CHAPTER – I

ORIGIN AND DEVELOPMENT OF THE CONCEPT OF JUSTICE

Introduction

The term ‘justice’ in a general sense refers to give each person what is his due. But it not as simple as it looks. It is a complex phenomenon which pervades social thought to incomparable extent. The concept of justice is a basis to both of law and of morality. Although it seems that idea of legal and moral and justice share certain common principles, still they do not stand in the same relationship to their respective fields of operation, law and moral. On the one hand it is regarded as a concept which is concerned with the order of society as a whole, and on the other hand it is an expression of right of individuals in contrast to the claim of general social order. Justice in terms of law is used to cover the set of principle and procedure that ought to be followed. Here the purpose of lawyer is not to distinguish the principle of natural justice which is relatively inferior through fundamental part of the legal system, but he is trying to point out that it is a distinction between natural justice and remaining superstructure which is dependant on custom, precedent and enactment. Unlike legal justice, justice in the light of social morality does not cover the whole field of principles and actions that are considered as right. It is regarded as foundation of social morality without it society would collapse. The scope of moral laws is confined within the realm of moral justice. However, the system of law is concerned with the protection of right.

The idea of justice, both in the legal and moral sense deals with general ordering of the society. Justice has two faces one is conservative and the other one is reformative. The criminal law is especially designed to protect the order of society as a whole. The punishment of crime is not a matter of giving satisfaction to the victim but one of protecting the social
fabric. In so far as the victim of crime is able to vindicate a claim against the criminal in respect of the wrong he has suffered, it takes the form of reparation or compensation for loss or damage, and is in no way a satisfaction of any natural desire to see the aggressor paid back in his own coin. In a system of criminal law, that natural desire of wronged individual is merged into the general desire of society as a whole to be protected from such harmful conduct, and punishment is imposed by the authority of the organized society and for the sake of whole society.

In social ethics, as in law the concept of justice has both a conservative and reformative role. The conservative is to maintain the established order of things, taken to be entitlements. A person is entitled to the things that he has acquired, provided that the method of acquisition was not itself wrong. He has all the rights in whatever ways he wants to use his property. But the role of justice in the case of reformative is to change the existing pattern of entitlements by taking account of merit and of need. It is not just for an individual to continue to remain always on the same level of play. If he develops his talent through proper training, experience then justice demands that he should be promoted. Then what is status of need in society. For example, if the pay of the worker is not sufficient enough to meet his basic need then we can say that it is unfair. In that case if we increase the pay of worker so as to give them enough, then it is not necessary the amount of rich one. Both conservative and reformative justices are not strongly differing with each other. Each tries to fulfill a good purpose. Conservative assumes that everyone benefits from a stable social order, however imperfect, and so it aims to preserve stability. Reformative justice supplements this good purpose by another, trying to remove the imperfection, redistributing rights so as to make the social order more fair. In the thought of ancient Greeks, the idea of justice almost had a reference to social order. To trace the development of justice from the beginning of socio-political philosophy to the present, it
would be convenient to divide it into two parts: ancient roots of justice and modern roots of justice.

1.1 Ancient Roots of Justice

The root of ancient justice starts with Plato’s and Aristotle’s writings. Plato discusses the concept of justice in Book IV of *The Republic*, where he defines justice as the principle that everyone should perform the function for which he is best suited. He used the term ‘just’ as a synonym: The root of ancient justice starts with Plato’s and Aristotle’s writings. Plato discusses the concept of justice in Book IV of *The Republic*, where he defines justice as the principle that everyone should perform the function for which he is best suited. Justice in the words of Plato:

…that which is in the interest of the best state. Then question came to our mind that what is the interest of best state. The answer is the arrest of change, by the maintenance of a rigid class division and class rule.¹

The economic division of labour which exists in the society is supplemented by social and political division of labour. Plato suggests that there are mainly three divisions of labour existed in the society. These are: guardian or rulers, the auxiliaries or military and labour class. The guardian class needs the virtue of wisdom to carry out soundly the function of governing, the auxiliaries need the virtue of courage in order to maintain security and order. All the three classes need the virtue of temperance or self-control in order to accept their respective role in the society.

Finally, the virtue of justice is one which maintains balance or harmony among these classes and also guides them to do their duty or job properly. But Plato argues that this initial

division of labour is not proper definition of justice, it is simply a clue to understand the idea of justice. In his book The Republic (433) he describes why the economic division of labour is not justice. He started asking:

Do you think it would do much harm to the society if a carpenter started making shoes instead of carpeting and vice versa. I do not think it would not harm very much. But the problem starts when a person who is a worker by nature or a member of money making classes get into the worrier classes.²

This kind of interchangeability creates great crime against the society. Any such plotting from one class to another destroys the regulation and order of state, and injustice arises. Conversely when each individual deliver their duty whatever assign to him appropriately then only it is considered a just act. An individual could do everything for himself but he would have a hard job to keep going. He is not really self-sufficient. Life will be much easier and more comfortable if there is a division of labour and an exchange of products. Men need the help from each other.

In his The Republic, Plato portrays the nature of man to be just that means just man is one who obeys the rules of state. According to this theory human soul consists of three parts: reason, spirit and appetite. Among these three types of human soul, reasonable soul possesses higher quality that means it rules over the rest of the two parts. The order relation is known as justice in the soul. Again he points out that: “Just man is the happy man.”³ The man who obeys the rules as well as order of the soul is counted as happy man. Here Plato assumes that there is a connection between the nature of state and nature of the soul. The obedience to the laws of good state produces the right order in the soul of citizen. Good state is that state which fulfills

² Ibid.
³ Ibid., p.208.
its own nature and will at the same time produce the conditions in which its subject can best fulfill their nature as men. Just act, according to Plato is one that is not conformity to the interest of state but to conformity with nature. He believes that nature as divine and that divine element in state (justice) neither mysterious nor irrational but it is something which is wholly reasonable and intelligible. To sum up Plato’s view on justice we can say his theory of political obligation rests upon the assumption that justice resides in the state and that justice for him implies the presence of divinity.

Aristotle, like Plato presents the concept of justice in a systematic manner. Plato’s treatment of justice is much more attractive, while Aristotle’s conveys more enlightenment thought. Aristotle’s ideas about justice are given most systematically in the Book V of Nicomachean Ethics. He started his discussion by making a division between universal justice and particular justice. Aristotle tries to identify universal justice with moral righteousness which reminds us of a leading aspect of Plato’s The Republic where he makes a similarities of universal justice with law. The word just and unjust both possesses ambiguity, according to Aristotle. He says: “Justice means lawful or fair; unjust means lawless or unfair.” Like Plato, Aristotle also tries to identify his notion of justice with legal and moral justice. The aim of law, according to Aristotle is to promote virtue and restrain all vice. Justice in the former sense is known as complete virtue. It is a complete virtue but only in relation with other people. Unlike universal justice, particular justice deals with specific issues like merit, fairness, status, wealth etc. For the sake of clarity he divides his particular justice into two parts: distributive justice and corrective justice. Distributive justice is a matter of arranging things according to proportionate equality (on the basis of desert or worth) while corrective justice is concerned with equality of arithmetical proportion. I shall take care of all these issues in a detailed manner in the next chapter which especially on Aristotle.

1.2 Modern Roots of Justice

For the sake of clarity and precision it is better to divide modern root of justice into two parts: liberalism and utilitarianism. Liberalism and utilitarianism are two different aspects of individualism. The prime aim of individualism is that individual is considered as the center of all end. All the social and political institutions exist to serve as a means for the welfare of individual. The individualistic philosophy begins with Thomas Hobbes (1588-1678) who is regarded as father of modern political philosophy. His discussion starts with an analysis of nature of man. Hobbes thought experiment is anti-Aristotelian in nature which strongly believes that all human beings are roughly equal in physical and mental abilities, so that there are no natural masters or natural slaves and no fundamental difference between men and women or any group of people such that some of them are naturally subordinate to others. To quote Hobbes in this context:

Nature hath made men so equal, in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger with himself.\(^5\)

Hobbes points out that even though we differ in strength and intelligence there is no super men and women alike among us who can dominate us either through muscle or mind. Since

individuals are roughly equal in strength, everyone is concerned only with the best of his life and tries to seek power as the best means to secure future apparent good. In their attempt to satisfy their self-regarding desires, they would come into conflict with one another. And the state would inevitably become, “a state of war of every man against every man.” In order to protect his life and property from external aggression individual voluntarily enter into the contract where he surrenders all his natural rights to a sovereign ruler. Sovereignty resides in the state and law becomes the dictate of sovereign ruler. It is the duty on the part of the individual to obey the laws of the state and those who violate it have to suffer severe punishment.

Thus, for Hobbes working according to law is justice. Hobbes explicit definition of justice as the performance of covenants appears only in *Leviathan*. His definition of justice in terms of covenants is of two types: human justice exists by convention not by nature but by absolute authority of the sovereign. Hobbes argues that sovereign has legitimacy and power in a society only he can take the decision what is best for all. By obeying the command of sovereign authority, individual enters into a contract which he has made for his safety and security. John Laird explicates that Hobbes had both a wider and narrower sense of justice. In his wider sense justice was described as ‘the performance of covenants’ and in narrower sense it is defined as ‘whatever was done with right’. Again Hobbes makes a distinction between two uses of just and unjust, just concerned with persons whereas unjust deals with individual action. In his *Element of Law* and *De Cive*, Hobbes repeats the distinction between justice of a person and justice of action. He does not bother at all about the wider and narrower sense of justice. In his *Leviathan* he defines just and unjust as: “Conformity, or inconformity to

6 Ibid.
Hobbes says justice of a man is conformity to reason of his manner or manners of life while justice of an action is the conformity to reason of that particular action.

After providing a distinctive definition of justice, Hobbes moves on to traditional classification of justice derived from Aristotle. But he was not satisfied with the Aristotle’s division of justice, i.e., commutative and distributive justice. Commutative justice, according to Aristotle, is said to require equality of value in the exchange involved in a contract, whereas distributive justice determines that award of benefits should be given to individual in terms of his merit. Hobbes rejects the idea of commutative justice and pointing out that it is not unjust to sell at a higher price than one buys. Value depends upon the desire of those who agree to a contract, so that any kind of agreement just or fair so long as it is made voluntarily. The fairness of contract indeed depends on the wishes of the parties, provided that they each have a reasonable knowledge of what is involved and they really are free agents. So Hobbes says commutative justice is simply a justice of a contractor, i.e., keeping of covenants made in a contract for the exchange of goods. Similarly he is dissatisfied with the idea of distributive justice, on the ground of individual’s merit.

Hobbes argues justice which is determined in terms of individual desert is nothing but a ‘grace’. It is a matter of gift and not of obligation. Distributive justice, according to Hobbes, is to distribute as his own share which reminds us the traditional account of justice that ‘rendering each according to his due’. Hobbes calls it as equity. He draws a firm distinction between distributive justice and equity. Distributive justice is not confined to the equal distribution. It follows the traditional definition of justice that each man should get whatever his own fair share. While equity sticks with equal distribution, that means every individual should be treated in an equal manner. In this context he differs from Aristotle meritarian

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account of distributive justice, i.e., that power and privilege should be given to those persons who possess that capacity.

With the help of distinction between justice and equity, Hobbes is able to say that: “a sovereign may commit inequity but not injustice.” Hobbes points out that like any other man sovereign has an obligation to follow the law of nature including that law prescribed by equity. But he has no covenantal or artificial obligation towards his subjects as a result of their social contract. The sovereign has a natural obligation to the third law of nature that prescribes the performance of covenant which is based upon mutual trust. Mutual trust can exist only when there is reasonable certainty that promises shall be kept provided both the parties perform their duties in a rational manner. Hobbes provides absolute authority to sovereign ruler he can do all the things which he thinks best for overall development. He is also bound by laws of nature and has to make all the possible effort in order to provide safety and security to individual’s life and property at the time of war.

Thus, we can say that Hobbes supports egalitarian conception of justice that all men are entitled to be equal. But he modifies his vision of equality slightly in a different manner. Instead of saying all men are equal, he says all men are roughly equal, so no one is strong enough to dominate the rest. After discussing the basic ideas of individualism it is necessary to discuss the two of its sub-parts: liberalism and utilitarianism. The term ‘liberalism’ is derived from the word ‘liber’ that means liberty or freedom. Liberal individual has an intrinsic right over freedom. But the social critic of liberalism asserts that it is the ideology of rich class, as it is never associated itself with the right of common man. It is because for the liberals, right to property is conceived to be sacred, and any attempt by state towards restraining that right is taken to be detrimental to the individual’s personality. John Locke (1632-1704) is known as

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the father of liberalism. It ensures certain rights to individuals, namely, right to life, liberty and property. To quote the word of Hiller Steiner:

The libertarian is vitally concerned to secure a society in which the enforceable obligations to which any individual is subject – apart from his obligation to refrain from overt violence against the persons of others – are all obligations which he has personally contracted. What it prescribes is the minimization of uncontracted enforceable restrictions on individual conduct.\(^9\)

Locke starts his analysis with the nature of man. There is not much difference between Hobbes’ and Locke's view on nature of man. Hobbesian view is that man is egoistic, competitive and quarrelsome and aggressive; and state of nature is the state of war each against all. Similarly Locke shows the egoistic nature of man whose efforts are always directed to acquire pleasure and pain. In spite of all these similarities he assumes that he is rational and co-operative. It is the presence of ‘divine nature’ which helps man to produce a good deal of order and harmony in the society. But even after co-operation and rationality, and even after having some natural rights protected by natural laws, individual feels certain inconsistencies in the state of nature. These inconsistencies are the absence of an impartial legislator (who would interpret the laws of nature uniformly), an impartial executive and impartial judge. To overcome these shortcomings men enter into a contract. The contract is made between individual with society and society with state. Under it each individual agrees to surrender all his natural right to the community as a whole who guarantees the safety and security of individual’s life and property. In this state of nature everyone should get equal amounts of goods. Right allocation of good among members of the society is known as justice. The right distribution is held to be that which maintains the property or ownership of proprietors. Justice,

according to Locke, is a dependent function of ownership. He asserts that the prime function of natural law is to provide security to distributive arrangement. John Dunn says:

If the law of nature were reducible to self-interest the condition of scarcity in which human beings live, the inelasticity of supply and the consequents that every appropriation is necessarily performed at the expense of others, would mean that it was self-contradictory. There is a permanent conflict between human duty and human interest in the world and it is the function of law of nature to mediate this conflict.¹⁰

Thus, justice is inherent in obeying the limited government which enforces natural law that existed in the state of nature. This law provides protection to the right to life, liberty and property.

David Hume (1711-1776) is also a representative thinker of liberal tradition. For Hume, justice is a virtue which man may possess. This concept suggests that justice is an attitude of mind pertaining not to men’s action but to their personal qualities. Hume’s idea of justice is largely confined to the right to property and the obligation of promises. In his book Enquiry Concerning the Principles of Morals, he says promise keeping is one of the most considerable parts of justice. Although Humean conception of justice closely indicates its connection with property, he never tries to define justice in terms of property. In this context he differs from Locke who suggests that justice is bound up with property. Hume relates justice with human conventions and suggests that:

the rules of justice are conventions whereby material goods (wealth, land, possession, etc.) are ascribed to particular individuals; and the virtue of justice consists in respecting this ascription, by refraining from appropriating the goods of others, and ensuring that wrongly appropriated goods are returned to their owners.\footnote{David Miller. Social Justice. Oxford: Clarendon Press, 1976, p.158.}

In Locke’s philosophy we can find that individuals have natural rights over life, liberty, and property, whereas in Hume rights are ascribed by conventions and justice consists in respecting these ascriptions. In this sense justice becomes an artificial virtue and there seems to natural motive to perform an act of justice. In his Treatise of Human Nature, he provides foremost examples of artificial virtues like promise keeping, political allegiance, adherence to international law and strict standards of chastity and modesty required to welcome. He further makes a distinction between artificial virtues with natural virtues. Natural virtue springs out naturally in human being. The chief qualities of natural virtues are greatness of mind (heroism), goodness and benevolence (generosity, humanity, compassion, gratitude, friendship, fidelity, zeal, disinterestedness, liberty. Whereas complexity involves in the motivation of artificial virtue, it depends on a convention that grows up in the course of social experience.

After designating justice as an artificial virtue Hume has set himself three tasks to perform before his analysis of that quality is complete. First of all, what originally prompts men to adopt rules of justice, secondly, what induces them to obey the rule and finally why justice, as the disposition to follow such rules is considered a moral virtue. In order to explain the adoption of justice Hume refers to the general circumstances of human life. There are three main conditions which make it necessary to have rules stabilizing possession by assigning
objects to particular people as their property. These three conditions are as follows in a detail manner:

Firstly, men desire more goods than easily available to them from the hand of nature. So he is placed in completion with one another for scarce resources.

Secondly, men are not entirely benevolent in their disposition, so will not agree to let each person have such goods as will maximize the total stock of happiness.

Thirdly, goods can be wrested fairly easily from one set of hand to another.\textsuperscript{12}

Within these three given conditions men are liable to come into a conflict with one another over the distribution of resources. If they follow their inclinations in a direct and short-sighted manner, the outcome will be a struggle for goods and it gives no chance to develop his skills and engage in mutual co-operation. There is no need to change his natural inclination, provided they respect others interest and his rights to property. Hume’s second condition is almost similar to his first one, so there is no need to repeat the things. Finally, there is question of why justice should come to be regarded as moral virtue. If the established property rules of property help them to fulfill benefits everyone and those who try to break that rule are liable to suffer punishment because they voluntarily interfere in rules of convention. David Miller rightly pointed out that justice is vital to human society and no society can afford to lack the convention in question. To quote David Miller:

…we may legitimately speak of justice, in Hume’s account, as respect for the rights of others; provided we always remember that an individual’s right is an ascription of a good to a person in accordance with a rule of justice.\textsuperscript{13}

Thus, for Hume, right to property is also ascribed by conventions. Is there any rational way through which we can allocate the property? Hume suggests three basic modes of distributions, namely, merit of each recipient, use of each person and equal distribution. The distribution of property, according to desert cannot be achieved by a general rule of distribution or by a set of rule because it requires continual adjustment with individual character. The personal feature desert is one over which men will inevitably disagree, therefore conflict arises. Similar is case with use of each person property, if we give freedom to individual that he can choose the most possible for himself. Then Hume moves to the third possibility of distribution of property that is equality. Although it is considered as an ideal mode of distribution put up to some point it leaves its impact on equal distribution. All human beings are not born equal, some are born in a wealthy family or some in poor family but when we distribute the resources (natural and material) we should adopt fair and equal policy.

In order to overcome all these inconsistencies Hume prescribes five bases of having right over property, namely, possession, occupation, prescription, accession and succession. Possession operates only at the foundation of society. If men to come together to institute a system of property, their guiding principle would be that each man should be given a property right over those goods which he has already possessed. Occupation says, a person shall have a right to whatever object he has possessed first, i.e., prior to any other person. Prescription may be regarded as a long termed possession. Here person shall have a right to whatever object he has held over an extensive period of time. Accession and succession are the other two modes of getting titles over some specific objects. Hume points out, as against Locke, that labour is not the important factor, but simply a relationship of physical proximity between the two concerned objects. By succession, he intends the transfer property from parents to child on the

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ground of their personal relationship. Thus, for Hume, justice denotes a kind of relationship that would be appropriate for men considered as owner of property. According to Hume, justice is an artificial virtue because men find it to their advantage. While following the principle of justice, men are moved by self-love and benevolence. He paints a different type of human nature that he is neither completely selfish nor completely altruistic. Hume suggest that justice and public interest are independent values, there may be circumstances in which public interest is allowed to override justice.

Unlike Hume, Immanuel Kant also belongs to the liberal individualistic tradition portrays a completely different picture of man. The basic aim of every individual is to attain a good life, and he works in according to his freewill. In order to fulfill his own personal interest, he is inspired by his emotional will which is harmful to his good life. By following the rules of categorical imperative, which not only control his inner feelings but help him to attain a good life. For Hume, justice implies that individual must work for the welfare of the society as well for his own self. Whereas for Kant, justice implies working according to his own free will within the state whose main task is to eradicate the obstacle of good life. Kant’s views on justice are found in his four major works on politics, viz., Idea for Universal History with a Cosmopolitan Purpose, Theory and Practice, Perpetual Peace, and The Metaphysical Elements of Justice. Justice, according to Kant: “The aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law of freedom.”

The same thing is expressed by *Universal Principle of Justice* which says: “Every action is just (right) that it in itself or in its maxim is such that the freedom of will.”\(^{15}\) Thus, justice means each individual should work as community as a whole, where freedom of one individual depends upon other. In that community each individual should follow one universal law and they are bound to follow the rules. If they fail to follow the universal rule injustice arises in the society. He further points out that: “Justice is united with the authorization to use coercion.”\(^{16}\)

In *Theory and Practice*, coercion is defined by Kant as: “Restriction of freedom through the arbitrary will of another party.”\(^{17}\) Here he tries to bring out a significant point that if individual freedom creates any obstacles to another’s freedom, coercion plays a vital role which restricts that person who arbitrarily uses his freedom. Again he writes:

…if a certain use of freedom is itself a hindrance to freedom according to universal laws (that is, is unjust), then the use of coercion to counteract it, in as much as it is the prevention of a hindrance to freedom, is consistent with freedom according to universal laws; in other words, this use of coercion is just.

It follows by the law of contradiction that justice (a right) is united with the authorization to use coercion against anyone who violates justice (or a right).\(^{18}\)

Kant points out that it is the role of justice which determines legitimate or illegitimate use of coercion. The legitimate use of coercion is working according to liberty of individual while the later one forbids the individual liberty which is called as injustice. Legitimate use of coercion always tries to make a balance with illegitimate use. The individual who follows the universal laws and at the same time concerned about everyone freedom is regarded as just person.

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\(^{16}\) Immanuel Kant. *The Metaphysical Elements of Justice*, p.35.


\(^{18}\) Kant. *The Metaphysical Elements of Justice*, p.36.
Thus, Justice for Kant, is a law of reciprocal relation that is necessarily consistent with individual freedom under the universal principle of justice. Kant divides his universal principle of justice into two heads: general division of justice and general division of justice which is basis to the Roman Law. This first division of justice is again divided in to three parts: (1) be an honorable man, (2) do no one an injustice and (3) enter each person into a society in which each person can (edit something) get and keeps what is his own. On the basis of these three principles Kant divides the system of duties into internal, external and connecting duties. But in the second categories of justice, Kant tries to define justice in two senses, i.e., law and right. Justice in the former sense deals with external, which is again subdivided into natural law and positive law. Natural law, according to Kant, is based upon *a priori* principle or has to obligate the principle recognized by reason. Whereas positive law is one which works in accordance with will of external legislator. The above mentioned laws are known as private law and public law. The whole book of Kant’s *The Metaphysical Elements of Justice* has discussed about the distinction of these two justices. Private law belongs to individual’s state of nature. It includes the legal relation among individuals, the right and duties of individuals with regard to other individuals, the laws of property, contract among them, family law etc. Another meaning of justice is right. In general sense right means the power to create obligation. In the words of Kant: “Justice is the restriction of each individual’s freedom so that it harmonizes with the freedom of everyone else.”

By concluding Kant’s view on justice we say that justice for him to obey the order of categorical imperative which is complete in itself. He has to obey the rules of categorical imperative at any cost, there is no way to escape from it. It suggests that each individual should follow the rules of each one’s free will. In obeying the order of free will individual is obeying

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19 Kant. Immanuel Kant. “On the Common Saying: This May be True in Theory, but Does not Apply in Practice.” *Kant’s Political Writings*, p.73.
the command of himself, which help him to lead a good and virtuous life. State does not play any role in Kant’s political writings, it is individual own self which plays an important role in the order of justice. As has been said before that individualistic theory has two parts, one is liberalism and the other one is utilitarianism. Two prominent philosophers of liberal political philosophy present their ideas on justice in a noble manner. Likewise, in utilitarian philosophy, ‘utility’ is the centre around which all social and political institutions revolve. Utilitarianism is the measuring rod of all types of individual and state action. Happiness, pleasure, pain, truth, good, beauty moral, etc are all included in utility. Everything that creates pleasant vibration on the sense screen of man comes under the conception of utility. Egoistic hedonism advocates that man by nature is a pleasure seeking animal, and involve his hand on that work which gives him maximum benefits.

As an ethical theory, utilitarianism implies that action is regarded as just and right only insofar as it works for the welfare of whole humankind. Utilitarianism was first formulated by Bentham later on J. S. Mill brings some kinds of modification in it. To quote the View of Sidgwick:

By utilitarianism is here meant the ethical theory, that the conduct which, under any given circumstances, is objectively right, is that which will produce the greatest amount of happiness on the whole; that is, taking into account all whose happiness is affected by the conduct.  

Happiness for Sidgwick is to achieve pleasure and avoid pain. It is generally regarded as the common notion of psychological hedonism which believes that the ultimate goal of human being is to achieve pleasure. Unlike psychological hedonism, ethical hedonism believes that

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pleasure ought to be treated as the final goal of every human being. Utilitarianism is basically a revival of hedonism. Here actions are more result oriented that whatever means it may be but result should be good. It is the social good which determines that action is just and moral.

Utilitarianism gets its privileged in the field of legislation. For him legislation of the state is just if it promotes the overall welfare. He is aware of the fact that the government which gives special importance to welfare of few people and neglect the whole mass can never be regarded as just state. Jeremy Bentham (1748-1833) is the prominent expounder of the classical utilitarian philosophy. He portrays the egoistic nature of man, who is always concerned about his own pleasure. In order to overcome such conflict Bentham introduces the state of nature. State of nature, according to him, is a reconciler of conflicting interests of the citizens. State has all powerful authority which can restrain individual behaviour through punishment. Bentham provides four basic sanctions through which human behaviour can be controlled. These sanctions are: physical, moral, religious and political. Among these sanctions, political sanction is important one which binds the remaining three. It comes through law, law is enacted by state and each individual is bound to obey the laws.

Thus, law becomes the command of the sovereign power of the state. So state can take all the major decision for the welfare of individual as a whole and punishment should be given to the wrong doer if he knowingly breaks the order of state. Thus, it is evident that Bentham’s philosophy is aggregative in nature, which always aims at the advancement of aggregative satisfaction. The role of justice, in Bentham’s philosophy is working in accordance with rules of law and the prime object of law is to achieve overall welfare, i.e., greatest happiness of the greatest number. The aim of law is to produce maximum utility then only it is regarded as good. In short we can say that in Bentham’s philosophy, just society is which ensures the
greatest happiness of the greatest number, an action is just which produces maximum pleasure
to the maximum number.

Unlike Bentham, J. S. Mill tries to give utmost emphasis on individual dignity. He believes that as a rational being his/her humanity should be respected at any cost and not to be
treated as a mere means for the welfare of society as a whole. Each individual possesses some
inalienable rights and it is the duty of society to protect such rights from external threats. John
Stuart Mill is also eminent philosopher who belongs to the utilitarian tradition. However, he
was born and brought up in utilitarian gospel of Bentham, but he tries to bring significant
changes in Bentham’s philosophy. We can find the idealistic image of utilitarianism which
indicates that he was influenced by the writings of Rousseau’s and Kant’s political thought.
Bentham shows the egoistic and self-centered image of man in his philosophy. Unlike
Bentham, J. S. Mill introduces two basic assumptions to utilitarianism – qualitative aspect and
elevation of liberty over utility. Mill divides individual actions into two groups such as: self-
regarding, and others-regarding. Self-regarding means individual is only concerned only with
his life, whatever he does for the benefit of his own welfare. Here individual is solely
responsible for his own action, and there is no danger of any external authority. But external
influence is compulsory in the case of others-regarding because each individual needs the help
from others for the fulfillment of desires. We should take care of our liberty and at the same
time liberty of co-fellows. This is possible only with the interference of state, which controls
and regulates all our actions. Thus, working according to the regulation and principles of state
is called justice.

The first glimpse of his theory of justice can be found in his book *Utilitarianism* (1861)
J. S. Mill advances three basic criteria which his ideas of justice are present in an implicit
form. The criteria’s are: subjectivity, objectivity and adoptive evolution. Mill’s subjective
criterion of justice deals with individual interests and expectations that arise from human self-development. He strictly points out that not all interests need social protection, but those social interests which are responsible for total welfare of mankind in general. There are mainly three such interests, namely, liberty, security, and equality. He acknowledges the variation of these interests in different situations. Liberty encompasses freedom to choose, acts according to one’s own so long as rights of others is not violated. Security provides safety of one’s life and property. To quote J. S. Mill in this context:

The moralities which protect every individual from being harmed by others, either directly or by being hindered in his freedom of pursuing his own good, are at once those which he himself has most at heart, and those which he has the strongest interest in publishing and enforcing by word and deed...; it is these moralities primarily, which compose the obligations of justice.  

The duty of justice is to expand social utility by helping human being to develop his interest and also refine human capacities and talents. The role of justice is to check the anti-social attitude of human beings which helps him to prevent others from harm and at the same time a developed sympathetic attitude toward others. The objective criterion of Mill suggests that development of individual capacity is the medium of social utility. It rests on extension, contribution, sacrifice and effort as criteria of merit. In terms of merit, Mill thinks that it has different implications in various contexts. For example, the person who is deprived of natural talent might possess objective claim subsistence in order to develop the ability to make productive contributions. Mill believes that both his subjective and objective criteria of justice are potentially congruent in a liberal democratic society. He provides six classes of things which are coming under his application of justice. These are as follows:

1. Legal rights: It is just to respect the rules of legal right and unjust to violate them

2. Moral rights: There are certain laws which may be considered as unjust because it infringes other life or property

3. Requital of desert: Justice should be given to those people who have possesses that capacity (that mean good or good and evil for evil)

4. Promise keeping: We should keep our promises (fulfillment of engagement, return the debt to the creditor)

5. Impartiality: Distribute all the scare resources in a manner. We should be free from any kind favoritisms and preferences

6. Equality: Everyone should be treated equally

Out of these six classes of things, the first two classes share the idea of a right and the last two are close to each other in order to forbid the discrimination. Mill’s last pair (impartiality and equality) of six categories justice involves serious criticisms. Impartiality is the part of the work of judge in order to give a fair judgment. Similarly, equality is the fundamental right of every human being. If all are treated equally, then what is need of desert in the society? So it is unfair to treat equally, because without knowing their desert treat them equally is a dangerous issues. Mill’s principle ‘greatest happiness of greatest number’ involves serious criticisms. Bentham holds that actions are right as they tend to promote happiness, wrong as they tend to produce reverse of happiness. Mill implicitly supports this view of Bentham. It involves two things: first of all, it is aggregative which refers to happiness of total number, secondly, distributive that happiness should be shared among different people. The meaning of happiness is different from person to person. What is happiness for me, it may not
be for others. So how one person’s happiness is counted as much as for others. Some individuals have possessed higher capacity, some are more capable and some are less, so it is difficult to treat in an equal manner. Thus, we cannot say that distribution of goods and rewards should be based on equality or merit because its dependency is based on context or situation.

In this context, tries to draws the necessary attention towards David Miller *Social Justice* which was published in 1976, though his book was published after Rawls’ book but it worth to discuss the idea of justice prior to Rawls’ idea. Miller’s general views on justice bear resemblances with traditional idea of justice, i.e. ‘to give each what is his due’. Like Henery Sidgwick, he also draws a distinction between conservative and ideal justice. According to Sidgwick, the role of conservative is to maintain the existing order of right, goods and privileges. Though Miller borrowed the idea of conservative justice from Sidgwick, but he presents it in a novel manner. Conservative justice, according to Miller, is to be a principle of right. Justice in the words of Miller: “to each according to his rights, rights being derived from ‘public acknowledged rules, established practices, or past transactions’ (such as promises or contracts).”

Miller points out that each individual should receive the rights provided that is suited to his capacity and without acknowledgement of public consent he cannot get these rights. It is also based on practices, promise and contract that a person does with his fellow partners. While Sidgwick identifies ideal justice with desert (merit), he argues that criterion of justice is more central to need than desert. He provides three such principles through which distribution can be possible, namely, rights, desert, and need. These three are so complicated situations and it is

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difficult to build a co-relation between them. The conflict between right and the rest of the two principles can be solved, but need and desert (merit) are incompatible with each other.

Following Michael Walzer’s *Spheres of Justice*, Miller suggests that our just distribution varies according to “our mode of human relationship.” He argues that there are three basic modes of human relations: citizenship, solidaristic community and instrumental association. Miller’s defined citizenship is mode of association, where equality is the means of distribution. Here each individual shares the common status, namely, right to equality, liberty, right to vote, right to personal protection, right to political participation etc. Solidaristic community, according to Miller, shares a common identity as a member of stable group for the fulfillment of common principle. The principle of justice underlying this mode is the distribution of need. There are many thinkers who believe that the claim of need is one kind of charity, humanity or benevolence not of justice. Miller replies that any distribution helps him to reduce human sufferings are the part of human obligation and it fulfills the purpose of need. In this context he refers the idea of Brian Berry, for whom need is not an independent idea. A person needs something means he wants to fulfill some of his purposes. Miller is dissatisfied with this idea, so he suggests three types of needs: instrumental, functional and intrinsic. Instrumental need supports the idea that need is a mean to an end. For example, one needs a mobile phone in order to communicate with his family members. So mobile is the means through which he can communicate. But the rest two needs (functional and intrinsic) reject idea of means to an end. For example, a lecturer needs a book in order to make students understand level more clear, doctor needs some operation tool to save some one’s life. All these are part of the process for the fulfillment of those ends. So he agrees with the conclusion draws by Barry that need which is the relevant part of justice is dependent upon an end. Market

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society is one of the parts of social structure which discuss the concept of desert. The social structure is based on mutual exchange and contract. The social obligation arises from such contract which is undertaken freely. The success and failure of each individual depends upon his own skill, if he follows the rule of contract he deserves reward. But success or failure does not always depend upon human effort, it is the luck or fortune which is also the deciding factor of human effort. Being born in a wealthy family or because of his natural talent some persons get higher position in the society, whereas poor people are deprived of those facilities.

But Miller argues that it is his own free actions which decide his reward or punishment, no one is responsible for that. Miller explicates that desert works in two different ways. First of all, grading the individual position in an organization by judging their work what he is finally produced and fixing the remuneration for each position in accordance with its value; and secondly appointing people to the grade position by some selection procedure that assesses their capacity to do the job well. Miller’s account of distributing reward based on two conditions: payment should be decided by seeing the product at the end of his work; and position should be given to them by judging their merit whether he deserves it or not.

Thus, he comes to conclusion that desert and need always conflict with each other in terms of their equality. It is the principle of desert that always discriminates people on the ground of their ability and skill. The individual or group of individuals who do all the effort welfare of society as well as his own self he will be get all the rewards and live in better position than to the less fortunate individual who lacks such ability. It is the desert which creates inequality in the society. On the other hand, Miller claims that need as a matter of justice presupposes some sense of human equality. But at the same time he explicates that these three principles (right, need and desert) have different application in a particular form of society. These three principles are associated with justice for wellbeing of society as a whole.
So it is wrong to give priority to one over the others. We can say that it depends upon individual perception and situations demand, which assign their priority.

In the contemporary period, one of the chief exponents of social justice is John Rawls. Rawls conceives of a just liberal society which provides better opportunity than any other organization. He conceives of an ideal society where the basic political, social and economic institution of a modern constitutional democracy should be designed in such a way that takes care of individual basic liberties of each citizen. Rawls suggests that society should be arranged in such a way that each individual should get equal share. All the social and cultural organizations are present in the society for welfare of human beings. He strongly believes that revision is necessary if the existing social institutions create any obstacle for the development of individual’s life. Rawls does not believe in the concept of self-sacrifice. Following Kant, he says as a rational being each person should be treated as an end in itself, not as a mere means for the fulfillment of others goal. Every individual in the society possess certain unique characteristics which differs from others. The role of society is to find out that unique quality and trained him to actualize his talents. Justice in the words of Rawls:

It is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of the society as whole cannot override. For this reason justice denies the loss of freedom for some is made right by a greater good shared by others.24

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He admits that society is cooperative venture of mutual advantages. Though all individual are alike in nature, likewise their interests also vary from each other that sometimes create conflict among them. As we know that no individual is self-sufficient, they need the help from others fellow mates in order to satisfy his needs and interest. It is a kind of give and take relationship where everyone should participate in a fair manner, otherwise injustice arises in the society. It is the social cooperation which makes individual life better. So, Rawls conceives that the principle of social justice is the guiding factor which distributes burden and benefits in an equal manner. The prime subject of justice is to construct a basic structure. By basic structure he means:

The main political and social institutions of society which fits together into one system of social cooperation, the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation.  

Rawls conceives that basic structure is the background of social framework within which all the cooperative activities of associations and individuals take place. The primary role of basic structure in the society is to provide the security to the background of justice. He claims that it is the basic structure of society that distributes the social primary goods. In order to maintain uniformity among all the members of society he expounds a principle which shows the novelty of his theory of his justice. This principle is known as original position. The person in the original position is only concerned about his own welfare, in that we cannot call him as an egoistic person. As Rawls puts it: “Since all are similarly situated and no one is able to design principles to favour his particular conditions, the principles of justice are the result of a fair agreement or bargain.”

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25 Ibid., p.7.
26 Ibid., p.19.
It will be easier for the society to everyone in an equal manner because no one knows their original status in the society. The principle which we adopt in the original position, Rawls defines it as ‘justice as fairness’. Rawls indicates that person in original position would choose two principles, namely, liberty principle and difference principle. Liberty principle treats all human beings in an equal manner and here individual rights occupies a highest position which cannot be neglected for the sake any higher end whatever it may be. But the situation is slightly different in the case of difference principle which is more concerned about the growth of least deserved groups. It believes that inequality is permissible if it changes the social structure which will bring new hope for those less privileged people. Unlike Aristotle, Rawls advocates that the prime concern of distributive justice is to compensate individual for his/her misfortune. In his theory of justice Rawls adopts a minimum criterion of justice which is available to maximum number of people. The prime motive behind adopting this criterion is to raise the standard of underprivileged groups who are suppressed either because of their luck, talents or born in a poor family.

The historical accounts of justice show the various features of justice according to the nature of particular tradition. It is not possible to maintain uniformity among them because of their diverse cultural set up which differs from each other. Human welfare is the prime concern of each group but the method they adopt for their promotion of individual rights is different. Individual should act in such a manner that it brings benefits for himself as well for the others, this actions alone can counted as virtuous action. It is desirable for the individuals to set a goal for the life and in order to attain that we have to adopt the valid means which makes our life meaningful. Both the individual good and social good are complimentary to each other and its fulfillment depends upon the correct decision making of the individual.