CHAPTER - II

GENESIS OF DISTRIBUTIVE JUSTICE IN INDIA

I. Distributive Justice in Ancient Era

The term 'justice' and 'distributive justice' has been the sine-qua-non of almost all the legal systems of the world since time immemorial. Similarly, distributive justice in ancient India seems to have been encased within the golden Gasket of 'dharma' which may be said to be the foundation of its socio-political, socio-legal and lego-political life. It is quite visible that the threads of Justice in India have been spun around the concept of Dharma which regulated almost all individuals' activities concerning his life. To be true, the earliest notions of justice in the Hindu jurisprudence can be traced in the religious texts. In vedic period, there was little evidence of the immiscible notions of the term justice. Law and justice were hardly distinguishable and were inter-mixed. They were never competing or zealous companions but shared together their mutual ideal relationship in the service of society and their centre being the man whom upnishads described as अमृतायु पुजः: the child of immortality or eternity. The entire make up of law and justice had saturated with dharma. It was this code of ethics which regulated the activities of all men—whether King or Ordinary men in

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performance of their social, economic, political, religious and secular duties.

In ancient India, the term law and justice had invariably been associated with term 'dharma'. The Hindu philosophers laid down great emphasis on Dharma. It prevailed throughout the Hindu philosophical thought and regulated the Hindu social structure. The study reveals that the expression 'dharma' remained of wide import and included within its ambit the aggregate of rights, duties and obligations, moral, social and legal. According to Prof. U.C. Sarkar, the 'Dharma' is used in five different senses and these are; religion which is a category of theology, virtue as opposed to sin or vice, in this sense it is a category of ethics; law which is a category of jurisprudence; justice and duty the category of one's actions. The true objective of judicial administration in India was to uphold the spirit of Dharma i.e. the duties of individuals, of all persons in all walks of life. Ancient Hindu jurisprudence did not make any distinction between legal, moral and religious duties. Its aim and purpose was that all duties must be performed and justice must

4. Supra note, 2.
be done. No decision was to be made exclusively according to the letter of the shastra, if a decision was devoid of Yukti (reason) failure of justice occurred.  

The smiritikars dealt with the perennial problem of conflict between law and justice by laying great emphasis on the need of justice. According to them, justice should not only be by the letter of law, but it should also be equitable—justice in accordance with reason. Thus, apart from the theological and ethical norms ingrained in the concept of Dharma the importance of Dharma in Hindu jurisprudence lies in three propositions viz. dharma as a law, justice and duty.

In ancient Hindu society all persons including the King were considered to be bound by Dharma. The study of the History of ancient India discloses the fact that during the whole vedic period the theory of utility dominated the Hindu thought. The real purpose of law was to impart justice harmonizing themselves with the conditions of social life. It was required that the conditions of life must harmonise with law.


8. ibid., p. 29.
Dr. Radhabinod Pal has rightly observed:

Rigvedic philosophy does not ignore the consideration of law in its social aspects in relation to the purposes, needs and interests of life. Nay, the whole vedic philosophy is saturated with utilitarianism, if we may borrow the expression from modern philosophy, with the idea of utility to human society. To them the one crucial test of the worth of anything is the utility of such a thing. Even their gods are tested by this one ideal. Yet these rights scarcely recognised the influence of the condition of life and law, law is eternal on immutable; the conditions of life must harmonize with law must fit in, in the natural sequence of the rise of the universe with 'Rita'.

The concept of justice has been highlighted by various law givers like Manu, Gautama, Yajnavalkya, Narda, Baudhayana, Katyajana and others. They shed light on the nature and quality of justice of ancient Hindus. This is borne out by the classes of people suitting their needs. The society war evidently marked for its unequal and class character which had one set of laws for the twice born and other set of laws for another class of people, one set of laws for men other for women, one set of laws for sons and others for daughters so on. Thus quintessence of justice, equality and non

9. See Supra note 2, p. 80.
10. See Supra note 3, p. 88.
discrimination of poor by strong were known to ancient Hindu, social and legal system. The parameters of justice, of course, were based on strict confirmity to observance of caste rules and their violence or disregard attracted punishment.\textsuperscript{11} 'Varnadharma' was considered the basis to impart justice. The quality of justice was conditioned by the strict view of 'Varna-dharma'. The judge was under the duty to enforce the rules of Varna-dharma. The same was the case with the king. He was under a duty to enforce and execute faithfully and impartially the norms of Varnadharma.\textsuperscript{12} Manu epitomizes the spirit of the then existing justice as follows: 'A King who knows the scared laws, must inquire into the law of the caste of districts, of guilds and of families and thus, settle the particular law of each.'\textsuperscript{13} He declared, "Justice being violated, destroys, justice being preserved, preserves, therefore, just must not be violated lest violated justice destroy us".\textsuperscript{14} Similarly, Kautilya also emphasized on the need of promoting 'Dharma' with King as its ultimate defender and preserver. According to

\textsuperscript{11} Ibid.
\textsuperscript{12} Id.
\textsuperscript{13} Institute of Manu, Chapter III, p. 41.
\textsuperscript{14} Ibid., p. 15.
him, "When all dharmas perish, the King becomes promulgator of dharma, for the establishment of the four fold varna system and the protection of morality. The dominant purposes and functions which moved the king in Ancient India were the attainment of dharma, artha and karma."\(^{15}\)

The study of sutra-literature further reveals that there were special provisions for the reservations of special privileges of the classes particularly the Brahmans. These were specifically contained in sutra-literature. The Brahamana was allowed immunity from the six kinds of approprious treatment. To quote Radhabinodpal, "He must not be subjected to corporeal punishment, he must not be imprisoned, he must not be fined, he must not be exiled, he must not be eviled, nor excluded."\(^{16}\) Even in the field of acquisition of property, privileged classed had privileged modes of acquisition, acceptance of gift being reserved for Brahamanas.\(^{17}\) In addition to this, there were notions of indulgence of privilege and of charity which were a

\(^{15}\) For example, Maintenance of Justice, use of property and enjoyment of family life.

\(^{16}\) Supra note, 2, p. 30.

\(^{17}\) Ibid.
kind to each other and were closely related to then prevailing conception of justice. Radhabinod Pal has succinctly summed up position in the following lines, "The ideas underlying indulgence and privilege do not rest on the principle of equality, but upon such human sentiments which going beyond the effects of distributive justice, endeavour to render some help to the weak, to those who stand in some need, therefore. But their applicability lies more in communities than in individuals and by forbearance than by active participations. These notions are not founded up on the principle of uniformity but upon that sentiment which, going beyond the effects of distributive justice provides protection and succor for weakness and not only allow full scope to the exertion of others, but supplements it by the surplus of its own strength, and lays no claim to enlist it for purposes of community. Charity advances even further in the same direction and relates to the relief of private wants which are outside and do not concern the social interests, and cannot be attended to sufficiently in any other way. This whole series of indication and virtues has, however, its foundation in the sense of the necessity of satisfying human wants, the self same sense which has led to the formation and organisation of spheres of society, of which the conditions relating to and
dependent upon human action are comprised in the law. 18

To sum up, it can be safely said that law and justice in ancient India were not "the chance product of profitable and unprofitable hours," but were the result of an innate and reasonable impulse of humanity, a sociological process pushed forward by necessity due to the co-existence of reasonable beings with material and spiritual wants. Promotion of justice was the part and parcel of 'Raj Dharma' and King was bound to impart justice to his subjects in strict observation of the principles ordained in the philosophy of 'Varṇadharma'. The promotion of 'justice' was the sole substance of Kingship unlike the British-Austinians and so called progressive jurists who prided in dubbing ancient Indian legal system as ephemeral, primitive and phantom of imagination. However, later generation of Hindu jurists effected some changes, filled in the outline thus drawn, elaborated the elements, but the cardinal principle thus delineated by the ancients remained practically unchanged. 19

II. Distributive Justice in Medieval Era:

Muslim period marks the beginning of a new era in the legal history of India. Arabs were the first muslims who came to India. They came in the eighth

18. Ibid., pp. 141-142.
19. Ibid., p. 175.
century and settled down in the Malabar Coast and in Sindh but never penetrated further. The social system of muslims was based on their religion, Islam, which may be described as a reformist version of current seventh century Arabian practice. The main idea of the muslim rule in India was its own self-preservation and political domination over hindus. In the early days no doubt, the muslims who came from Persia, Turkey and Afghanistan kept themselves aloof from the tradition, but in due course the old warriers were lifted and process of Indianization began which reached its climax during the Mughal period. They adopted many habits, ways and manners of Hindus and vice-versa.

During Muslim era in India, especially in the pre-mughal period, there were a series of cultural, social and political stresses and strain on the style and way of life of the Hindus. The Muslims forced upon the Hindus their own laws, customs and religious practices. Hindus were not treated in law on par with muslims--the later being the conquerors and the former

22. Supra note 20, p. 15.
23. Supra note 3, p. 91.
the Kafirs the non believers. Special disabilities like Jazia\textsuperscript{24} and revenue legally acquired legal rights over land. Both in theory and practice, there was discrimination against Hindus vis-a-vis Muslims. Muslim rule in India was not founded on the basic principles of human dignity, equality and justice and was essentially autocratic, theocratic and irresponsible, devoid of the idea of rule of law, morality, justice, tolerance and social harmony. Such was essence of justice called Kazi justice—wholly arbitrary, inconsistent with principles of minimum morality and elementary principles of distributive justice. The movement from ancient to medieval society did not cause any fundamental change in the contents and concepts of justice. Like Hindus, Muslims also traced the origin of law in religion. Law to them was of divine origin. The human requirements and even the notions of human justice were secondary to them.\textsuperscript{25}

The political theory of Muslims was governed by their religious text, Islam.\textsuperscript{26} The political institutions which were adopted and developed by the

\textsuperscript{24} Abolished by the Great Muslim Emperor Akbar (1564-65).


\textsuperscript{26} See, Percival Spear, India: A Modern History, (Ist Ed), Ch. III, pp. 94-101.
Muslims were based on the idea given by the Greek philosophers and the Muslims political theory laid emphasis on the fact that all muslims must unite closely in the form of an organised community. Any attempt to break away from the organised community was condemned by the religion.  

The Quran being of absolute authority, all controversy centred round its interpretation from which arose the muslim law or Shariat. The muslim religion was modified by Persian culture by which all invaders were more or less influenced. Kulkarni has rightly pointed out the prevailing spirit of justice in the following words: "The Turkish invaders of India presented a political and religious arrangement in the country, the essential injustice and inequality of which could not be wholly removed even by the most enlightened muslim rulers. Religious intolerance and racism were the bedrocks of their policy. The policy of

27. Quran, III, 192, XL 11, 38, V, 2.

28. Two main sects were - the sunnis, to which the Turks and Afghans in India adhered, and the shias who became dominant in Persia.

intolerance inspired the sultans to propagate strange doctrines. While Ala-Ud-Din Khilzi asserted that non muslims in the country could claim no rights, Feroze-Shah declared with admirable finality that India was Musalman country."

The concept of distributive justice in Islam took into consideration the basic elements of human nature and did not disregard abilities. As laid down in Fatwa-e-Alamgiri, the administration of justice during the medieval period was always guided by the sacred book of Muslim: (a) The Quran, book containing the revelation of Prophet Mohammad; (b) Sunna, the book collections of his words, deeds and silently approved questions referred to him during his lifetime and finally; (c) Ijma, containing those disputed points of law which were resolved by the agreement of persons who had a right in the nature of knowledge to form a judgement of their own after the death of prophet.


32. See, M.B. Ahmed, Administration of Justice in Medieval India, (1941), p. 70.
Thus, it is evidently clear that distributive justice during the medieval period revolved around the philosophy of Shariat laws. The scale of justice was highly tilted in favour of Muslims. In fact, the position of non-Muslims was quite miserable in comparison to the Muslims. All actions to administer distributive justice were to be judged according to ethical principles contained in Shariat laws. Muslim jurisprudence, like Hindu jurisprudence, laid emphasis on duties of man in all walks of life and rights of man occupied a secondary place. The whole picture of distributive justice existing during medieval era is lucidly depicted by Majumdar, the great historian, in the following words:

(i) Non-Muslims were not treated as equal to Muslims in law and were called "Zimmis".
(ii) their evidence was inadmissible in the courts against Muslims;
(iii) they did not enjoy the all rights and privileges which the Muslims had;
(iv) They had to pay an additional tax called Jazia and;
(v) they had to pay the taxes at double the rate than what a Muslim paid.

33. See, Paras Diwan, Muslim Law in Modern India (1982), p. 17.
35. See, R.C.Majumdar, Ancient India (1974); also see Mishra, the Judicial Administration of the East India Company in Bengal (1965), pp.50-51.
To epitomise, the whole analysis of distributive justice administered during Muslim era reveals that the discrimination of non-Muslims and the dominance of the feudal lords, Mullahs and Khalifas left a very little scope for the growth of notion of distributive justice in Muslim society. In fact, modern concept of distributive justice in India may be said to have emerged as a matter of reaction as the Hindu and Muslims rule was such that it hardly treated depressed classes and weaker sections fairly and repressed discrimination on the basis of caste, colour, religion, race, language and sex. All this led Indian society collectively towards frustration. There emerged a wide gulf between haves and have-nots due to wrong policies evolved by Hindu and Muslim rulers during their respective eras. Ultimately, the need to evolve the philosophy of distributive justice on the principles of equity was realised in the early dawn of modern India and paved to give it a constitutional status immediately after independence.

III. DISTRIBUTIVE JUSTICE IN MODERN ERA:

(A) Pre-Independence Era:

The transition from the medieval to modern period has resulted in a prodigious change in the use

and disposition of the term 'justice'. This change was quite steady and consistent and had been the product of growing needs of the society from time to time. The search for an absolute standard to judge the action of a man in the society, led to the evolution and growth of concepts like, 'just' and 'right', 'proper', 'sound' 'just' and 'reasonable', and 'natural justice' etc. The earlier notions of 'justice' accompanying the above phrases were essentially either theological or ethical questions judged in the context of right and wrong from the religious or moral philosophy of the judges.

The study shows that earlier view of justice underwent a vast change with the change in the values of the society. The term 'Justice according to law' was popularly coined to meet the needs of the people. According to this philosophy the notion of justice was subordinated to the suzerainty of law.

36. Supra note 32, p. 35.
37. Ibid.
It is revealed that earlier British rulers in India adopted a policy of status-quo with little or least change in the administration or laws of the Hindus and Muslims. They were more governed by economic-drain theory than acceleration of political change and social justice. Particularly, after the first war of independence in 1857 the British rulers adopted the stance to oppose all new reforms. This attitude was summed up in a Calcutta newspaper in 1873 in the following words:

Avoid change, by removing obstruction rather than by supplying new stimulants, slowly developed, but do not violently upheave native society, leave the rich and poor to themselves and their natural relations within the limits that present oppression. 39

However, the impact of British heritage on Indian political life and legal system was of far reaching significance which can be easily visualised through the development of modern democratic institutions, the notion of representative assemblies and responsible government, the secularisation of administrative with independence of judiciary, the inception of the doctrine of the rule of law, of equality before law, substitution of new medium of instruction of English and processes of socio-

political change. During this long colonial domination Indians had come to realise that there can be no justice without liberty and no liberty without justice. Britishers had grafted in India lock, stock and barrel the elaborate machinery of English law and justice—both substantive and procedural in the interest of the administration of justice. Hence, the idea of rule of law, freedom of personal liberties, natural justice, equality before law in modern India are essentially of British origin both in form and spirit which find a pride place in the Constitution of free India. In India, the truth lies in the fact that the precursors of movement for distributive justice in its sense were Raja Ram Mohan Roy, Swami Vivekananda (1863-1902), Gandhiji (1863-1948) and others. They boldly denounced the discriminatory age old practice of untouchability, sati system, championed the doctrines of material and spiritual equality, renunciation and service to society. It was Swami Vivekananda who made a revolutionary statement when he remarked: "It is mockery to offer religion to starving man. ... a country where millions of people live on flowers of the Mohva plant and a million or so of sadhus and a

40. Ibid.
hundred millions or so of Brahmins suck the blood out of these poor peoples." Swami Vivekananda diagnosed four principal evils - priest craft, poverty, tyranny and ignorance from which the million of people were to be saved. He declared:

I hold every man a traitor who having been educated at their expense, pays not the least heed to them.

Similarly, Gandhiji took the cause of common masses, particularly the untouchables and other weaker sections of the society including rural and industrial labour. He proclaimed that Swaraj could not be complete unless the lowest and the humblest sections got all the ordinary amenities of life that a rich man enjoys. It was the imperative duty of the government, according to Mahatma Gandhi, to ensure adequate livelihood to all Indians. 'A government that does not ensure that much is no government. It is anarchy. Such government should be resisted peacefully.' As regards social equality, Gandhiji considered untouchability is the greatest blot on Hinduism. He declared, "Untouchability is a part of Hindu Creed. I should decline to call myself a Hindu and most decidedly embrace some other faith if it satisfies my aspiration.

42. Harijan, June 9, 1946, p. 5.
Fortunately, for me, I hold that untouchability is not a part of Hinduism. It is against sastras, it is against dictates of reason. Of course, Gandhiji did not advocate absolute equality between man and man as he aimed at the creation of a just egalitarian society wherein individual merit as well as heed is given due consideration for the development of society. He observed, "We do not want to produce a dead equality wherein every person becomes or is rendered incapable of using his ability to the utmost possible extent. Such a society must ultimately perish." So he always appeared to the stronger and moneyed people to practise a parigaraha or non-profession and power for the benefit of the weak and society.

It is in such era of our social, political and moral heritage that finally reshaped the equality and content of justice which finds a pre-eminent place in our National Charter the constitution of India. It is these aforesaid values and ideals which inspired the helmsmen of our national movement particularly, Jawahar Lal Nehru and Dr. B.R. Ambedkar. Jawahar Lal Nehru

44. Harijan, Feb., 11, 1923, p. 4.
46. See, Supra note 53, p. 96.
drove home the point that the first task of free India is 'to feed the starving people and clothe the naked masses and to get every Indian a full opportunity to develop himself according to his capacity. He warned, "If we cannot solve this problem soon, our paper constitution will become useless and purposeless." Nehru explained the meaning and purpose of Swaraj when he observed, "In our country few people live in town and even fewer are educated. The majority of our people are in the factories. If only the few people living in the towns derive benefit from Swaraj and Kisans remain as they are, then it cannot be deemed to be Swaraj for all. It will be swaraj of the rich only. Even to this day, we see a section is steeped in abject poverty... They even get hardly enough to eat. This is totally against justice. Those who actually work do not reap the benefits while few live in the ease and comfort without having to work because of their inherited wealth or income derived through usury. Justice can only be achieved when all have equal opportunities to earn and progress and each is paid according to work. 47

Dr. B.R. Ambedkar also pinpointed three imperatives to make Indian democracy and the constitution

a success. The first thing, he observed, "In my judgement, we must do is to hold fast to Constitutional methods for achieving our social and economic objectives. . . . It means we must abandon the method of civil disobedience non-cooperation and Satyagrah. . . . The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not to lay their liberties at the feet of even a great man, or to trust him the powers which enable him to support their institutions. The third thing we must do is not to be content with mere political democracy as well. We must make our political democracy, a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy means? It means a way of life. These principles of liberty, equality and fraternity are not be treated as separate items in a Trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced

from equality and equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of law over many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require the constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On Jan 26, 1950 we are going to enter into a life of contradictions. In politics, we shall be recognising the principle of one man one vote and one value. In our social and economic life, we shall by reason of our social structure continue to deny the principle of one man one value."

Thus transition is witnessed in the use and disposition of the term 'justice'. The earlier notion of justice accompanied by theological or ethical
instincts was disfavoured and a new term 'justice according to law' was coined to meet the deep felt aspirations of the people. The great social scientists and the conscience-keepers of the majority people of India, especially Raja Ram Mohan Roy, Vivekananda, Mahatma Gandhi, Pt. Nehru and Dr. Ambedkar and others, gave a different meaning to the notion of justice in the light of existing circumstances of Indian society. They championed the doctrines of material and spiritual equality. For them, justice was a weapon to provide to the humblest, the weakest and the lowest sections of the society all the amenities that rich man enjoys. The true aim and objective of the philosophy of justice, according to them, was to feed the starving people, and clothe the naked masses and to get every Indian the fullest opportunity to develop himself according to his capacity. The true purpose of justice is to create such a situation in the society that opportunities to develop is shared equally by all irrespective of their caste, colours, race, religion and sex.

B. Post Independence Development:

It was the fortune of Indian democracy that great thinkers like Jawahar Lal Nehru and Dr. B.R. Ambedkar were earnestly committed to incorporate in
India's new constitution the philosophy of distributive justice. Thus, Indian constitution opens up with the preamble which states in its unequivocal terms that the people of India have solemnly resolved to secure to all its citizens justice-social, economic and political, equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual, and the unity and integrity of the nation.49 The Preamble to the constitution, the Fundamental rights and the Directive Principles of State policy rest on the solid foundation of political liberty and socio-economic equality for all the teeming millions in rags, tatters and tears.

A thorough probe into our national charter supports the view that a numerous provisions 50 have been incorporated to cherish the pious goal of distributive justice with an aim and object that economic, social and political equality is achieved for all irrespective of difference of caste, colour, race, religion and sex without any further loss of time. The Constitution enshrines the principle of government of people, by the people and for the people which induces

49. See Supra note 7, p. 63.
50. For detail see Constitution of India, The Preamble, Part III and Part IV.
people to hold unitedly and strive for a path of common
destiny, common tryst, common ends founded on the
sacred principles of justice and righteousness
irrespective of diversities of languages
religion, creed and race, colour and sex. The
Constitution of India, a vortex of Indian ethos and
Indianness, is an equalising, harmonising and cementing
force attempting to recompense low and the high, weak
and the strong and poor and the rich to make democracy
really socialistic and egalitarian.\textsuperscript{51} The path shown
in the constitution is designed on the sacred
principles of law, justice and morality which
ultimately will accomplish the goal of real swaraj
dreamt of long back by our beloved leader Bapuji.

From this scheme, it is apparently clear that
the Indian constitution lays down the following steps
to implement the policy of distributive justice:

(i) It declares that its objective is to usher in
a new social order, where there will be
justice-social, economic and political.

(ii) It declares certain rights as fundamental
rights and they are made enforceable with a
view to ensure tripartite justice, that
is--social, economic and political. For
instance, they include civil, religious,

\textsuperscript{51} Supra note 3, p. 98.
social, economic, political and cultural rights.

(iii) The said fundamental rights and the statutory rights are interwoven into the fabric of distributive justice through the justiciable laws of social control. Thus, it can be safely said that the Constitution of India has twin objectives; first, to usher in a new social order ensuring distributive justice to all the citizens and; second, to protect the liberties of the people from the onslaughts of autocratic and arbitrary power. These two ideas run like a golden fabric through the entire scheme of the Constitution. Indeed, the substantive and the procedural provisions of the Constitution harmonising the said two concepts give a new impetus, phillip, and sustenance to our commitment of rendering tripartite justice to all to iron out the gulf between low and high, weak and the strong, and poor and the rich.


53. See Supra note 11, p. 66.
It may be emphasised, a fortiorari, that the goal of distributive justice in our country is sought to be achieved through the process of rule of law. The legislatures make laws relating to scheme of distributive justice; the executive implement such laws through their domain in terms of the constitution, and the judiciary scrutinises such laws in terms of the constitutional ideals of distributive justice. It may even be said that the rule of law is an integral part of our distributive justice. There can be no other than the constitutional assurance that all people are ruled by laws and not by men and that every citizen will have the right to equal opportunity in matters of development of his personality. The philosophy of distributive justice and rule of law as contained in the Constitution has been rightly explained by former Chief Justice, P.B. Gajendragadkar, in the following words:

54. Ibid.

Parts III and IV, taken together, can be safely described as containing the philosophy of the Constitution. This philosophy can be described as the philosophy of the social service state. Both the Preamble and the Directive Principles of State policy give evidence of the unmistakeable anxiety of the framers of the constitution to shape the constitution as a mighty instrument for the economic improvement of the people and for the betterment of their conditions. Equally noticeable throughout the relevant provisions is their determination to achieve this result in a democratic way by the rule of law. In other words, the provisions of Part III and IV considered in the light of the preamble emphasize the need to improve the social and economic conditions of the people and to attempt that task with maximum permissible individual freedom guaranteed to the citizens.56

The concept of distributive justice as embodied in the Constitution is a living concept of revolutionary import. It gives sustenance to the rule of law and meaning and significance to the ideals of a welfare state. It is found on the basic ideal of socio-economic equality, and its aim is to assist in the removal of socio-economic inequalities and disparities.57 The freedom guaranteed under the


57. See Supra note 7, p. 69.
Constitution are not an end in itself, but the means to achieve distributive justice. Our constitution is the unique document for the upliftment of the down-trodden and weaker sections of the society. It is a charter of economic democracy aiming at human emancipation. The greatest need of the hour, therefore, in our society is social integration of the weaker and oppressed sections of the people with the rest of the society. Any test that serves to perform this task most effectively should be treated as the objective of distributive justice. To quote Justice Mathew:

A common approach is to begin by defining certain basic needs necessary for subsistence—food, shelter, clothing etc. simply by virtue of his membership in class of men, every human being in the society should be provided with such basic necessities no matter how small his contribution, no matter how meagre his abilities. This demonstrates that our Constitution does not leave the individual at the mercy of the law of nature representative of competitive model of society. It assigns a prominent role to and imposes heavy responsibilities upon the shoulders of the State to assure a dignified life to each individual.

58. Ibid.
59. Id.
irrespective of what he deserves on meritarian consideration. Yet, in a way it incorporate that the need-based principle is richer in content and has close proximity with distributive justice than the merit based principle. The former produces equality, while the latter increases inequality. Therefore, it is apt that our approach should always be directed at ameliorating the lot of the weaker sections of the society, and in reducing to, as far as possible, the number of those whose share of utilities of life fall below the minimal level. It means securing to each and every human being the basic necessities of life like food, clothing, housing, medicine, education and the life etc. This is the voice of distributive justice and the very dharma of the Indian Constitution.

IV. Sum Up:

The detailed study of the foregoing chapter, reveals that the term 'Distributive Justice' remained enveloped within the golden gasket of Dharma. The study shows that even in Vedic period Dharma and justice remained an immiscible notion and was hardly

61. Ibid., pp. 53-55.
62. See, Supra note 11, p. 70.
distinguishable. However, the thing of pride remained that they were never competing or zealous companions but shared together their mutual friendly relationship in the service of society. It is evidently clear that the entire notion of Distributive Justice remained saturated with Dharma which was considered a code of ethics designed to regulate the activities of all men—whether king or an ordinary man—in all walks of their lives.

It is equally warranted by the historical facts that the expression Dharma, which always imbibed the spirit of distributive justice, remained of wide import and included within its ambit an aggregate of rights, duties and obligations with a view to perform social, economic and political duties within the Kingdom. The philosophy of distributive justice existing during ancient era has been profoundly highlighted by the various law givers like Manu, Gāutama, Narda and many others. According to them the parameters of justice were based on strict observance of caste rules and their violence attracted even severe punishment. Perhaps, the quality of justice was circumscribed by the strict observance of "varna-dharma". Even the king was duty bound to enforce and execute the norms of

64. See, supra note 3, p. 29.
'Varna dharma impartially.' The true objectives which dictated the spirit of king in ancient India were to attain Dharma artha and Karma. The Sutra literature further reveals that the notions of distributive justice in ancient India supported the philosophy of status quo and the special provision for the reservation to the upper classes particularly to the Brahmins were designed with an aim to give phillip to the philosophy of status quo. This is borne out by the observation made by Radhabinodpal who said, "The brahmana was allowed immunity from the six kinds of approprious treatment. He must not be subjected to corporeal punishment, he must not be imprisoned, he must not be fined, he must not be exiled, he must not be eviled; nor excluded." The privileges of the higher strata of society are further substratified by the facts that even in the field of acquisition of property, the classes had privileged modes of acquisition which were at all not permitted to the lower strata of society.

It can thus be safely stated here that the philosophy of distributive justice in ancient India remained not of the chance product of profitable and unprofitable but was the product of an innate and

65. See, supra note 13. p. 15.
reasonable impulse of humanity which was pushed forward by necessity due to the co-existence of human beings with material and wants. However, we must not deny the truth that later pedigree of Hindu jurists brought some radical changes, filled in the outline thus drawn, elaborated the elements of Distributive justice ignoring the basic principles of status-quo philosophy prevalent on Indian soil.

Similarly, the notions of distributive justice in medieval era remained confined within the four walls of religion. The entire administration of justice during the medieval period was always guided by the sacred books of Islam, that is Quran, Sunna and Ijma.67

It is revealed that the principles of distributive justice were carved out by the philosophy of Shariat laws and scale of justice was highly tilted in the favour of the Muslims. All actions to administer distributive justice were always judged and tested according to the ethical principles contained in Shariat laws. The past experience reveals that the position of non-muslim was quite miserable in comparison to Muslims.68 The main purpose of the muslim rule in India was its own self-preservation and

67. See, M.B. Ahmed, Administration of Justice in Medieval India (1941), p. 70.

68. See, Paras Diwan, Muslim law in Modern India (1982), p. 17.
political domination over Hindus. They forced upon Hindus their own laws, customs and religious practices and were not treated on par with Muslims; the later being the conquerors and former the Kafirs. Truly speaking, Muslim rule in India was not founded on the basic principles of distributive justice which comprise mainly of human dignity, equality and brotherhood. Moreover, Muslim rule was autocratic, theocratic and irresponsible, devoid of idea of justice and social harmony. Any attempt to break away from the organised Muslim community was condemned by the Muslims. Religious intolerance was the bedrock of their policy. The Muslim rulers perpetrated discrimination on the bases of caste, colour, religion, race, language and sex which ultimately gave birth to frustration and led Indian society towards a direction where the feeling of discrimination was bound to arise on a wider scale. All this ultimately resulted into a thirst to change the yardsticks of distributive justice evolved by Muslim rulers and introduce, the cardinal principles of distributive justice based on equality, dignity and fraternity.

69. See, Supra note, 3, p. 29.
70. See, R.C. Mazumdar, Ancient India, 1974.
The study further reveals the fact that there was hardly any change in the attitude of the British rulers in India with regard to the notions of distributive justice. The foregoing study stands to the testimony that earlier British rule in India poor themselves adopted a policy of status quo and left the rich and selves without endeavouring any efforts to weed out the widening gap between the two. The Britishers were governed by economic-drain theory than acceleration of social, economic and political justice. All this led ultimately the great social, scientists of India, like Raja Ram Mohan Roy, Swami Vivekananda, Gandhiji and many others to the horizon of new thinking. They boldly denounced the discriminatory age old practices and engineered the doctrine of material and spiritual equality, renunciation and service to society. They openly, supported the cause of common masses, and proclaimed vigorously that Swaraj could not complete unless the lowest and the humblest sections of the Indian society get all the ordinary amenities of life that a rich man enjoys. Similarly, Pandit Nehru and Dr. B.R. Ambedkar remained the Indian masses of the reality that the first task of free India was to feed the starving people and cloth the naked masses and afford every Indian the fullest opportunities to develop himself according
to his capacity. This was really what they meant by the philosophy of Distributive Justice. They philosophized that society based on the principle of graded inequality meant elevation for some and degradation for other. For them, this kind of situation in the society was highly against the spirit of justice and needed special efforts to cherish the goal of distributive justice. Thus the philosophy of distributive justice witnessed a radical change during post independence era. The earlier notions of justice, founded either on theological or ethical justification and adjudged in the context of the spirit of rightness or wrongness purely from a view point of religious or moral philosophy was given a divorce and social values were taken to be the parameters to evolve the principles of distributive justice with a view to meet the changing needs of Indian society. With this objective in mind, the Indian constitution opens up with the preamble which very lucidly in its unequivocal terms furnishes a guarantee to secure to all its citizens justice-social, economic and political with resolve to provide a solid foundation of political liberty and socio-economic equality for all the teeming millions virtually living their lives in rags, tatters and tears. Moreover, the survey of our national charter reveals the fact that numerous provisions have been
added in this pious document to cherish the pious goal of distributive justice with a strong zeal that economic, social and political equality is ordained for all irrespective of difference of their caste, colour, race, creed, religion and sex. The constitution induces people of India to strife for a path of common ends irrespective of diversities of languages, religion, race, colour and sex. Both the Preamble and Directive Principles of the State Policy stand as testimonies to the fact that unmistakeable anxiety of the wise founding fathers of the constitution was to shape the constitution as mighty instrument for the economic upliftment of the people and for the betterment of their conditions. Truly speaking the philosophy of distributive justice envisaged in our national charter is a living concept of revolutionary import which embodies within its ambit a cementing attempting to recompense low and high, weak and the strong, and poor and the rich to make Indian democracy really socialistic and egalitarian to accomplish the goal of real Swaraj dreamt of long back by our beloved freedom fighters on whose blood has been constructed the whole pyramid of India democracy. To sum up, the spirit of distributive justice furnishes a guarantee to secure for each and every human being the basic necessities of life like food, clothing, housing sanitation, health, education and life etc. This is really very dharma of Indian Constitution.