CHAPTER 3

SOCIETY, LAW, AND JUSTICE

"People think it is in their power to act unjustly, and therefore that it is easy to be a just man. But it isn’t. It is easy, and in their power, to go to bed with their neighbour’s wife or to strike the man next door or to pass money across the table. But to do these things in a certain manner is neither easy nor in their power. And they think the just man is none the less able to act unjustly, because the just man is equally or even more able to commit acts of this kind” Aristotle

The word justice has been derived from the Greek word Dikaisune. It is a wider term than the word of justice. Plato also used this term in a wider sense. His concept of Justice is closely related to morality. “It is the disposition which makes a man refrain from an act recommended by desire or by his apparent interest, though obedience to a belief that he ought not to perform it”. According to Plato Justice is the real principle of social life and that is why ‘The Republic’ is also known as a treatise concerning Justice. It’s aim was to subordinate a true conception of justice for the false views which common error and sophistic teaching had contrived to spread. As Barker puts it, “Whether he is combating the theory of the sophists, or seeking to reform

1 Aristotel,Nicomachean Ethics V 9,1137a 4-9
2 M.B.Foster, Masters of political thought from Plato to Machiawelly-quoted by N. Jayapalan, Comprehensive study of Plato, Atlantic Publishers and Distributors, New Delhi,2002 p.35.
the actual practice of society, justice in the hinge of Plato’s thought, and the
text of his discourse”.

Justice is the cornerstone of Plato’s Ideal state. To him a state was
ideal if justice reigns supreme in it. The philosopher ruler knows what is
justice in an appropriate manner. According to him unity and harmony
prevail in the state because of justice and is inseparable from his ideal state.
Justice of the state is the citizen’s sense of duty.

Justice is the basic principle of every legal system and also it should be
the guiding principle of all social institutions. According to John Rawls
“justice is the first virtue of all social institutions, as truth is of systems of
thought. A theory however is 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.” In a
society there are some restrictions founded on justice, which cannot be
violated in the name of personal freedom. In a just society the liberties of
equal citizenship are taken as settled. Moreover the rights secured by justice
are not subject to political bargaining. But in certain occasions society may
permit an erroneous law. This may be because of the absence of a better one.
The state may tolerate an injustice only when it is necessary to avoid an even

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3 E.Barker, Greek Political theory-Plato and his Predecessors; quoted by N.
Jayapalan, Comprehensive study of Plato, Atlantic Publishers and Distributors, New
Delhi, 2002 p.35)
4 Rawls, p.3.
greater one. For the same reason Rawls observes "being first virtues of human activities, truth and justice are uncompromising".\(^5\) It is important to note the role of justice in a society. A society is more or less a self sufficient group of persons. Their relations to one another are based on certain rules of conduct which is binding the group. The individuals for the most part act in accordance with them. Though the society is a group established for mutual advantage, it is also marked by conflict as well as by an identity of interests. The conflict of interests are there because persons included in the group were different. Though the collaboration produces greater benefits, each prefer larger to a lesser share. For these reasons a set of principle is needed for the smooth functioning of the group. It is required for underwriting an agreement on the proper distributive share. For the same reason it is said that "a society is well-ordered when it is not only deigned to advance the good of it's members but when it is also effectively regulated by a public conception of justice. That is, it is a society which (1) every one accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally known to satisfy these principles."\(^6\)

If man stick on to excessive demands on one another, it will very difficult to reach a common point of view from which their claims may be adjudicated. At the same time if there is a general desire for justice, it will

\(^5\) Rawls, p.4.
\(^6\) Rawls, p.5.
limit the pursuit of other ends. So a public conception of justice as constituting the fundamental charter of a well ordered human association is a necessity.

But the existing societies are not well ordered in this sense. Thus it seems natural to think of the concept of justice as distinct from the various conceptions of justice as being specified by the role which these different sets of principles, these different conceptions, have in common.\(^7\)

A standard of agreement in conceptions of justice is however not the only prerequisite for a viable human community. There are other basic social problems, particularly those of coordination, efficiency, and stability. In addition to that scheme of social co-operation must be stable. It must be more or less regularly complied with and it's basic rules willingly acted upon. Now it is clear that these problems are connected with that of justice. So we cannot in general assess a conception of justice by it's distributive role alone, however useful this role may be in identifying the concept of justice. For the same reason Rawls says "we cannot into account it's wider connections; for even though justice has a certain priority, being the most important virtue of institutions, it is still true that, other things equal, one conception of justice is preferable to another when it's broader consequences are more desirable."\(^8\)

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\(^8\) Rawls p.6.
The primary subject of justice is the basic structure of society, i.e. the method in which major social institutions distribute fundamental rights and duties and determine the division of advantages from social co-operation. The protection of monogamous family, private property, competitive markets, together with ensuring of freedom of thought and liberty of conscience are examples of major institutions. The basic structure is the primary subject of justice because its effect are so profound and present from the start. This structure contains various social positions and that men born into different positions have different expectations of life determined, in part by the political system as well as by economic and social circumstances. There are inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles regulate the choice of political set up and the main elements of the economic and social system. Thus the justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.

While following these arguments it is still confusing to examine the principles of justice that would regulate a well ordered society. Every one is presumed to act justly and to do his part in upholding just institutions. According to David Hume though justice may be the cautious, jealous virtue,
we can still ask what a perfectly just society would like. For Aristotle justice
have a sense of refraining from pleonexia, that is from gaining some
advantage for oneself by seizing what belongs to another, his property, his
reward, his office, and the like, or by denying a person that which is due to
him, the fulfillment of a promise, the repayment of debt, the showing of
proper respect, and so on.

Justice as fairness

The guiding principle of justice for the basic structure of society are
the object of the original agreement. They are the principles that free and
rational persons concerned to further their own interests would accept on an
initial position of equality as defining the fundamental terms of their
association. These principles are to regulate all further agreements; they
specify the kinds of social co-operation that can be entered into and the forms
of government that can be established. John Rawls considers this way of
regarding the principles of justice as justice as fairness. If men who engage
in social co-operation choose, in one joint act, the principles which are to
assign basic rights and duties and to determine the division of social benefits.
They are supposed to decide how they are to regulate the claims against one

9 L.A. Selby-Begge, An Enquiry concerning the principles of morals, Sec III part I,
10 See W.F.R. Hardie, Aristotle's Ethical theory, Oxford, the Clarendon Press, 1968,
ch.X.
11 Rawls p. 11.
another and what is to be the foundation charter of their society. Each person
must decide by rational reflection what constitutes his good. Likewise the
group of persons must decide once for all what is to count among them as just
and unjust. The choice a rational man would make in this situation of equal
liberty, assuming for the present that this choice problem has a solution,
which determines the principles of justice.

The primary subject of the principles of social justice is the basic
structure of society, the arrangement of the major social institutions into one
scheme of co-operation. We have seen that these principles are to govern the
assignment of rights and duties in these institution and they are to determine
the appropriate distribution of the benefits and burdens of social life. Here
John Rawls warns that the principles of justice for institutions must not be
confused with the principles which apply to individuals and their actions in
particular circumstances. These two kinds of principles apply to different
subjects and must be discussed separately.\footnote{Rawls, p.55.} An institution here means a
public system of rules which defines offices and positions with their rights
and duties, powers and immunities and the like. These rules specify certain
forms of actions as permissible, others as forbidden; and they provide for
certain penalties and defenses and so on, when violations occur. Games and
rituals, trials and parliaments, markets and systems of property are the
examples of institution.
When the actions specify by an institution are regularly carried out in accordance with a public understanding, the institution can be said as existing at a certain time and place. Here the actions are taking place following the system of rules defining the institution. Thus parliamentary institutions are defined by a certain system of rules. These rules enumerate certain forms of action ranging from holding a session of parliament to taking a bill to raising a point of order. Various kinds of general norms are organized into a coherent scheme. A parliamentary institution exists at a certain time and place when certain people perform the appropriate actions, engage in these activities in the required way, with a reciprocal recognition of one another's understanding that their conduct accords with the rules they are to comply with.¹³

An institution and its basic social structure, is a public system of rules. Which means that, everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement. A person taking part in an institution knows what the rules demand of him and of the others. He also knows that the others know this and so on. To be sure, this conditions are not always fulfilled in the case of actual institutions, but it is a reasonable simplified assumption. The principles of justice apply to social arrangements understood to be public in this sense. The

rules of a certain subpart of an institution are known only to those belonging to it, we may assume that there is an understanding that those in this part can make rules for themselves as long as these rules are designed to achieve ends generally accepted and others not adversely effected. The publicity of the rules of an institution insures that those engaged in it know what limitation on conduct to expect of one another and what kinds of actions are permissible. There is a common basis for determining mutual expectations.

In a well-ordered society one effectively regulated by a shared conception of justice, there is also a public understanding as to what is just and unjust. It can be assumed that the principles of justice are chosen subject to the knowledge that they are to be public.¹⁴

Democracy is the appropriate political atmosphere to foster laws which ensures justice. Socio-Political basis of the democratic system itself gives prominence to the principle—justice for all; i.e ensuring justice to everybody irrespective of their economic and social status. But in India, one cannot say that the legal system stands for justice irrespective of economical/social status of the people.

In India there are adequate laws and there is also a machinery to implement them. However denial of justice is a reality. Economic and Social backwardness is the main reason behind it. Delay in ensuring justice through

¹⁴ Rawls, p.56.
judicial proceedings will also result in denial of justice. Former chief justice P.N. Bhagavathi in his Law Day speech in 1985 said

"I am pained to observe that the judicial system in the country is almost on the verge of collapse. Our judicial system is crashing under the weight of arrears. It is trite saying that justice delayed is justice denied. We often utter this platitudinous phrase to express our indignation at the delay in disposal of cases but this indignation is only at an intellectual and years to get justice. They have to pass through our own courts have to wait patiently for years and years to get justice. They have to pass through the labyrinth of one court to another until their patience gets exhausted and they give up hope in utter despair... The only persons who benefit by the delay in our courts are the dishonest who can with impunity avoid carrying out their legal obligations for years and each affluent person who obtains orders and stays or injunctions against government and the public authorities and then continues to enjoy the benefit of such stay or injunction for years, often at the cost of public interest."\(^1\)

In India giving justice only means enacting laws and ruling according to them. Apart from this nobody is concerned about changing socio-political situation. Laws which were enacted beyond 50 or 100 years is inefficient to manage the prevailing situation. Judicial administration is also more or less primitive. Society is fast changing; at the same time exploitation against weaker section is increasing. Economic changes which are seemingly beneficial to the society exploit the poor. Political, administrative systems also favor the people who have power and money. Here the concept of injustice is to be redefined. Redefining the ‘injustice’ in a particular society is

\(^{15}\) B.R. Agarwala, our Judiciary, National Book Trust India, New Delhi, 1993 pp. 198-199.
the task of the persons formulating philosophical principles. Socio-Political situations and ethical norms prevailing in the society should also be considered. In order to keep pace with fast changing social structure post modern concepts should also be applied in the field of legal philosophy.