetite, one man, one work, on the basis of functional specialisation, a state-regulated scheme of education, the rule of philosopher—rulers and their emancipation from domestic and economic worries by a system of communism, and
emancipation of women and their equality with men. 34 Plato's conception of justice has in it the principles of a social scheme and social justice. His concept of justice is based on the submergence of the individual in the society. It does not concede the notion of individual versus the State. It refers to the 'whole' duty of man and not merely his 'legal' duties.

From the point of view of Plato, justice denotes self-control on the part of various classes of society which makes each class mind its own function and not meddle with the functions of other classes. It also makes various members of each class stick to their own allotted functions within the class and not interfere with the functions of other individuals in the same class. Justice, thus, is a principle of non-interference 35 which keeps within proper bounds the various classes of society, various individuals of each class and various elements in an individual's soul. It is a principle of functional specialisation which moves every one to make a specialised contribution to society. Specialisation leads to efficiency. Justice is architectonic and keeps other virtues in harmonious relationship with each other. It permeates and integrates the other virtues of wisdom, courage, and self

34. Ibid., p. 19.
35. Id.
control and keeps them within proper bounds. As such, justice is the bond that holds the society together.  

According to Kelsen, "The longing for justice is men's eternal longing for happiness. It is happiness that man cannot find alone as an isolated individual, and hence seeks in society. Justice is social happiness. It is happiness which is guaranteed by a social order." He further added, "The happiness that a social order is able to assure cannot be happiness in a subjective individual sense, it must be happiness in an objective collective sense, that is to say, by happiness we must understand the satisfaction of certain needs, recognised by the social authority the law giver as needs worthy of being satisfied, such as the need to be fed, clothed, housed and the like."  

According to John Stuart Mill, a society which is governed by the legal philosophy of distributive justice is one which should treat all equally well who have deserved equally well or it, that is, who have deserved equally well absolutely. This is the highest abstract

36. Ibid., p. 20.
38. Ibid.
standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens should be made in the utmost degree to converge. He further observes; "it is universally considered just that each person should obtain that (whether good or evil) which he deserves, and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is perhaps the clearest and most emphatic form in which the ideal justice is concerned by the general mind."

The study reveals that characteristic of distributive justice is the expansion of the spirit of collectivism, the promotion of the feeling of co-operation and the exercise by society of its collective power in support of the legitimate claims of individual life. Frankly speaking, its formula is "to every man according to his needs" rather than "to every man according to his deserts." It considers how it can secure to each individual a standard of living and such a share in the values of civilization as shall make possible a full existence of human life.


40. Ibid.

41. See supra note 24, p. 30.
Spencer also identifies justice with distribution. To quote him, "Each individual ought to receive the benefits and the evils consequent upon conduct. When we act, and especially when we produce, we naturally create certain benefit ought to be recured to us." 42

In all these ways, the concept of justice according to law is gradually pervaded by the notion of justice and the distributive justice in the law. However, it is now amply clear that the emphasis has shifted from analysis of justice to that of distributive justice. This is because modern social and economic developments have made it clear that individual justice, justice between the wrong doer and the victim is only a partial and incomplete form of justice and it is in the notion of distributive justice. 43 The welfare state concept is generally thought of as an application of notion of distributive justice. More over, the equality of opportunity for under privileged and weaker sections of the society is being increasingly heard these days which virtually demonstrates the need and importance of the notion of distributive justice in modern consciousness. 44 To be comprehensive, it embraces "the

43. See, Supra note 24, p. 45.
44. Ibid.
whole economic dimension of social justice, the entire question of proper distribution of goods and services within the society." It demands equality in the distribution of facilities and burdens with a view to strike a balance in the prevailing socio-economic conditions of the society just to bring equilibrium between the conflicting, interests, claims and desires of the individual. To quote Justice P.N. Bhagwati, "When I talk of justice, I mean not commutative justice but distributive justice, justice in depth, justice which penetrates and destroys inequalities of race, sex and wealth, justice which is not confined to a fortunate few, but takes within its sweep the entire people of the country, justice which ensures equitable distribution of the social, material and political resources of the community. This is the kind of justice which we in India are trying to realise through the process of law and our substantive law is being geared to this task." 

45. Id.

46. The advantages or facilities and burdens are of number of kinds such as, wages, taxes, property, punishments, individual or social performance of rights and duties as allocated by the legal system of that country.

Justice Krishna Iyer visualises the term 'distributive justice' as an issue of "special concern for the backward human sector of the lowliest and the lost, and activist, affirmative state action for their advancement as a democratic imperative, plus the organisation of sensitive and creative milieu which offer, as of right, social economic and cultural opportunities, dignity of personhood and individuality to every human, regardless of seeming of real disparities to unfold his full mental, moral and physical potential." Thus, distributive justice means justice to all and not to a few or a favoured class. It does not introduce class conflicts, but seeks to improve and harmonise the society with a philosophy to ameliorate the socio-economic imbalances. The readjustment of social claims may "involve a transfer of resources from one section of the society to another, but the transfer is only an equitable reallocation of resources and notice destruction on the structure itself." Distribution of justice demands preferential treatment of the weaker sections of the society but that is only to correct the imbalances.


49. See supra note 24, p. 46.
existing in the society and not to cause unnecessary harassment or injustice to the advanced sections thereof thas why, it seeks to remove the imbalances in the social, economic and political life of the people.\textsuperscript{50} There can not be distributive justice unless the society progresses in all the directions. In fact distributive justice helps to bring about a just society.

The need of the distributive justice is to protect the weak, aged, destitute, poor, women, children and other down-trodden segments of society against the ruthless competition of life. It seeks to give advantageous aids to the unprivileged so that they may have an equal opportunity to compete boldly with more advanced section of the society. It is the balancing wheel between haves and haves not.\textsuperscript{51} Its aim is not to pull down the advanced sections of the society, but only to uplift the backward and the under privileged sects, thereof without unduly and unreasonably effecting and undermining the interests of the former. It only prevents unjust enrichment at the expense of the under privileged and ensures a balanced and harmonious development of the society.\textsuperscript{52}

\textsuperscript{50} Ibid.
\textsuperscript{51} Id.
\textsuperscript{52} Id.
III. KINDS OF JUSTICE

The real credit to evolve the kinds of justice goes to Aristotle. He, in his *Nico Macheoin Ethics*, divides justice according to law into three kinds—distributive justice, corrective justice, and commutative justice. The 'distributive justice' deals with distribution of honour or money or other thing, that is, due share in political community. The 'corrective justice' corrects a loss of portion and rights involuntarily sustained in transaction between individual members of the community and third is 'commutative justice' or justice in exchange, which determines the proportion of one sort of goods or services in return for another sort of voluntary transaction of purchase, sale, or hire. Thus what he calls 'distributive justice' is that 'equal things should be given to equal persons and unequal things to unequal persons.' Distributive justice as such is based on worth, merit and ability.

Justice, to Aristotle as to Plato, is virtue in action. Justice means that member of a community should fulfil his moral obligations towards the fellow-members of his community. Complete justice is the whole of moral virtue in social relationship. Aristotle argues that corrective justice is mainly concerned with voluntary commercial transactions like sale, hire, furnishing of security, etc. and other things like aggression on property and life, honour and freedom. Distributive justice consists in proper allocation to each person according to his worth or desert. This type of justice relates primarily but not exclusively to political privileges. From the point of view of distributive justice, each type of political organisation has its own standard of worth and, therefore, of distributive justice. In a democracy, the standards of worth is free birth; in an oligarchy it is riches, in aristocracy of birth it is descent while in true aristocracy it is virtue. Distributive justice assigns to every man his due according to his contributions to society. It minimises strife and confusion by countering inequality of the equals or the equality of the unequals. Distributive justice is identifiable with proportionate

54. Ibid., p. 1149.
equality i.e. a man's rights and awards must correspond to his social performances and contribution. 55

However, justice is not only a joining of persons, but also of principles. It blends together the claims of the principle of liberty with those of the principle of equality, and both with those of the principle of fraternity or co-operation; justice adjusts them to one another in a right order of their relation. Equality may quarrel with liberty, when its application comes to a classless society. Similarly, the principle of liberty may quarrel with that of fraternity — it is a conflict of the individual with community. There may also be internal conflicts with single principle. A final principle is thus necessary to resolve these conflicts, it is *summ cuique Iribuit* 56 and this final principle is justice, which balances and reconciles the different claims. This is the reason for placing 'Justice' at the top of liberty, equality and fraternity in the preamble of our National charter. 57

It may be reiterated here that theories of justice must take into consideration three important facets of

55. Id.


57. See, Supra note, p. 51.
distributive process.\textsuperscript{58}

(a) The total amount of the goods to be distributed.

(b) The pattern of distribution arrived at, and

(c) The distributional procedure described as the principles of selection by means of which the distribution is arrived at.

The important thing to be noted here is that justice, like equity, may vary with the chancellor's foot, but is basic to our constitutional order and is a fundamental, preambular pledge to every citizen. Justice, individual or social, natural or legal, is no mirage.\textsuperscript{59} Manu, the ancient law giver, rightly says: "Justice, being destroyed, will destroy; being preserved, will preserve; it must never, therefore, be violated."\textsuperscript{60} Similarly, the Koran in no less eloquence highlights the philosophy of justice in the following words, "Justice is an unassessable fortress, built on the brow nor demolished by the force of armies."\textsuperscript{61}

The bitter truth is that social and economic justice are the Kernel of the civilized society. The concept of social justice takes within its sweep the

\textsuperscript{58} For detail see Nicholas Rescher, Distributive Justice: A Constructual Critique of the Utilitarian Theory of distribution (1966), p. 5.


\textsuperscript{60} Ibid.

\textsuperscript{61} Ibid., p. 17.
objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities. The sequitor, for our social scheme, is that Indian democracy is not static, passive or negative. It is dynamic and positive and is determined to create a new social order based on equality and justice through the instrumentality of law. Law, in such a challenging situation, cannot walk alone, but must collaborate with progressive schools of the social sciences and remake, not merely meddle, reorient, not merely readjust. In other words of Dean Pound, while jurists have been at these tasks a new social order has been building which makes new demands and presses upon the legal order with a multitude of unsatisfied desires. Once more, we must build rather than merely improve; we must create rather than merely order and systematize and logically reconcile details."

Thus social justice is a relative concept with changing context dependent on time and circumstances, on people's culture and aspiration. We concern ourselves with an ancient Asian member of the Third World with its inherited injustices, cultural kins, and enormous economic, social and demographic problems. So our

63. The supra note 3, p. 35.
64. Ibid., quoted in Iyer, ibid., p. 35.
perception must be conditioned by the past, present and future and the traditions and aspirations of the board community in working its way towards liberation, all of which have, in good measure, codified in our constitution. But, even within the National charter which is the sanction for the correction of the old way of life and the direction for the social order, there is spacious scope for interpretation guided by social perspective. The Indian Constitution, says Granville Austin, is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire constitution by the aim of national renaissance, the core of the commitment to the social justice lies in Part IV, in the Directive Principles of State Policy. These are the conscience of the constitution. The Directive Principles thus connect India's future, present and past, adding greatly to the significance of their inclusion in the constitution, and

65. Ibid.

giving strength to pursuit of the social revolution in India.\textsuperscript{67}

Similarly, Dr. Ambedkar regarded Part IV as a socialist chapter and contended that the intention of the nation was "not to pay lip service to these principles but they were to be made basis of all legislative and executive action that they might be taking hereafter in the matter of the governance of the country. He vehemently objected to making the constitution any other than a mere political contrivance.\textsuperscript{68} He cited the directive principles as giving us the substance of a socialistic State. He further added: "If the Directive principles are not socialistic in the direction and in their content, I fail to understand what more socialism can be."\textsuperscript{69}

\textsuperscript{67} Austin also adds:

In Directive Principles, however, one finds an even clearer statement of social revolution. The aim at making the Indian masses free in the positive sense; free from the positiveness engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves."

\textsuperscript{68} See supra note 3, p. 36.

\textsuperscript{69} Ibid.
Social justice is the balancing wheel between freedom, political and economic, and indeed, makes for the survival of democracy. For the oppressed class and suppressed peoples liberty meant not only political liberty but social and economic equalitarianism and an anti-exploitative human order, socialist aspirations having gained intellectual currency in all the continents. The coloured peoples were claiming human justice which was militantly social and economic. Inevitably, their evangelical assault of the new socio-economic politics affected the Indian ethos, and so, we may collect the constellation of social justice principle even from the U.N. Charter, universal declarations, conventions and convenants. Justice, in its triple aspects, is the primary goal of our constitution's social dymanics. To quote Pt. Nehru, "the first task of the constituent Assembly, is to free India through a new constitution, feed the starving people and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity." He firmly believed that there were in the contemporary world challenges, social, political and economic which if the system failed to meet, will destroy

70. See, supra note 59, p. 17.
71. Ibid.
it. He warned that these challenges had to be met either by discarding or by adjusting the legal system.

Similarly, American jurist Dean Roscve Pound spoke of distributive justice which is facet of social justice, in the following lucid words:

As the saying is, we all want the earth. We all have a multiplicity of desires and demands which we seek to satisfy. There are very many of us but there is only one earth. The desires of each continually conflict with or overlap those of his neighbours. So there is as one might say, a great task of social engineering. This is a task of making the goods in existence, the means of satisfying the demands and desires of men living together in a politically organised society, if they cannot satisfy all the claims that men make upon them, at least go round as far as possible. This is what we mean when we say that the end of law is justice. We donot mean justice as the ideal relation among men. We mean a regime. We mean such an adjustment of relations and ordering of conduct as will make the goods of existence, the means of satisfying human claims to have a things and do things, go round as far as possible without the least friction and waste. 73

Our national charter opens with the preamble which states in unequivocal terms that the people of India have solemnly resolved to secure to all its citizens triology of justice, i.e. justice - social, economic and political, equality of status and of opportunity and to

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73. Ibid., also see Dean Pound, Mahlon Powell Lectures and Jurisprudence, (1959), Vol. I, III.
promote among them all fraternity assuring the dignity of
the individual and the unity and integrity of the
nation. The philosophy of triology of justice perhaps
lies hidden in the long and voluminous debates of the
Constituent Assembly which can in its firm and solemn
resolve to proclaim India as an independent Sovereign
Republic and to draw up for her future governance a
constitution:

(a) Wherein shall be guaranteed and secured to all the
people of India justice, social, economic and
political, equality of status of opportunity, and
before the law; freedom of thought, expression,
belief, faith, worship, vocation association and
action, subject to law and public morality; and

(b) Wherein adequate safeguards shall be provided for
minorities, backward and tribal areas, and
depressed and other backward classes.

The socio-economic justice stipulated in the
constitution was welcomed by different sections of
constituent Assembly, Mr. M.R. Masani supported the clear
rejection contained in the resolution of the existing
social structure and the gross inequalities prevailing in
the country. According to him, "Objective Resolution"

74. See, Supra note 24, p. 61.

75. C.A. D. Vol. I, p. 61, Also see B. Shiva Rao, The
Framing of India's Constitution; A Study, (1968), pp. 121-122.

envisages far-reaching social changes-social justification, the fullest sense of the term but it works for those social changes through the mechanism of political democracy and individual liberty."\textsuperscript{77}

Dr. B.R. Ambedkar further stated, "If this Resolution has really behind it a sincerity. . . . I should have expected some provision whereby it would have been possible for the state in most explicit terms that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be possible for any future government which believes in doing justice, socially, economically and politically unless its economy is a socialistic economy."\textsuperscript{78}

Refering to socio-economic justice, Dr. S. Radha Krishnan said that it intended to effect a smooth and rapid transition from a state of serfdom to one of freedom.\textsuperscript{79} Then emphasizing the need for such a change, he said, "it is, therefore, necessary that we must remake the material conditions. . . . \textsuperscript{80}

Thus, the scheme of distributive justice as visualised in the objective Resolution was incorporated in the preamble, the fundamental Rights and the directive

\textsuperscript{78} Ibid., p. 100.
\textsuperscript{79} Id. C.A.D., Vol. II, p. 269.
\textsuperscript{80} Id. at 273.
principles of the states policy and other provisions of the constitution.\(^{81}\) Constitution ordains the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice-social, economic and political shall inform all the institutions of the national life.\(^{82}\)

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81. See, Constitution of India, The Preamble, Part III & IV. Also see Part XVI.

82. See Constitution of India, Article 38, Clause(1).
IV. THEORIES OF JUSTICE

There are various theories of justice which have been propounded from time to time in search of an ideal standard of justice. Normally, the concept of justice was closely linked with property. Locke who looked upon the law of nature as the principal foundation of justice of all just order, attached a good deal of importance of property. Formerly, and even now, man's right to property is the most valuable right because his happiness to a great extent depends on it. It is for this reason that utilitarians adopted the criterion of the greatest number of maximising human happiness. Equality is another modern value considered as a key to justice. Thus, Rousseau based his Social Contract on the thesis that all men are born equal. And this provides a foundation for universal human rights and a rational basis for a theory of social justice. Recently, John Rawls has established an objective theory of justice in which he arrives at a concept capable of bridging the gap between the form and the substance of justice. Thus theories

83. See, Justice, (Nomo VI), p. 269.
84. See, Rousseau, Social Contract, p. 4.
which take in their sweep the principles of distributive justice, may be classified as:

i) utilitarian Theory;

ii) Contractarian theory;

iii) Egalitarian Theory, and

iv) Gandhian Theory of Justice.

An attempt has been made to examine the different aspects of these theories and ascertain the extent to which they satisfy the demands of the distributive justice.

(A) Utilitarian Theory

The propounders\(^\text{86}\) of this theory defined justice with reference to principle of 'the greatest happiness of greatest number.' They argue that justice in its essence is distributive in character.\(^\text{87}\) According to them, public utility is the sole origin, justification and criteria of justice. The Hedonistic calculus became the major standard during nineteenth-twentieth centuries\(^\text{88}\) for determining the contours of justice including egalitarian or social justice. Their idea of justice was a device to promote goodness, virtue,

\(^{86}\) The great champions to propound the utilitarian theory are Hall, Hume and Bentham.


\(^{88}\) See, supra note 8, p. 81.
pleasures and avoid evil, pain, and unhappiness. They opined that utility was morally good which ought to be pursued as the supreme aim of life and law. The utilitarians defended their claim by arguing that the principles of justice do not in fact prescribe particular mode of distribution of external resources, but in fact they justify the given distribution of resources by the total amount of happiness which it produces. Thus principle of justice became results of their application.

Brandit, however, does not agree with the utilitarians and points out the weakness of utilitarian theory from the perspective of distributive justice in the following words: "If quantity of welfare can be raised by a grossly unequal distribution—for instance, in an efficient system of slavery then we have to favour inequality. Equality, on utilitarian scheme, is a servant of quantity of welfare." Similarly, Nicholas Rescher, with a zeal to improve the contents of utilitarian approach, suggests that one of the most basic elements of the concept of the justice should be to minimize the number of persons in a State of genuine deprivation regarding their share in the available pool

89. ibid.

90. For example, what a person has right to is typically a piece of property.

91. See, Supra note, 24, p. 54.

of utility. Diminishing the number of those who simply do not have enough is a more fundamental element of the concept of justice than diminishing between the 'haves' and 'have nots'.

John Rawls sums up his dissatisfaction with utilitarianism in the following words:

"If then, we believe that as a matter of principle each member of society has an inviolability founded on justice which even the welfare of every one else can not override, and that a loss of freedom for some is not made right by a greater sum of satisfaction enjoyed by many, we shall have to look for another account of the principle of the justice."

We may thus note that the utilitarian theory does not bring home the expectations of society because the needs and desires of man vary qualitatively and are mutually incommensurable. Man harbours the most varied needs. If all the needs of an individual can not be satisfied, and if he is faced with choice thus choice can not be described as a rational alternative between two measureable quantities of pleasure.

The utilitarian principle is, therefore, inapplicable in situation of behaviour where a number of qualitatively different needs (interests, consideration)

93. See, supra note, 91, p. 55.


95. For example, the need for food, rest and sleep, occupation, sexual activity, culture and knowledge.

compete. The incommensurability of needs precludes a quantitative maximisation. Utilitarians have ignored all conflicts of interest from the outset and it is made impossible to allot to the distribution any dependent meaning. But the most economic problems of social bearing are problem of distribution, or at any rate problems which have a distributive angle.

Utilitarianism, thus, only means the gospel of utility, and as Ivor Brow says, "If we give to utility a broad and generous content, if we recognise that a wild uncultivated moorland is just as 'useful' to humanity as a forty acre field with wirefences and motor plough complete, then utilitarianism becomes a doctrine and policy which needs comparison." For utilitarians the basic idea is simply this, that all actions must be judged by their results, that is, by their fruitfulness in pleasure. The utilitarians carried forward their principle step by step, each great thinker adding something of permanent value. Progress was their watchword, and their enthusiasm for liberty and public good

97. See, Supra note, 93.

98. For example, No of the bases available to the population and many other problems.

supplied the driving power. That is what the present time inherits from them. 100

(B). Contractarian Theory

The appearance of contractarian theory of justice was witnessed during 15th and 16th century. This new political philosophy was expounded by Jean Bodin and Thomas Hobbes who in their search for justice enunciated the doctrine that 'Justice is the Keeping of Convenants.' 101 They opined that law was nothing but an expression of people's agreement or contract or will and had their approbation in the form of varying social contracts entered into to achieve justice. 102

According to these politico-legal scientists, the theory of social contract was a device to seek justice and to maintain order and peace in society. The champions of this philosophy highlighted the fact that law must include some assumptions about the nature of group life, its organisation, institutions and purposes. 103 Throughout the history of social contract, those who have sought to prove that law and justice arise only from agreement have been countered with arguments designed to

100. Ibid.
101. See, supra note 8, p. 99.
102. Ibid.
prove that organised life is a natural or necessary consequence of human coexistence. In Greek, arguments that the law was simply the expression of a contract was met by the contentions of Plato and Aristotle that it was natural for man to live in an organised political society. These contracts between prepolitical and political existence are as essential to modern thought as they were to the speculations of the ancient world.\footnote{104}

The contractarian theory of justice is as old as political thought itself and it has found support both in East and West. Kautilya, the minister of Chandra Gupta Maurya, elaborated it in his Arthasastra. He wrote, "People suffering from anarchy, as illustrated by the proverbial tendency of a large fish allowing a small one, first elected Manu to be their king, and allotted one-sixth of the grains grown and one-tenth of their merchandise as sovereign's dues. Supported by this payment kings took upon themselves the responsibility of maintaining the safety and necessity of their subjects."\footnote{105}

Similarly, the Greek philosopher Plato dealt with the

\footnotesize{
104. Ibid., p. 208.
105. Arthasastra, B.K. I, Ch. XIII.
}
contractarian theory in his book *Crito* and the Republic. Roman law, which exercised so powerful an influence from the twelfth century onward made it clear that most of the positive rules obeyed by men were created by contract. It was only during and after the middle Ages that the idea of social contract found a significant place in the discussions of the political thinkers. Manegold maintained that the king could be deposed if "he violates the agreement according to which he was chosen."\(^{106}\)

In the sixteenth and seventeenth centuries the supporters of the social contract theory multiplied and there was more or less universal acceptance of the doctrine. For Hobbes man was not at all social; indeed he found "nothing but grief in the company of his fellows" all being almost equally selfish, self seeking, cunning, egoistic, brutal, covetous and aggressive. The state of nature was a condition of perpetual war, "where every man is enemy to every man and where rule of life was only that to be every man's that he can get and for so long as he can keep it." Men in that State of nature were like hungry wolves each ready to devour the other, their lives were "solitary, poor, nasty, brutish and

These conditions were really intolerable and could not be left to continue indefinitely. Man naturally wished for peace and security, and to escape from the misery and the horror of their natural condition they contracted themselves to form a civil society.\textsuperscript{108} which would ensure to each, security and certainty of life and property.\textsuperscript{109} However, John Locke maintained that man in the State of nature was neither selfish nor self-seeking, nor aggressive. He was social and sympathetic towards others because the law of nature, which was the law of reasons directed him to be so. In Locke's State of nature men were equal and free to act as they thought fit, but within the bounds of the law of nature.\textsuperscript{110}

Locke said that peace was not secure in State of nature. It was constantly upset by the "corruption and viciousness of degenerate man." Such an ill condition, Locke asserted, was "full of fear and continual danger" and in order to escape from all this and to gain certainty and security man made a contract to enter in civil society. This contract was of all with all and Locke named it a social contract. This contract put an

\begin{itemize}
\item \textsuperscript{107} Ibid., p. 456.
\item \textsuperscript{108} Thomas Hobbes Called this type of society as a \textit{Commonwealth}.
\item \textsuperscript{109} See Hobbes \textit{Leviathan}, Part-I, Chapter XXI.
\item \textsuperscript{110} For detail see Hobbes, Treatises on Government, II, Sec. 149.
\end{itemize}
end to the State of nature and substituted it by a civil society or the State. 111

Similarly, the starting point in Rosseau's theory was the 'Traditional' State of nature. Rosseau's man in the State of nature was a "noble savage," 112 who led a life of primitive simplicity and idealic happiness. He was independent, contented, self sufficient, healthy, fearless and without need of his fellows or desire to harm them. 113 It was only the primitive instinct and sympathy which united him with others. He knew neither right nor wrong and was away from all notions of virtue and vice. 114

But these conditions did not last for long. Man began to think in terms of mine and thine. When man began to think in terms of mine and thine there emerged the institution of private property. 115 To quote Dunning:

The arts of agriculture and metallurgy were discovered; and in application of them men had need of one another, and co-operation revealed and emphasized the diversity of men's talents and prepared thus the inevitable result. The stronger man did the greater amount of work; the craftier got more of the

111. Ibid.
113. Ibid.
114. For him, "Original man had not the least notion of mine and thine, no true idea of justice no vice no virtues unless we use these terms in the sense of equalities conducive to his own conservation."
115. See, supra note 112, p. 10.
product. Thus appeared the difference of rich and poor the prolific source of all other sources of inequality.\textsuperscript{116}

The study reveals that the idea of society and the state came into existence because of need to protect the individual interests. People entered into \textit{Factum Unions} and \textit{Factum Subjections} with a view that their rights with regard to their priority and liberty are secured by the State.\textsuperscript{117}

According to John Rawls, "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.\textsuperscript{118} Rawls understands society as a \textit{co-operative Venture} for mutual advantage. In a co-operative society, there is a social union and shared end, conceived not as a substantive goal, but as a plan of conduct which will assure that the endowment of each will be complementary to the goal of all.\textsuperscript{119} Thus utilitarian theory fails to accomodate this very conception of justice. He, however, has endeavoured to explain his concept of justice more specifically in the following two principles:\textsuperscript{120}

\begin{footnotes}
\item[116] Ibid.
\item[117] For detail see \textit{Rousseau, J.J. The Social Contract.}
\item[118] See, supra note, 85, p. 93.
\item[119] Ibid., p. 303.
\item[120] Ibid., p. 302; also see James P.Sterba, \textit{The American Journal of Jurisprudence, Vol. 22,(1977), p. 58.}
\end{footnotes}
i) Each person is to have an equal right to the most extensive total system of equal basic liberties compatiable with a similar system of liberty for all.

ii) Social and economic inequalities are to be arranged so that they are both.

a) To the greatest benefit of the least advantaged. . . and

b) attached to offices and positions open to all under condition of fair equality of opportunity.

John Rawls claims that the first of these principles would be taken to have priority over the second. By this he means that liberties are to be sacrificed for the sake of the increased share of other social goods. All social values, liberty and opportunity, income and wealth and the bases of self-respect are to be distributed equally unless an unequal distribution of any or all of these values is to the advantage of the least favoured.

According to David Miller, "An equal liberty has first priority, followed by the demand for fair equality of opportunity. Only when these are fully satisfied can

121. See David Miller, Social Justice (1976), pp. 42-44.

122. Ibid.
we turn to arranging social and economic inequalities so that they work to the greatest benefit of the least advantaged member of the society." 123 This means that liberties are not to be sacrificed for the sake of increased shares of other social goods. 124

Thus there is nothing in the two principles which directly prescribed how wealth and other goods should be distributed to persons. In this respect the contractarian theory of justice resembles utilitarianism. 125 On comparing the two theories from the point of view of ordinary principles of justice, one is constrained to find that the utilitarian theory diverges from ordinary principle of justice in two important ways. Firstly, it is a wholly 'forward looking theory.' It judges actions to be right or wrong solely on the basis of their future efforts. The philosophy of justice, however, includes 'backward looking elements.' 126 Secondly, it judges action to be right or wrong according to the net quantity of happiness they produce, whereas the common idea of justice is concerned with distribution of benefits among

124. For example, it would not be considered just for a society to give up freedom of the press in order to achieve greater, economic benefits.
125. Ibid.
126. For example somebody is said to have a just claim to a reward on the ground of desert, a present act is seen as right because of its relationship to a past act.
persons.\textsuperscript{127}

To some extent, Rawls theory of justice is also "forward looking" with exception of the principle of fair equality opportunity and that too only to a limited extent as it involves the notion of desert.\textsuperscript{128} According to this theory, the size of incomes and other rewards is not to be fixed in such a way that they fit the future for the least advantaged member of the society.\textsuperscript{129} This theory is not strictly aggregative because it does not allow the few to be deprived to obtain greater balance of happiness for the many, it is not distributive either since it contains no principles directly prescribing an allocation of benefits and burdens. According to Miller; "The contractual theory of justice appears to be less a radical alternative to utilitarianism than a modification of the utilitarian theory, differing from time that theory chiefly in demanding the maximum benefit for one particular group in society—the worst off—instead of the maximum benefit for society at large. While this may come a little closer to

\textsuperscript{127} See, Supra note 110, p. 50.

\textsuperscript{128} See, Supra note 24, pp. 50-52.

\textsuperscript{129} Ibid.
our ordinary sense of justice than the unmodified utilitarian position, it still appears to diverge too from well established judgements to satisfy by the requirements which both Rawls and modern utilitarian purpose for an acceptable moral theory. 130

The thomstic premise that in matter of distributive justice the individual does not have separate inherent rights whatever rights, whatever rights he possesses are those which belong to him as a member of the group, does not hold good in the contemporary world where distributive realm is thought of primarily in terms of opportunities open to an individual. 131

This conception of social life and the values which it embodies need a theory of justice which would account for these substantial transformations in the individual's relationship to the society. 132 According to Murphy, "John Rawl's theory of justice as fairness is responsive to this need. He views the problem of social justice as one of procedure. The subject to justice is structure of society. To establish social justice we must create a publicsystem of rules by reference to which the

130. See, Supra note, 127.


132. See Supra note, 24, p. 59.
conflicting claims which inevitably arise can be authoritatively determined. The principles of justice as enumerated above provide theoretical framework for the modern conceptions of freedom and equality. The Rawlsian rule that the distributive differences must be judged from the perspective of the least advantaged is a moral hypothesis which must itself be tested by the standards of human freedom.

It is thus clear that "the pivotal concept of our position is co-ordination that an acceptable theory of distribution requires the due meshing of the consideration of justice with those of utility. Regarding the rationale of distributive justice, our position is neither strictly denotological nor strictly utilitarian, it is denotological utilitarian. Utility no longer the queen bee, but becomes merely one among several workers in the ethical hive. But owing to all these, the polemical problem of distributive justice remains to be incomplete and imperfect in any of the legal systems of the modern world. In the words of Nicholas

133. Supra note, 131.
134. Supra note, 24.
135. Ibid.
136. See, Supra note 47, p. 120.
Rescher, "Distributive justice—exactly like punitive justice can be brought to realisation only in this world, that is, in an imperfect world populated by imperfect man. A perfectly just system of punitive justice would apprehend, process and punish all and only the guilty and would ignore, leave unprocessed and unpunished, all and only the innocent. But any realizable systems will be such that it can not fail to depart from the ideal in several ways. And these modes of injustice are inter-related and inter-locked; as we modify the system to avoid injustice of one kind, we ipso-facto increase those of another. In evaluating alternative procedures in criminal law and law enforcement we have to be prepared to make choices among the realizable, and thus less than ideal alternatives; exactly the same is true in evaluating socio-economic arrangements with respect to their accordance or violation with the principle of distributive justice. 138

[CI]. Egalitarian Theory

The contractarian and utilitarian concept of justice had cumulative impact on Dean Roscoe Pound and other American legal thinkers and jurists who also propounded the theory of distributive justice within the framework of law, legal ideals and values. 139 They did

138. Ibid., p. 8.
139. See supra note, p. 93.
not see any confrontation between law and justice and envisaged that distributive or egalitarian justice could also be realised on the principle of community or in public interest through the instrument of law and due process of law. It is the ideal of distributive justice which sustains law in its application to social ordering or human engineering.\footnote{140} Human freedom, individual liberty, dignity and social equality are synthesized through law with an over emphasis of law to secure the interests of personality, possession and transaction by balancing the individual interest with those of community interests from the point of the community rather than that of individual.\footnote{141} Dean Pound elaborating his concept of justice observed:

"Looked at functionally the law is an attempt to satisfy, to reconcile, to harmonize, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or through securing certain individual interests or through delimitations or compromises of individual interests, so as to give effect to the greatest total of interests or

\footnote{140. Ibid.}
\footnote{141. Id.}
to the intereststhat weigh. more in our civilization with
the least sacrifice of the scheme of interests as a
whole.142 For him law is a means to balance the competing
interests of an individual along with the social interests
of the society.143 He further observed; "we come to an
idea of maximum satisfaction of human wants or
expectations. What have to do in social control, and so in
law, is to reconcile and adjust these desires or wants or
expectations, so far as we can so as to secure as much of
the totality of them as we can.144 Other realists focus
on the importance of functional approach of law to
realize social justice. Of course justice is not a matter
of slot machine. It is the duty of the judge to
rationalize justice in such a manner that individual
remains fully free man without being exploited or
exploiting and justice whether legal or distributive is
readily available to every one so that people are not
forced to seek justice in the streets and not in the
courts.145

145. See, Supra note, 85, pp. 81-90.
Another aspect of egalitarian justice is procedural justice which consists in employing correct methods to develop rules of conduct to ascertain facts into final dispotive judgement. A body of well established rules of procedural justice called by other name as natural justice consists of rules to justify the confidence of the general.\textsuperscript{146} In fact, reform in these as well as reforms in judicial mechanism has gone a long way in democratic countries to assume fair play, impartiality and equality to the individuals vis-a-vis groups association, government and state. It is the guarantee in the realisation of both procedural and substantive justice.\textsuperscript{147} Procedural justice forms the integral part of substantive justice, the latter being the content and former the form constitutive the core of the concept of justice is all democratic and egalitarian to both rule of law and social justice.

(D). Gandhian Theory of Justice

Gandhiji's life is a saga of fighting injustice, tyranny and inequality in order to establish a new socio-economic order based on truth, equality, and non-exploitation. He fought imperial British ruler's in

\textsuperscript{146} Ibid.

\textsuperscript{147} Id.
India because both of these evils were contrary to the principles of human liberty, dignity and equality. His crusade for the liberation of oppressed classes is testimony of his commitment to equality and social justice.\textsuperscript{148} He was against all kinds of unjust social, economic and political order. He believed in the supremacy of the ethical values and SARVODAYA\textsuperscript{149} i.e. the good of all which includes the virtues of truth, love and justice towards all human beings.\textsuperscript{150}

Adhering to such philosophy of human equality and justice for all, Gandhi'ji spiritualised political, economic and social philosophy and advocated socialism by wise renunciation of wealth. He opposed coercion or sanction to make people good.\textsuperscript{151} His theory of (Sarvabhutahita) or good of all being is opposed to Marxian theory of class struggle and Benthamite theory of greatest good of the greatest number. Like Plato's Republic Gandhiji believed in Ramarajya the kingdom of Righteousness on earth. Hence non-co-operation with

\begin{flushright}
\textsuperscript{148.} Ibid., p. 83. \\
\textsuperscript{149.} Ibid. \\
\textsuperscript{150.} The roots of justice and truth originate from Yajurveda which says "is avasyam idam Sarvam yat kim chit Jagatyam jagat Tenatya Ktena Bhunjitha, ma gradha Kasyasvid dhanam." \\
\textsuperscript{151.} See, supra note 139, p. 84.
\end{flushright}
and passive resistance to injustice and unjust social and political is the cardinal feature of Gandhian justice. Non-cooperation and passive resistance are the means in Gandhian scheme for establishing liberty and justice for the exploited oppressed mankind.

To Gandhiji, the ancient Hindu lawgiver Manu was a great sinner whose legal philosophy polluted the Hindu mind in regard to position of women and Harijans ignoring the basic texts of Hindu social thought of equality and human dignity. The just cause of women and Harijans was very dear to him and he brought for them Mukti (emancipation). To quote him: "Untouchability, as it is practised in Hinduism today, is in my opinion against God and man and is, therefore, like a poison slowly eating into the very vitals of Hinduism, it has no sanction whatsoever in Hindu shastras taken as a whole."152

The foregoing study reveals that Gandhiji's life mission was a mission for justice, to seek justice for all the weak, the poor and the oppressed, be it labour, women, or untouchables. His crusade against cow slaughter, prohibition, child marriage has been solely guided to secure justice, equality and dignity to millions of Indians who had been denied justice for centuries.

He further says, "My soul refuses to be satisfied so long as it is a helpless witness of a single wrong, I know God if I do not wrestle with and against evil, even at the cost of life itself. My mission therefore, is to teach by example and percept the use of matchless weapon of Satyagraha. He confidentially philosophised that Satyagraha may be used as a powerful weapon in any sphere of life and to get redress of any grievence. The weapon purifies one who uses it, as against whom it is used.\textsuperscript{153}

To sum up, Gandhi was great champion to usher in the era of distributive justice with a strong zeal to actualise the dream of 'SARVODAYA' and 'Ramrajaya'. He laid emphasis on the principle of equality which could be possible through the principle of distributive justice. He transparently believed in non-violence and claimed that goal of distributive justice could be achieved even without coercive means. What is needed is the spirit to serve the poor. Service to serve the poor brethren should flow out spontaneously from within where resides the true guide to govern the whole creation of the world. To conclude, his philosophy of distributive justice is not confined only to one country but is quite comprehensive and has its application to the world as a whole.

\textsuperscript{153} See, M.S. Deshpande's Light of India, Message of Mahatama (1950), p. 34.
The foregoing study reveals that ever since the birth of the society justice has been associated with the term 'Dharma'. The various phases of the development of the civilization of the society, throw a flood of light on the fact that the word 'Justice' stood for privileges, duties, obligation of man and his standard of conduct as the member of the community. It is revealed that justice remained a word of ambiguous import and possessed different meanings dependent on social conditions and moulded by time, circumstances and worldly changes.

It is also apparently clear that justice has not as yet been assigned a universally acceptable definition and has defied almost all the attempts made by various jurists, thinkers, judges and sociologists. However, the merit lies in the fact that though no comprehensive definition has yet come out about its meaning, yet it has been used as an elastic and dynamic concept deemed always to vary from people to people, from time to time in accordance with the existing political, social and economic conditions and above all the philosophy of life which always played a dominant role and determined the

154. See Supra note 2, p. 35.
155. See Supra note 6, p. 3.
moral sense of the community.

The study transparently discloses the fact that various definitions attempted by the various jurists with regard to the word 'justice' connote that it puts an end to the conflict between the individual and the universal, microcosim and macrocosim, and brings about a synthesis between the whole and the parts.\textsuperscript{156} It is an act of right distribution giving to each man his due. It is a kind of happiness that man cannot find alone, as an isolated individual, and hence can be sought in society. Frankly speaking, justice is a social happiness to be guaranteed by social order. Plato has thus rightly opined that justice resides in the state and must be identified with complete virtue which is composed of three elements viz; wisdom, courage and temperance. For him, justice consists in will to concentration on one's own sphere of duty, and not to meddle with the sphere of other. Its habitation is in the heart of every citizen who does his due in appointed place. It grows with specialization of function. Platonic concept of justice, therefore, goes against individualism because a man must not think of himself as an isolated unit with personnel desires, needs or ambitions but as an integral part of an organic whole.\textsuperscript{157} Thus justice for him is architectonic and keeps other virtues harmonious relationship with each other. It permeates, and integrates the other virtues of wisdom, courage and self

\textsuperscript{156.} See, supra note 24, p. 22.

\textsuperscript{157.} See, Supra note 28, p. 20.
control and keeps them within proper bonds keeping society together. 158

Similarly, great jurists like Aristotle, Plato, Cicero, Stuart Mill and others hold the view that chief characteristics of Distributive justice is the expansion of the spirit of the collectivism. The promotion of feeling of co-operation and exercise by society of its collective power in support of the legitimate claim of individual life ensuring to every man according to his needs rather than every man according to his deserts. In this manner justice can be identified with distribution. To be comprehensive, it embraces the whole economic dimensions of social justice, entire question of proper distribution of goods and the services within the society." 159 It necessitates equality in the distribution of the facilities and burdens so that a balance is struck between the conflicting interests, claims and the desires of individual. To be true, distributive justice destorys inequalities of race, sex and wealth and ensures equal distribution of the social, material and political resources of the community.

Keeping in view the aims and objectives of the distributive justice, justice Krishna Iyer has rightly

158. Ibid.
159. See, supra note 44, p. 45.
visualised the term 'distributive Justice' "as an issue of social concern for the backward human sector of lowliest and the lost." Justice in its true perspective means justice to all and not to a few or favoured class. It seeks to improve and harmonise rather than to introduce class conflict. It defends the preferential treatment of the weaker section of the society with a zeal to correct the imbalances existing in the society and not to cause unnecessary harassment to the advanced section thereof. Distributive justice is thus a sharp weapon designed to remove the imbalances in the social, economic and the political life of the people. It is badly needed to protect the weak, aged, destitute, poor, disabled, women, children and other downtrodden segments of the society. It seeks to give preferential aids to them with an objective to provide them an equal opportunity to compete boldly with advanced and powerful section of the society.

The study further reveals that there are mainly three kinds of justice namely, distributive justice, corrective justice and commutative justice. The first type of justice deals with the distributive process in the community. It comprises mainly of three important

160. See Supra note 18, pp. 218-219.
things; (a) total amounts of the goods to be distributed, (b) the pattern of distribution arrived at, and the distributional procedure described as the principles of selection by means of which the distribution is arrived at.\textsuperscript{161} The basic objective of distributive justice is to remove inequalities and afford equal opportunities to all citizens in social as well as economic affairs with a view to create a new social order based on equality and justice through the instrumentality of law. It is not static, passive or negative. It is rather dynamic and positive concepts dependent on time and circumstances of the society.

Our National Charter, therefore, has been designed with an intention to bolster up the philosophy of socialism and welfare state and many articles have been incorporated to be used as the balancing wheel to obtain the goal of distributive justice. The basic reality is that justice is the primary goal of our constitution. This may be summed up very lucidly in the words of Pandit Nehru which run as under, "The first task of constituent assembly is to free India through a new constitution, feed the starving people and to cloth the naked masses and to give every Indian the fullest opportunities to develop himself according to his capacity."\textsuperscript{162} Distributive justice thus can be said an

\begin{itemize}
\item \textsuperscript{161} See supra note 58, p. 16.
\item \textsuperscript{162} See supra note 72, p. 62.
\end{itemize}
adjustment of relation and ordering of conduct with a view to satisfy human claims, as far as possible, without the least friction and waste.\textsuperscript{163} It ordains the state to promote the welfare of the people at large and reject the existing social structure and the gross inequalities prevailing in country.

Various theories of justice have been expounded with the passage of time with a zeal to have a deep search for an ideal standard of justice. Traditional theory, Radicalist theory, Pragmatic theory, Utilitarian theory, Contractarian Theory, Egalitarian Theory and Gandhian Theory help us in determining the contours of distributive justice. Their thorough probe reveals that justice is a well thought device to promote goodness, virtue, pleasures and avoid evil, pain and unhappiness. The different philosophies enable us to perceive that the canons of distributive justice do not only prescribe a particular mode of distribution of external resources but also justify the given distribution of resources by the total amount of happiness which it produces. Rawls has rightly understood justice as a kind of co-operative venture for mutual advantage where there are shared ends, conceived not as substantive goal but as a plan of conduct which will ensure that the endowment of each will be complementary to the goal of all.\textsuperscript{164} To sum up the different approaches with regard to justice we may dedu
the conclusion that concept of justice mainly deals with two basic principles; (a) that 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 and, (b) social and economic inequalities are arranged in such a manner that they are both to greatest benefit of the least advantaged and attached to offices and positions open to all under condition of fair equality of opportunity.\(^{165}\)

\[\text{The foregoing study placed emphasis on the fact that}\]

to cherish the goal of distributive justice in the society we must create a public system of rules by reference to which the conflicting claims can be authoritatively determined. It provides a theoretical framework with a view to synthesize freedom, liberty, dignity and social equality through law with an over emphasis of law to safeguard the individual interest with those of community interest from the point of view of community rather than that of individual. Thus we arrive at a conclusion that distributive justice is an endeavour to satisfy, reconcile, harmonize, and adjust the

\[\text{163. Ibid.}\]

\[\text{164. See supra note 85, p. 303.}\]

overlapping and often conflicting claims and demand through the process of law so as to give effect to the interest that weighs more in our civilization with least sacrifice of the scheme of interest as a whole. The term 'distributive justice' is thus procedural in nature which implies the employment of correct methods to evolve rules of conduct to ascertain facts into the final dispositive judgement with an assurance to guarantee a fair play, impartiality and equality to the individuals vis-a-vis groups association, government and state. The Gandhian theory of justice also dwells on this spirit though he, unlike Karl Marx, supported the theory of non-violence to cherish the goal of distributive justice. His crusade for liberation of oppressed and depressed classes is perhaps the strong testimony of his commitment to equality and distributive justice. He believed in the supremacy of ethical values and 'Sarvodaya' which includes the virtues of truth, liberty, dignity and equality of opportunities towards all human beings in the kingdom.