CHAPTER 2
JUSTICE DELIVERY SYSTEM: THE CONCEPTUAL DIMENSIONS

2.1 Justice

The origin of man and the society and culture are perceived as being inextricably linked as having developed together from the outset. Initially, man was an animal. Gradually, he acquired culture. Every culture is required to meet the common needs for the most of its members. All cultures, therefore, share certain fundamental attributes, the system by which the men’s universal needs are met. These cultural aspects may be varied in specifics of form, content and function are discernible as aspects of every people’s way of life. The whole range of cultural evolution is, therefore, almost identical or at least closely correlated with much of the range of human social evolution.

From the earliest stage of social development in the form of family, horde, group, clan, tribe and village community to the emergence of ‘nation state’, the search for justice has been the quest of every organised living. Search for justice is the search for that social order where conflict of interests shall be replaced by harmonious human relations. The concept of harmony, balance,

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2 The term ‘Culture’ is used to describe the way men live in relation to one another.
3 A common set of fundamental needs shared by all men is food, protection, social co-operation, belief, aesthetic experience etc.
4 Supra note 1 at 13.
equilibrium or reconciliation of interests has been the dominant theme in the treatment of Justice. According to Ernst Barker:

“Justice is a term of synthesis. It is the final principle which controls the general distribution of rights and the various principles of their distribution”.

Broadly, justice is the harmonious reconciliation of individual conduct with the general welfare of society. The juristic conception is pragmatic because the significance of human actions can be determined from their efforts on human well being. A human action is prudent when it promotes happiness. That human action is just which is conducive to the welfare. When this view is elevated to social vision, only that act can be said to be just, which promotes the common good and that unjust which deflects from it. Justice has to maintain the function by which the needs of the community are served and to prevent malfunctions or obstructions. It has to harmonize the needs with one another and functions with the needs. Therefore, justice can also be said to be an adjustment of relations for ordering of conduct as possible with least friction and waste. According to Friedrich, “Justice is never given, it is always a task to be achieved”. It is the just allocation of advantages and disadvantages, preventing the abuse of power, preventing the abuse of liberty, the just decision

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9 Ibid at 148.
of disputes and adapting to change. According to Roscoe Pound, “It is an endeavour that achieves results”.

Justice like equality, democracy and development is a word of ambiguous import and possesses a basic absolute meaning and plural relationist meanings dependent of specific social conditions and moulded by time, circumstances and cosmic changes. It is a kind of umbrella topic covering a vide variety of problems and considerations.

2.1.1 Concept and its genesis

The concept of justice is of imponderable import and has been the watchword of all major social and political and social reform movements since times immemorial. The word “justice” is very comprehensive expression. The notion of justice is comparatively more ancient than that of law. The Latin form of justice is Justus or justitia and it is from these terms that the word ‘jus’ is derived having varying meanings such as truth, morality, righteousness, equality, fairness, mercy, impartiality, rightness, law etc. This expression is again cognate with justum – meaning what is ordered. In Roman law, it meant right, justice or law.

In ancient India, law and Dharma (justice) were not distinct concepts. In Dharmasastras, Smritis and Arthasastra the concept of justice, law and religion were not distinguished and invariably

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13 Supra note 1 at 13.
justice was equated to harma and vice-versa. The 
comprising of vedic Samhitas, Brahmanas, Aranyakas and Upanishads 
which are considered divinely inspired works, form the most 
ancient source of the Hindu law. However very little of positive value 
extcept some occasional references to certain statements can be traced 
in these early works, which may be considered as the authoritative 
expositions of the law.18

In the Dharmasutras, the approximate period of which is 
usually reckoned to be between 800 to 200 B.C., we can always find 
special sections on the law of inheritance, the law of government, 
legal procedure and other features of law, as it was taught and handed 
down traditionally in the oldest school of the Brahmanas. The most 
important Dharamsutra works are those of Gautama,19 Baudhayana,20 
Apastam21 and Vasistha.22

The Smritis period was characterised by the systematic 
exposition of the rules and principles of law. The Smritis or 
Dharmasastras are the earliest treatises from which our knowledge of 
the line of development, which Hindu law had pursued during the 
second epoch of its history, is derived which were composite in their 
character. The principal Smritis are the blend of religious, moral, 
social and legal duties. They contain some metaphysical speculations, 
matters sacramental and also ordain rules of legal rights and obligations.

The three principal Smritis which are still considered the source 
of present day law are:

17 N.C. Sen Gupta, Evolution of Ancient India Law, 336 (Arthur Probsthain, 
18 Anjali Kaul, Administration of Law and Justice in Ancient India, 2 (Sarup Book 
Publishers (P) Ltd., New Delhi, 1993).
19 600-400 B.C.
20 500-200 B.C.
21 450-350 B.C.
22 300-100 B.C.
1. The Code of *Manu* (*Manavadharmasastra*) compiled sometimes between 200 B.C. to 100 A.D.;

2. The Code of *Yajnavalkya* which was written sometimes between 100 B.C. to 300 A.D.;

3. The Code of *Narada* which was written between 100 A.D. to 400 A.D.\(^2\)

In Mosaic Law of Israel,\(^2\)\(^4\) the idea of justice and law were inextricably interwoven. The classical legal definitions of justice mean ‘rendering everyone his own’ - *summ cuique tribuere*. But ‘what is rightly anybody’s own’ is precisely the problem of law, which should be determined according to some principles and not arbitrarily. That has to be administered justly, fairly and faithfully without bias or partially. Equality is the core norm, which sustains and upholds justice.

To Rudolf Von Ihering\(^2\)\(^5\) and Kant ‘law’ is a scheme to realise justice as something inherent in the very constitution and structure of law. Stammler too maintains that ‘all positive law is an attempt to the just law’ He classifies\(^2\)\(^6\) the principles of justice into two categories, namely the principles of respect and the principles of participation. The first category is concerned with respect for human person, while the second is concerned with means of existence.

J.S. Mill remarks, “Justice implies something which is not only right to do, and wrong not to do, but which some individual person can claim from as his moral right. No one has a moral right to our generosity or beneficence because we are not morally bound to

\(^{23}\) Supra note 1.


practice those virtues towards any given individual”. Utilitarian philosophers like Hume and Bentham consider utility – the greater good of the greatest number—as the sole origin of justice. John Rawls contractual theory comes in recognition to the claims of individual with his right to dignity and inviolability of person founded on justice, which even the welfare state cannot over-ride. His concept of justice is expressed in the following two principles.27

1. Each person is to have an equal right to the most extensive basic liberty for others.

2. Social and economic inequalities are to be arranged so that they are both:
   
   (a) to the greatest benefit of the least advantaged; and
   
   (b) attached to the offices and positions open to all under condition of fair equality of opportunity.

Even the positivists have also given their concept of justice. Hans Kelsen attempted to insulate the positive law from every kind of natural law. Justice connotes an absolute value. Its content cannot be ascertained by pure theory of law. However to Kelsen most questions of justice pertain to the domain of ethics, religion which can not be analyzed. Therefore he observes ‘to determine whether this or that order is ‘just,’ is not possible. Justice is an irrational ideal. It is not viable by reason. But Kelsen would not deny the weighing of factors as a worthwhile moral exercise. He remark that the view that moral principles constitute only relative value does not mean that they constitute no value at all, it means that there is not one moral system, but that there are several different ones, and that, consequently, a choice must be made among himself what is right or what is wrong. As such it implies a very serious responsibility, the most serious moral

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responsibility a man can assume. If men were too weak to hear this responsibility, they shift it to an authority above them and in the last instance to God.

Justice is harmony of man’s inner life or with body of politic. Harmony, according to Plato, is the quality of justice and it is to be achieved by reason and wisdom presiding over desires and keeping them in place with indispensable aid of temperance and courage.

More realistic analysis and interpretation of justice is found by Aristotle. In his *Nicomachean Ethics*, justice is ‘a moral state’: ‘... that in virtue of which the just man is said to be a doer, by choice, of that which is just’. Or again, a ‘state of character which makes people disposed to do what is just and makes them act justly and wish for what is just’. In functional legal sense, justice according to him consists in ‘some sort of equality’. It consists in establishing proportionate equality both on need and merit basis. It is not merely a particular virtue but an imperative requisite for welfare of the state. He enunciated the doctrine of justice as giving equal share to equal persons and unequal share to unequal person. He meant that benefits and responsibilities should be proportionate to worth and ability of those who receive them.

As against the Greek philosophers Romans were the practitioners and accordingly Roman concept of justice is being legalistic. Romans identified justice as goal of law and of society. Their notion of justice as set-forth in Justinian’s *Corpus Juris* is based on Ulpian’s definition, ‘Justice is the constant and perpetual will, to render everyone his due’. This means ‘justice’ is giving to each man what is proper to him. Ulpian’s definition of justice was followed in the Christian era during the Middle Ages. Justice was regarded at all

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times as quality of will and purpose. St. Augustine thought that there could be no justice if it is not based upon Christian law of God as well as the law of nature. St. Thomas Aquinas modified the medieval concept of justice and once again founded justice both on Aristotelian and Ciceroian principles by emphasising that 'law' is an expression of human reason for the purpose of achieving justice. According to him, the judge in seeking to do justice many times has to look beyond the written law to equity, which the legislator desired to attain.

Jean Bodin and Thomas Hobbes in their search for 'justice' enunciated the doctrine that 'Justice is the keeping of covenants'. Rousseau declared that justice could be found only in the state in which political authority rests upon the force of opinion, which is really public and general. The theories of social contracts are made to seek justice and to maintain order and peace in society.

Herbert Spencer and Immanuel Kant linked the idea of justice with human freedom and liberty. Spencer described the essence of justice in his celebrated doctrine 'every man is free to do that which he wills provided he infringes not the equal freedom of any other man'. To him expansion of individual liberty and sanctity of contract were necessary concomitants of justice. Kant also preferred liberty in place of equality for determining the matrix of justice. He interpreted justice in terms of conformity with Categorical Imperative – i.e. Act in such a way that the maxim of your action can be made the maxim of a universal law general action. Rudolf Stammler carried further the Kant's idea of justice, which according to him is possible within a community of free willing individual conditioned by place and time. The authors of Federalist declared 'Justice is the end of government and it is the end of civil society'.

\[Supra\] note 1 at 140.
According to Utilitarian thinkers like Hume, Bentham and James Mill the problem of common good and general interest is an important aspect of justice. They defined ‘Justice’ with reference to the principle of ‘the greatest good of greatest number’. The public utility as such is the sole origin, justification and criteria of justice. This Hedonistic Calculus became the major standard during the nineteenth and twentieth centuries for determining the contours of justice including egalitarian or social justice. Prof. Hart considers justice as ‘a distinct segment of morality’ to which the law must conform. He quotes St. Augustine ‘What are States without justice but robber bands enlarged’.

The sociological school of jurisprudence has attempted to formulate ideals of justice. According to Roscoe Pound, the orthodox socialism of the last century was in fact a social individualism. It sought a maximum of free individual assertion through a maximum of collective action.\(^\text{30}\)

The communist theory combines two principles in explaining the idea of justice, namely, ‘to each according to his ability’, and ‘to each according to his needs’. Marx and Engels allowed no place to ‘justice’, which is solely based on ‘rights’ or ‘natural law’. They ridiculed the idea of ‘justice’ in their examination and analysis of economic rules. For both of them, there can be no idea of justice without equality i.e. economic equality without which justice would be a myth. Soviet concept of justice is a historical concept, which relates to the ideas about morality or immorality, the good and the bad, the just and the unjust judged on the matrix of economic determination and not deduced from the so-called eternal principles of reason or human nature.

The concept of justice given by the father of our nation depicts
the crusade for the liberation of oppressed classes in India that is the
testimony of his commitment of equality and social justice. He was
against all kinds of unjust social, economic and political order. He
believed in the supremacy of ethical values and Sarvodaya (the good
of all), which inculcates the virtues of truth, love and justice towards
all human beings. Adhering to the philosophy of human equality and
justice for all, Gandhiji spiritualised politics, economic and social
philosophy and advocated socialism by wise renunciation of wealth.
Non-cooperation and passive resistance are the means in Gandhian
scheme for establishing liberty and justice for the exploited oppressed
mankind. His mission in life was a mission for justice – to seek justice
for all the weak, the poor and the oppressed – be it labour, women, or
untouchables. His crusade against cow slaughter, prohibition, child
marriage etc. has been solely guided to secure justice, equality and
dignity to millions of Indian who had been denied justice for
centuries.

The ‘Law’ and ‘morality’ are the two instruments for promoting
and achieving justice. They are social tools that make justice
accessible to individuals free from personal and vested prejudices. The
basis raison d’etre of law and morality has been to seek and promote
justice varyingly described as truth, righteousness, moral virtue, true
happiness, equality, equilibrium, duty, etc.

In India, ‘justice’ has been extolled as the very embodiment of
God itself whose sole mission is also to uphold justice, truth and
righteousness. The immortal epics Ramayana and Mahabharata reflect
the spirit and ethos of Hindu thought and life in the tales of Rama
versus Ravana and Pandava versus Kauravas which magnificently
portray the moral supremacy and victory of good over evil, of justice
over injustice, and of Dharma over adharma. These epics alongwith

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Vedas demonstrate the deep commitment and faith of our sages towards justice.

Lord Buddha adopted the philosophy of middle path – the *Madhyama Marga* as a way out to seek justice for the humanity. He declared eight-fold path of morality – as a necessary basis for a good life and a just society. It consists of: Right views, Right aspiration, Right speech, Right conduct, Right livelihood, Right effort, Right mindfulness and Right contemplation.

### 2.1.2 Kinds of justice

#### 2.1.2.1 Preambular Classification

Justice V. R. Krishna Iyer\(^{31}\) quotes “The first task of the Constituent Assembly, Nehru told its member, is to free India through a new Constitution, feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity”. “I shall endeavour to show”, said Scarman expanding on the new dimensions of justice, “that there are in the contemporary world challenges, social, political and economic, which, if the system cannot meet, will destroy it. These challenges are not created by lawyers; they have to be met either by discarding or by adjusting the legal system. Which is to be?” A humanist jurist, Dean Pound, spoke of distributive justice which is a facet of social justice:\(^{32}\)

“As the saying is, we all want the earth. We all have a multiplicity of desires and demands which we seek to satisfy. There are very many of us but there is only one earth. The desires of each continually conflict with or overlap those of his neighbours. So there is, as one might say, a great task, of social engineering. This is a task of making the goods in existence, the means of satisfying the demands

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\(^{32}\) Dean Pound, Mahilon Powel Lectures.
and desires of men living together in a politically organised society, if they cannot satisfy all the claims that men make upon them, at least go round as far as possible. This is what we mean when we say that the end of law is justice. We do not mean justice as the ideal relation among men. We mean a regime. We mean such an adjustment of relations and ordering of conduct as will make the goods of existence, the means of satisfying human claims to have things and do things, go round as far as possible without the least friction and waste”.

This dynamic role is, in practice, lost in the dreary desert sands of the legal process. After the dawn of freedom spread its light on India 58 years ago, the country was first guided by its first document of governance i.e. Constitution of India. The Constitution was further guided by the goals succinctly expressed in the Preamble.

With the growth of industrialization, advancement of civilisation and awakening among the masses as well as the needs of the time, the concept of justice widened. The Preamble ensures political, economic and social justice at the first instance. ‘Political justice’ means the absence of any arbitrary distinction between man and man in the political sphere. ‘Economic justice’ means equality of reward for equal work and includes a fair deal to the working class by ensuring just dues for labour and healthy working conditions irrespective of caste, creed, sex, etc. It also means the abolition of economic conditions, which result in the concentration of wealth and the means of production in the hands of a few. ‘Social justice’ demands abolition of all sorts of inequalities, which result from inequalities of wealth and opportunity, race, caste, religion and the title and harmonization of the rival claims and the interests of different groups and sections. In State of Mysore v. The Workers of Gold Mines, Gajendragadkar, J. observed that the concept of social

33 AIR 1958 SC 923.
and economic justice is a living concept of revolutionary import; it
gives sustenance to the rule of law and meaning and significance to
the deal of a welfare state. The Constitution of India abounds with
natural and social justice as is evident from the Preamble and Parts III
and IV of the Constitution. Indeed the Constitution has been
repeatedly amended for the protection of liberties and promotion of
social justice to remove the scars of injustice and inequality. The
courts have given a powerful support to these rights by invoking the
power of judicial review. These are rooted in our democratic
egalitarian social and political order and are basic and fundamental in
the governance of the country as expounded in Kesavanada Bharti. 34

2.1.2.2 Aristotle’s classification

Aristotle made the notable distinction between distributive and
corrective justice. 35 ‘Distributive justice’ works to ensure a fair
division of social benefits and burden among the members of a
community. In other words, we can say that there has to be equal
distribution among equals. 36 Almost all philosophers have universally
accepted this concept of justice.

‘Corrective justice’ seeks to restore equality when this has been
disturbed, e.g. by wrongdoing, which assumes that the situation that
has been upset was distributively just. The object of corrective justice
is to restore the equilibrium in a society. For example, if ‘A’
wrongfully seizes ‘B’s property, corrective justice acts to restore the
status quo by compelling A to make restitution. Whereas Justice in its
distributive aspects serves to secure, and in its corrective aspect to
redress, the balance of benefits and burdens in a society.

35 Nicomachean Ethics V.
36 Nicomachean Ethics V, 3.
Justice involves manifold ideals and principles in its various forms such as, legal justice, natural justice, moral justice, social justice, political justice, democratic justice, totalitarian justice, racial justice, distributive justice, cumulative justice, personal justice and public justice.  

2.1.2.3 Natural Justice

Natural Justice occupies a prominent place in every legal system. Its foundation is rooted on the foundation of Anglo-American jurisprudence and shares in great measures the broad and vague parameters of higher law so that majestic principles of natural justice may remain eternally a bulwark and a powerful counter against tyranny, injustice and arbitrary power. The end of natural justice is to render everyone his due. The two main rules of natural justice which have been evolved through judicial process are:

1. No one shall be judge in his own cause (*Nemo debet esse judex in propria sua cause*) and

2. No one is to be condemned unheard without his being made aware in good time of the case he has to meet (*Audi Alteram Partem*).

The Donoughe Committee on Minister’s Powers 1932 added a third principle that a party is entitled to know the reason for the decision on which it is based. These rules are applicable not only in a court of justice but also before an administrative tribunal or authority. Just as the principle of due process of law in USA guarantees to citizen protection against arbitrary action by executive and administrative action, the rule of natural justice in India provide legal

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foundation on which administrative procedure rest. The Supreme Court of India remarked in another case,38

'The aim of the rules of natural justice is to secure justice or put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years . . . . An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry . . . . the rules of natural justice to apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. . . .'

After the Maneka Gandhi’s milestone in Indian legal system, there has been a sea change39 in the spirit and form of natural justice, which cannot be put in a straitjacket or defined like a pigeonhole theory. Justice Bhagwati40 views natural justice as a ‘great humanising principle intended to invest law with fairness and to secure justice and, according to him, over the years it has grown into a widely pervasive rule. . . . The soul of natural justice is ‘fair play in action, and that is why it has received widest recognition throughout the Democratic World...’.

After this, the judiciary has expounded the rule liberally whereby natural justice has now become an effective tool of Justice Delivery System. Natural Justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and

38 Union of India v. Afghan Agencies, AIR 1968 SC 718.
40 Ibid at 626.
adjudication to make fairness a creed of life. Justice Iyer explaining further the nuances of natural justice observed:

Today in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity be lights penumbral areas it is only for improving the quality of government by injecting fair play into its wheel . . . . Law cannot be divorced from life and so it is that the life of law is not logic but experience . . . . Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good just be limited to extreme cases. If to condemn unheard is wrong it is wrong except where it is overborne by dire social necessity. Such is the sensible perspective we should adopt if ad hoc or haphazard solutions should be eschewed. Justice Iyer summing the ethos of natural justice concluded ‘. . . . that the content of natural justice is dependent variable not an easy causality.

It can, therefore be briefly said that the concept of natural justice is the very soul of the system of administration of justice. Without this, no system can claim to survive.

2.1.2.4 Procedural and Substantive

A demarcation is also there in laws as well as justice in terms of substance and procedure. The ultimate supremacy lies with the notion of substantial justice because even the procedural laws are meant to

\[41\] Mohinder Singh v. Chief Election Commissioner, AIR 1978 SC 851 at 873.
substantiate the justice in substance. The sanctity of relationship between procedural and substantive laws has been beautifully explained by the Supreme Court in the case of State of Punjab v. Shamlal Murari, wherein, speaking for the court, Krishna Iyer, J. observed:

We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to Justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, though procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if breach can be without injury to as just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product of technicalities.

Justice is accepted as having both substantive and procedural ramifications. The procedural justice embodies the basic procedure and spirit. Whereas the substantive justice contains provisions concerning social aid, assistance, benefits and facilities, concession, extra privileges and rights for the welfare of those who need or deserve some help which we describe as ‘social justice’. The Constitution of India embodies this as is evident in the Preamble and Parts III and IV of the Constitution.

2.2 Legal Systems

2.2.1 Meaning

The term ‘system’ is used to describe a complex situation or area of activity. According to Oxford dictionary, the term ‘system’ means group of things or parts working together as a whole; orderly way of doing things. The legal scholars speak of the legal system and mean the entire conglomerate of concepts and processes with which they work. A ‘legal system’ refers to a more precise and scientific method of analysis and description of the complex structure and functioning of the parts and whole of the law.

The complexity of modern life is one of the most obvious facts facing us. In any situation an attempt at administration must take into account the many factors that enter into the problems to be solved. In the law, as in every other significant activity, there are just too many things happening at one and the same time for any simple handling of one facet to be effective; as many streams of action must be brought together simultaneously or in an orderly sequence the common description of administration as “getting it all together” is certainly apt. Getting everything together when it is all so complex undoubtedly requires thinking and acting in the systematic fashion that is known as the systems approach. The focus on structure lead to a definition like “system is an organized or complex whole; an assemblage or combination of things or parts forming a complex or unitary whole”. A concentration on the reasons for the existence of system provides something that indicates that: “The basic function of administration appears to be co-alignment, not merely of people in coalition but of

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institutionalized action - of technology and task environment into a viable domain, and of organizational design and structure appropriate to it.\textsuperscript{46}

Churchman,\textsuperscript{47} in noting the wide diversity in descriptions of what "system" is, summarizes a series of steps in thinking that must be taken in order to grasp the full meaning of a system. Therefore the five complementary considerations must be kept in mind.

1. The total system objectives,
2. The environment of the system,
3. Its resources,
4. Components of the system,
5. The management of the system.

A 'system', thus, may be defined as a set of elements becoming interrelated through pursuit of a goal. This common activity occurs along systematic lines on the basis of much input being combined to produce some outcome. A system in law would combine human elements with more material ones such as equipment to reach a goal i.e. the stability of society. Thus we can say that a 'legal system' covers within its ambit the whole of the processes from the commission of a wrong to the final adjudication of the matter, the various resources in terms of infrastructure facilities, the various components involved in the whole i.e. litigant, lawyer, police, court and legislature, as well as the tactics and techniques of managing the whole affair.


\textsuperscript{47} C. West Churchman,\textit{ The Systems Approach}, 29-30 (Delacortepr, New York, 1968).
2.2.2 Types

In the course of centuries, most legal systems of the world have developed a series of rules to govern the Justice Delivery System. These rules are mainly designed to redress the imbalance in power between the wrongdoer/accused and the state and to provide justice to the victims. Thus, every element of the institution of Justice Delivery System is supposed to go by the rules rather than mindless use of powers while dealing with a wrongdoer/accused. These rules are necessary to guide those who are engaged in the Justice Delivery System to provide certain predictability to the process and to legitimize the efforts at different levels to effectively maintain a Justice Delivery System. At the universal and regional levels human rights instruments greatly emphasize on the procedural guarantees that a legal system must provide for individuals who, for whatever reason find themselves obliged to resort to the judiciary. These guarantees particularly in the field of criminal law impose a set of restrictions on the state’s power to act against an individual who is being investigated for the alleged commission of a crime and who a facing probable conviction. The guarantees are mainly designed to ensure that the individual will receive a fair trial in which evidence against him shall be examined thoroughly to decide upon his guilt/wrong and that any penalty imposed will ensue from a convincing proof of the crime. In such conditions, it can be agreed that the principle that the criminal law protects the interests of the society while criminal procedure safeguards the rights of the


Article 14 of the International Covenant on Civil and Political Rights provides certain procedural guarantees to the individual in determination of criminal charge against him; similar guarantees can be traced under article 6 of the European Convention on Human Rights; Article 8 of the American Convention on Human Rights and Article 7 of the African Charter on Human and Peoples Rights.
defendant is true. The following are the two major legal systems, which compete, today in the criminal procedure:

2.2.2.1 Adversarial System

The adversary system is a system that is fundamental to the court system as it is known in England, in Australia, and in the other British Dominions and colonies including India. Its basis is that each party has a full and fair opportunity of presenting his case to the court or tribunal that has to consider it. It is described as a contest in which both sides are trying to win a dispute before a passive and impartial judge. The role of the judge is to ensure that the parties abide by the rules. The judge intervenes only when there is an objection from one side regarding the conduct of the other. In this type of system, most of the procedural safeguards are in favour of the accused. That is why it is described as a pro-accused system. The following safeguards are given to the accused: the right to remain silent, the right to appeal, the right to legal aid, the right to be free from unwarranted searches and arrest etc. It increases the confidence of the people in the legal system because each party is allowed to challenge the evidence of the opposing party and the judge acts as a referee/umpire and takes no part in the investigation of facts by limiting himself to acting as the “judge”. It means that he applies the relevant law to the facts established at the trial. A procedure that uses the adversarial type of trial has the great advantage that it effectively ensures the automatic observance of the basics of procedural justice.

In an adversarial trial, each party selects evidence it wishes to bring before the Court. Therefore, it is the responsibility of the plaintiff to ensure that the case is presented in the most favourable manner, from his/her point of view. The Court’s only duty is to provide a fair hearing. Thus, the litigants are heavily dependent on the ability of their lawyers to present their case in the best possible way.
Under this system, those members of the society who can easily afford the best lawyers are better served than the rest.

If the case is evenly balanced on each side, the bias in favour of one party is offset by the other. In such cases, the same numbers of facts are generally gathered using whichever procedure. But if the case is unbalanced as between the two sides, the adversarial trial produces a biased distribution of the facts. However, the adversarial system is considered fairer, irrespective of the outcome.

Generally it results in lengthier litigation for it depends upon the parties to bring a particular kind of evidence. So they may not intentionally bring or may conceal the evidence, which is against their respective interests. It is because of this reason that lawyers can mislead the court as also reflected by Lord Chancellor in his song Iolanthe:

“I’ll never throw dust in a juryman’s eyes
(Said I to myself – said I)

Or hoodwink a judge who is not over-wise
(Said I to myself – said I)”

This system also makes it difficult for the witness to tell his story in his own way, and thus deprive the court to know the natural reactions of the witnesses. Therefore a skillful lawyer is often able to put the witness at a disadvantage, or by asking questions which make the witness to appear either a fool or a liar. Though this is the principal aim of the cross-examination to bring out the truth but unfortunately, these tactics are used to confuse the honest witnesses. So they either retract from their statements previously given or are proved to be liars/fools in the court of law.

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The system is exemplified by the 18th and 19th century European Codes. The inquisitorial system envisages extensive pre-trial investigation and interrogation that is designed to ensure that no innocent person is brought to trial. In this procedure, the state is involved at two different stages; first, when a prosecutor, who is responsible for collecting the facts pertaining to the disputes submits a dossier to the judge and second, when an impartial and independent judge is actively involved in finding truth. Thus, the inquisitorial system is based on the presumption that truth can be discovered through an investigative procedure and the state is best equipped to carry out such investigation. The hallmark of the inquisitorial procedure is an official inquiry conducted by a government agent who has the responsibility to seek the truth of difficult issues.51

Under this system, the judge is a government official who has been a member of the judiciary since completing his legal training. In the words of Dr. Certoma,52 who had the experience of both systems, “the judge in an inquisitorial system is both judge and prosecutor”. He also pointed out that, “the collection of evidence in an inquisitorial system is in the control of the judge, not the parties, and he initiates the investigation and collects all of the evidence”.

The essence of the inquisitorial system is that the state is concerned with the outcome of the case that is why the state authorizes an investigator to discover all relevant facts related to the case. Therefore professional investigators are employed by the state. Police, Forensic experts, psychiatrists and scientists are expected not only to do most of the work but also to do it in a detached and

impartial manner. Thus is an assumption that allows the defence to leave most matters of investigation to state employed police officers or state funded institutions. The role of the defence is to safeguard the client’s interests by observing that the representatives of the state stick to the rules, which though numerous do not create equality of arms in the pre-trial stage. There is also scope for the defence to suggest that certain aspects, favourable to defendant, should be investigated and the prosecutor would be violating standard of professional ethics, if he fails to take notice of the evidence in the favour of the defendant.

Under continental civil proceedings, judges are fully aware of the evidence from voluminous dossiers presented to them well before the trial begins and therefore their questioning of witnesses at the trial is merely designed to supplement or verify the facts what they have already from the dossiers.

2.2.2.3 Distinction between the two systems

The fundamental thrust of both the systems is to find out the truth, the only difference being that they adopt different approaches to do so. The basic approach of both these systems is that the guilty should be punished and the innocent should be set free. These two systems, which have divided among themselves the history of criminal law, control the intervention of the state and the role of the judiciary in resolving conflicts. The differences are:

1. The ways of developing proof and argument are significantly different in the two systems, direct and cross-examination by lawyers under the adversarial or accusatorial system and judicial interrogation under the inquisitorial system.
2. Under the accusatorial system, the criminal defendant can waive the right to trial by pleading guilty. Such a practice appears, normal to Anglo-American lawyer. However, under inquisitorial system, all cases regardless of whether the accused confesses or not, most go to trial.

3. Each concept is endowed with different features according to which the discussion forces on criminal cases, civil procedure or the administration of justice in general. For example, in the inquisitorial system, one finds feature such as career judiciary, preference for rigid rules and reliance on official documentation, whereas the adversarial system embraces the judges as decision makers, by giving full discretion in decision making and there is an attachment to oral evidence.

4. Under continental civil proceedings, judges are fully aware of the evidence from voluminous dossiers presented to them well before the trial begins and therefore their questioning of witnesses at the trial is merely designed to supplement or verify the facts what they have already from the dossiers. The disputing parties are weaker under this (inquisitorial) model: they cannot limit the tribunal's field of inquiry through pleadings or by consent. The court itself will pursue facts and avail itself of any sources, including the interrogation of the defendant. One system has its fact finder operating in a factual vacuum and the other has the tribunal of fact prepared in advance with summarized records of all the testimony taken during preliminary investigation.

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evidential styles being inevitably distinct. The adversarial system gives the fact finder, the advantage of impartiality arising from his/her ignorance of the case.

Thus we can say that the accusatorial system is litigant led and the state's intervention is minimal. The criminal proceedings develop according to the civil rules; the role of the judges is limited to refereeing the debate and resolving disputed issues within the framework of rules, which control the admissibility of the evidence. On the other hand, under the inquisitorial system, the judges are charged with the obligation of enforcing the law. The role of the judges is to assure public control over the management of individual cases wherein a separate set of rules governs the criminal proceedings. They are initiated and directed by a prosecuting authority and they are divided into various distinct phases like preparatory, trial and punishment.

2.3 The Doctrine of Public Interest

In Shrouds' Judicial Dictionary, Volume 4 (IV Edition), the term 'Public Interest' is defined as:

“A matter of public or general interest 'does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected’.

54 McEwan, note 1, 6.
In Black's Law Dictionary,57 'Public Interest' is defined as follows:

"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national government".

The expression 'Public Interest' means an act beneficial to the general public. It means action necessarily taken for public purpose. The expression 'Public Interest' has not been defined either in the Constitution of India or in any other statute. It however, finds mention in the Constitution and certain statutes.

1. Article 302 of the Constitution lays down that-

   "Parliament may by law impose such restriction on freedom of trade, commerce or intercourse between one state and another or within any part of the territory of India as may be required in the public interest".

2. Section 124 of Indian Evidence Act mentions 'Public Interest' as-

   "No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by that disclosure".

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3. Section 397 of Companies Act defines ‘Public Interest’ as-

“Any member of a company who complain, that the affairs of the company are being conducted in manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399”.

Bowed by the weight of centuries he leans

Upon his hoe and gazes on the ground,

The emptiness of ages on his face,

And on his back the burden of the world.

(Man with the Hoe)

The law locks up both man and woman

Who steals the goose from off the common.

But lets the greater felon loose

Who steals the common from the goose.

(Anonymous)

If you were to live the life we live

(then out of you would poems arise)

We: Kicked and spat at for our piece of bread

You: Fetch fulfilment and name of the lord.

(Arun Kamble)
These clenched fists won't loosen now
The coming revolution won't wait for you
We've endured enough; no more endurance now.

(Pavar, Dalit Panther Poet)

Justice V. R. Krishna Iyer, in chapter ‘Some Half Hidden Aspects of Indian Social Justice’ quoted these lines. He tries to show the plight of people of this country. Every legal system gives prime importance to the doctrine of public interest and trust because any act or omission on the part of any individual or the state results into large scale changes in the lives of people. It is because of this reason that many a times individual interests are sacrificed compulsorily for protecting the public interest.

In Kutisankaran Nair v. Kumar Nair, the Kerala High Court held that the term ‘public interest’ as a subject in which the public or section of public is interested, becomes one of public interest. The Supreme Court in State of Bihar v. Kameshwar Singh, held that ‘public interest’ is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statutes and what is public interest today may not be a decade later. ‘Public Interest’ is thus a dynamic concept. Its amplitude is wide. Anything, which affects directly or indirectly or is likely to affect the rights and interests of the general public or any section of it, would be public interest.

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59 AIR 1965 Ker 161.
60 AIR 1952 SC 252.
2.4 Conclusion

“A seeker of truth neither desires to become a monarch nor desires to go to heaven to enjoy comforts at his will for his virtuous deeds nor desires to liberate himself from cycle of birth and death but he only desires intensively to all animate and inanimate entities to be redeemed from their pains and sufferings”.

This verse depicts the role of the courts which are considered to be presided over by the sages and seekers of truth from whom the people of this country have high expectations. Thus we can say that whatever type of legal system a country may adopt, its ultimate purpose is to achieve the accepted notions of justice. The present state of affairs in India destroys the spirit of the preamble and violates the basic rule of law of ensuring the right to get justice to the people of India.