CONCLUSION

Historically, justice has been conceived in two separate ways i.e. as a supramundane eternal idea conceived to exist apart from man and his stemming from the higher sources, although man seeks to know its nature and draw inspiration from it in his actions, and as a temporal man-made social ideal dependent upon man in its inception and practice. The concepts have the difference of contemplation and actions, philosophical reflection and practical conduct.

Gandhi, a trained barrister, who later claimed to be a farmer and weaver, an ardent follower of Hindu Dharma who believed more in the natural law rather than man-made or positive law, assimilated both the conceptions and conceived it as a man-made ideal to attain the supreme end of human life.

Justice is a dynamic concept beyond any general meaning applicable for all the time. However, the essence of justice is giving each individual or group his or its due in any form, which further depends on need, merit and capacity of the individual as well as that of the group. It has passed through a number of stages before coming to the present refined notion of equal treatment of equal persons in equal or essentially similar circumstances. The principle of resorting to self-help has now been taken care of by the society with respect to its members.

Formulation of the doctrine of justice with the philosophy of life and ideals of socio-political existence of man is a brain work of western thinking. In Greek philosophy, justice first came into view as a kind of metaphysical cosmological principle regulating the operations of the
force of nature. People in Greece under this ideal left the result good or bad to the destiny. It was Plato who brought the notion of justice into ethical principles involving human conduct.

Under the Indian concept of justice, it was regarded as a concept, which was part and parcel of the human life and day-to-day conduct with the other human beings.

Gandhi’s definition of legal justice is the concept of Indian tradition of ‘dharma’, a conduct based on the duty of individuals, a duty inscribed in the welfare of the society, a law based on rationality with due regard to morality and an approach which identifies the human beings to each other. In Gandhi’s view, man-made law must be derived from the needs of the society and hence a true law ought to reflect the higher principles of morality. As a law student in England, a successful lawyer in South Africa as well as in India, he demonstrated how law and truth can go hand in hand. He cited conscience as the measure or the rod to gauge natural law and positive law.

Here, Gandhi comes somewhat close to the ancient Greeks who believed justice in the metaphysical principles. They surrendered every result of their action to destiny. But the difference between Gandhi and the view of ancient Greeks is that here also Gandhi leaves room for ‘Karma Theory’. He advocated that action (Karma) is within the reach of a human being which, and nothing else, decides the ultimate result.

Gandhi, did not choose the profession of law willingly. He was not coping with the studies at Samaldas College and it was the attitude of escapism which landed him in England to study law. While studying his approach to justice, one has to keep two things in mind-first-, though an insider to the profession of law, he was not a man of academic.
Rather the responsibility put on his shoulders by his fellow countrymen in an alien land gave him the opportunity to grow and evolve in the crucible of experience. Secondly, his genius was more spiritual and moral than intellectual.

This way, in the study of his approach to justice, the struggle he undertook throughout his life to get the equal treatment for his brethren and for himself cannot be ignored. Gandhi sees justice as truth, non-violence, end of all exploitations, impartial performance of one’s duty, ‘theory of Karma’, theory of ends and means, awareness about one’s duty and performing it with full sense of dedication, voluntary obedience to the positive laws to an extent where it did not interfere with the conscience of a person and equality before the positive law.

Although Gandhi considered natural law as supreme yet he advocated obedience to the man-made law as our first duty. The positive law which is essentially for the protection of society, whether good or bad, must be respected at the first instance. If this law which is evolved through customs, usages or conventions, prevalent in the society at any time, does not fall in consonance with one’s conscience, fosters untruth, Gandhi shows the way through civil disobedience by way of Satyagraha. Here, in Gandhi’s approach there exists a room for reason or vivek or rationality based on morality.

Gandhi initially identified the problem area, educated the people about it, justified the claim to right and then approached the Government within the modalities of the constitutional remedies. However, the question of compromise at any stage, and that of Satyagraha in extreme case, were always kept open. The principal idea in Gandhi’s approach is that law shall be socially just or suffer civil disobedience.
In Gandhi’s moral jurisprudence, rule of law shall not be without peril to its own life, rob its inalienable liberties and conditions of survival which make men manly. Purpose of law is to secure justice but where this law supported by majority is repugnant or reactionary, the dissenting minority may seek repeal or amendment of these laws initially through the constitutional methods available to them.

Gandhi did not approve the idea of compartmentalizing justice in different aspects viewed by Western Theories of Justice. He took it as a whole virtue governing every aspect of life, ingrained in the ‘self-conscience’ and expressed in the form of love towards humanity and nature’s gifts. In Gandhi’s moral jurisprudence, law and conscience, law and humanism, law and religion, did not belong to watertight compartments of human life rather these vibrated on the same wavelength. He did not accuse the ‘King’ for their kingly weapons, his approach there was, however, to make the framers of law realise the injustice as a consequence of the legislative measures drafted by them.

He supported the use of soul force and sacrifice of self as a method of securing rights with strict adherence to the principles of truth and non-violence. Gandhi’s approach to legal justice can be seen in three ways i.e.

1. When the government is on one hand by passing discriminatory law, and individual or group of individuals is on the other side opposing the same.

2. When the law itself is not discriminatory but the difference is between two or more individuals and group of individuals within that framework.
3. When there is dealing between the officers of the court (lawyer) and the client (common man).

Dealing with the first aspect, Gandhi initially cast a duty on all to obey the law framed by the legislature. But if the individual or group of individuals see that the law passed is an instrument of justice, not serving the higher ends of morality and is repugnant to their conscience then resort to modalities within the constitutional framework.

After exhausting the constitutional remedies, one can shift to civil disobedience with the help of Satyagraha. But in this whole process, there is not even an iota of ill-will, violence or hatred against the persons acting as instrumentality of the state. Idea here is to disobey the law, suffer the penalty willingly and voluntarily without embarrassing the authorities, appealing to the inner voice of the framers of the law to see the injustice done by the legislation.

Influenced from Tolstoy, Thoreau and Ruskin, Gandhi dug deep into the oceanic reservoir of Indian culture and world heritage. Danial’s disregard of the law of model, and Persian, Socrates’ preaching of truth as perceived by him, Prahalad’s disregard to the orders of his father, Mirabai’s conduct, all were regarded by him as the purest form of Satyagraha. In his approach to justice, Gandhi targets the soul force in human beings by resorting to self-suffering.

Gandhi raised the ambit of the law of the family to national and international level. The doctrine of Satyagraha, which Gandhi adopted to oppose the satanic law, was nothing but the law of love used in civilized world to settle disputes and differences in the family.

Although it is burden on the state to perform judicial function in modern kind of polity yet Gandhi was not very much in favour of this.
He himself, being a lawyer, was aware of its basic problems. He felt that it was an expensive procedure, led to unnecessary delays and was bureaucratic. It also failed to treat the human beings with dignity and considered them only as litigants. Hence he advocated decentralisation and judicial work to be performed by the village panchayats.

In the second aspect of the approach, Gandhi again resorts to the fundamental principles of truth and non-violence with great rigour. He will not adopt the practice of defending the client at any cost or to succumb to the prevalent tout system etc. when he entered the profession of law. Justice, here, for Gandhi was on inquiry into truth by applying lawful and moral means as to what is due to whom and who is entitled to what within the established framework when the framework itself is not faulty or discriminatory. Cost award case and Parsi Rustomji’s case are glaring example of this.

He was well aware of the ‘good as well as bad’ tactics applied by his colleague to attain the desired result. But Gandhi would stick to his guns and did not even adopt unfair means to prove a right claim as right. He preferred being proved wrong by means of unfair practices and suffer penalty.

Gandhi here considered the lawyer’s duty towards the client, to the court and to his conscience. In these duties, he considered duty to conscience as the supreme and that over-rides the other two. His view of circumstances did not support the possible ways by adopting any means. When the client was morally wrong, Gandhi denied to defend him on account of legal lacunas rather advised his client to admit the mistake and correct it.
Truth, in such circumstances, was not merely a personal demand rather indispensable if the law and the lawyer are to perform their function in society with regard to the court, client and to themselves in order to attain justice.

For Gandhi, justice was not confined to what is within the ambit of a legal framework. It duly covered the dealings between the officers of the court (Advocates) and the client. He criticised the Advocates charging exorbitant fees and misguiding the clients to resort to litigation in order to gain for themselves. He questioned as to the basis on which the advocates charge more fee than that of a labourer for their honest day work. Here he brought into picture his concept of bread labour and advised all to earn a day’s bread by putting in hard labour.

Taking the violence as the essence of exploitation and justice, Gandhi wanted to create a non-violent society or a state premised on the economic freedom and equality. He showed the way by decentralisation of economic and political powers which will be instrumental in creation of self-reliant and self governing village communities. Swadeshi here plays the important role of inter-relating and inter-mixing the whole scenario of life. In Gandhi’s view, it meant to create such conditions within its own jurisdictions which are essential for creating a world order based on justice and love of mankind.

In this scheme of things, the country will have an organizational state of well-knit, well-coordinated and cooperating village communities involving direct participation of the individuals and creating a world order based on justice and love of mankind.

During the ancient times, an eye for an eye and a tooth for a tooth was the way to deal with any kind of act or omissions against the
uncodified rules. But the society seems to have realised its futility and now the approach is towards reformatory approach where an offender is treated as a human being and effort is made to bring him back to the mainstream as a useful member of the society.

Gandhi insisted on the protection of peace loving majority and supported punishment purely for protection of the society and reforming the wrong doer. He viewed criminal as the constituent of the degenerated section of the society whose behaviour is subject to correction. He regarded crime as a curable disease.

Rejecting the retributive and deterrent theories of punishment, Gandhi advocating universal identity of moral actions supported a human touch in the award of punishment. In his opinion, every individual is basically good and it is the situation of the society which takes him to crime. He said that society has no right to punish those who oppose it though a non-violent society might have.

Gandhi categorized the criminals into political and non-political. He regarded political criminals as friends of the state whereas non-political criminals as misanthropes. In the kind of punishment, the political criminals deserved forgiveness whereas non-political ones deserved reformation.

No doubt, he opposed the infliction of punishment involving content of violence in it but he did not prefer to interfere with the punitive powers of the state when the law framed by the state was broken by an individual or a group. However, he insisted on the changing of nature of the punishment from being punitive to reformatory. He wanted to take out the content of violence and advocated that the purpose of punishing the criminal, was to bring him
back home as a useful member of the society. He opposed the curtailment of individual’s liberty to the extent upto which it did not interfere with the absolute liberty of others.

In Swaraj, he did aim to abolish the jails as punitive homes but convert them into hospitals, where every criminal was a patient getting treatment for his psychological illness. The jailer here was like a doctor who treated the various patients as per their symptoms.

Gandhi, like a political idealist separated the deed from the doer. He opined that while a wrong deed deserves condemnation, the doer always deserves sympathy. He did not support the abolition of the concept of punishment. He only wanted to change its nature by withdrawing the violent element in it. He very well supported infliction of punishment by way of penalty and fines.

To be, or not to be, perplexed Hemlet-to hang, or not to hang, has now disturbed the jurists in modern times. Infliction of death penalty has always been controversial. Now there is more and more inclination towards reformatory theory of punishment. The reform has to be brought to a level where every one of us likes to pay attention to it.

Gandhi provides solution by saying that as man has no power to create life hence he has no right to take it. In Gandhi’s opinion two wrongs cannot make a right. Violence in any form to retaliate violence does not serve any purpose but create a chain of violent events. Moreover, every human being has a right to mend his ways and that can not be denied by cutting short his life.

Gandhi advocated that ‘goondas’ and criminals do not drop from the sky. Infact, they are the part and parcel of our being. We are the people who create such conditions as to force them to take recourse
to crime. Hence the society have no moral right to punish the criminals who are result of its misdeeds.

Gandhi wanted to create a non-violent society, based on human values and moral standards, with equal opportunities, economic equality and based on the theory of trusteeship with the concept of Swadeshi, where there will be no crime and hence no debate to decide on the question of the quantum of punishment.

Supreme law of our land (the Constitution) starting with “we, the People of India” guarantee justice, social, economic and political, equal protection of the laws, dignity of the individual, basic freedom, fair procedure before deprivation of life and liberty, justice even during confinement, free legal aid in given circumstances and other fundamental rights. The rights revolution and values transformation, militantly implicit in our constitution, have, however, been innocently ignored for long by the courts and academics. The imperial flag still flies over the intellectual empire of Indian justice system. Jurists and judges intend only to worship this national character vis-à-vis the penal and procedure codes not to shake off the old order and shape the new order. Macaulay and Stephen are still our Manu; Part III and IV of the constitution are still disregarded in true spirit.

For the world’s largest democracy where illiteracy is still high after 5 decades of independence, a land of poor transport and communication system, more informality, less legislative, more decentralisation of judicial power, mobile justice and flexible processes, local lawyering and pedantic justicing would have suited to the requirements.
Why District Judges are not final, High Courts are not ultimate, no one is above Supreme Court are the questions still to be answered satisfactorily. The judicial hierarchical structure and multi-decked review upon review procedure resulting into uncertainty, bankruptcy, immorality and incredibility, as the national calamity of legal justice, still loom on the Indian justice system.

Why so many appeals and revisions awaiting decisions for decades altogether, why not finality at lesser level, why tempting every loser to go to High Court and ultimately to the Supreme Court, why lengthy documentations and translations in a language which we cannot claim to be identifiable with the common-man, and why not village panchayat, Lok Adalats, conciliation boards, evening courts, arbitration tribunals, mobile courts, on-the-spot trial and result, why not summary trials, at least in small claims and simple crimes, require urgent attention.

The way we define offences and follow the procedure thereupon as well as in civil matters is all psychologically built on the British scheme of things. India struggled for independence, sacrificed a lot, attained the result but instead of changing the procedure to be followed in the dispensation of system, we just changed the ‘man’ in ‘the chair to deliver the decision’.

An effort was made to assimilate the best qualities of every constitutional system in the world in order to make ‘the best document’ in the form of the Constitution of India. But in that document, the framers failed to include the Indian spirit, the requirements and aspirations of the millions of downtrodden who fought to get the right to frame that document.