

REACHING ABSOLUTE JUSTICE: NEED FOR NEW INITIATIVES, METHODS AND PROCEDURES

Dr. Bhagyashree Deshpande*

Absolute justice is justice in deed and justice in truth¹. There is growing criticism that the present system of justice according to law, suffers from several deficiencies and people fail to get justice due to them, through the regularly constituted courts, tribunals or other authorities, who are charged with the responsibility of dispensing justice. Some people attribute these deficiencies to the law enacted, procedures prescribed to realize the objectives of the law, either conferring rights, benefits or imposing obligations and also to the courts, tribunals or authorities, which due to many factors fail to dispense justice. Merely providing access to justice or to non-judicial justice does not in any way provide relief to the litigants or to get justice due to them and 'access' in such cases does not serve the purpose. Time has come to study the problem minutely and to find out the causes and tune up the existing system to make it viable as an effective instrument to deliver 'absolute justice', where people feel that they got the justice due to them.

A Government found on anything except liberty and justice cannot stand. No nation founded upon injustice can stand² laws which have been enacted to secure to some extent the right of that section of the community, which is deemed its legitimate share in the means of livelihood³, to secure adequate means of livelihood⁴ and release of women and children detained without reason⁵. There are other instances to show the keen interest of the State to protect the health of people as right to health forms an essential ingredient of right to life, for instance, a foreigner undergoing life-imprisonment, also trial in another criminal charge, was granted permission to go to her home Country for one year to get 'cancer' treated.⁶ Upholding the rule of equal pay for equal work⁷ securing pension to a widow of a *hawaldar* denied pension for the last 40 years⁸ and the children of prostitutes were allowed to mingle with others and become part of the society.⁹ In medico-legal cases, right to immediate medical aid to preserve life was protected.¹⁰ The decision referred to bears ample testimony to the concern of the State to protect life, liberty and

* Vice-Principal, New Law College, Bharati Vidyapeeth Deemed University, Pune.

1. Salmond, *Jurisprudence*.

2. Quoted by Rananganath Misra, C.J., in *All India Judges Association v. Union of India*, AIR 1992 SC p 165 at p 177.

3. *Sansanka Sekhar Misra v. Union of India*, AIR 1981 SC p 522.

4. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC p 150.

5. *Kamala Devi v. State of Punjab*, (1989) 2 SCALE p 767.

6. *Narje Andra Leclose v. Delhi Administration*, (1984)2 SCC p 443.

7. *Randhir Singh v. Union of India*, AIR 1982 SC p 879.

8. *Ram Pyari v. Union of India*, AIR 1988 Raj p 12.

9. *Gaurav Jain v. Union of India*, AIR 1990 SC p 293.

10. See for details AIR 1987 SC p 965.

to ensure due justice is dispensed.

Justice under law without social justice no longer have any meaning.¹¹ WU John CH¹² expressed the view: "The need for providing justice to poor and rich, weak and powerful alike, is not a modern problem alone People of all ages and places have never ceased to hope and survive for it. It exhorts "Ye shall do no unrighteousness in judgment ... thou shall not respect the person of the poor nor honour the person of the mighty; but in righteousness shalt thou judge thy neighbour". Justice should be done to all alike without any discrimination. Concept of justice had been the watchword of all major social and political reform movements since times immemorial, and quest for justice has been the supreme endless efforts in order to abolish injustice, tyranny and exploitation.

In fact, justice is equated with truthfulness, righteousness, goodness, equality and other elements. Moral issues revolve around justice or injustice such as Freedom *versus* Livelihood, Liberty *versus* Equality; and Right *versus* Duty.¹³ Search for justice is an eternal quest. Justice is what appears just to a reasonable man.¹⁴ Constant attempts are made to build bridges of understanding between men and among nations based upon 'justice' and 'equal rights' and as observed by Gandhiji, the need for establishing a just society in his concept of *Ram Rajya* or *Swarajya*, as a necessary ideal for India's survival as an independent and vibrant nation.¹⁵ Nehru highlighted the need for social justice through which chronic poverty in India will be solved: "..... ending poverty, ignorance, disease and inequality of opportunity to wipe every tear from every eye."¹⁶ During the periods of *Dharma Shastras*, the concept of justice, law and religion were not distinguished and invariably justice was equated to *Dharma* and *vice versa*.¹⁷ "... the idea of justice and law are intrinsically inter-woven."¹⁸ The doctrine of equality in the core norm which sustains and upholds justice and has become the legal criterion for judging a law as good or just law.¹⁹ Hart considers justice as a distinct segment of morality to which law must conform.²⁰ Rawls John in his concept of justice observed: "..... that every person is to have an equal right to the most extensive basic liberty for others and social and economic inequalities are to be so arranged, to the greatest benefit of the least advantaged, and positions open to all under conditions of fair equality of opportunity."²¹ Kelson points out: "Most questions of justice pertain to the

11. Tehran Conference on Human Rights, 1966 quoted by Pratap Subhas, *International Workshop on Human Rights*, August 1992 p 113 at p114.

12. WU John CH, *Cases and Materials on Jurisprudence*, 482 West Publishing Co., 1958.

13. Thoughts of Greek Thinker Thrasymachu as quoted by Cohen and Cohen, *A Readings in Jurisprudence and Legal Philosophy*, Little Brown Co., Boston, 1951, p 621.

14. Lord Wright, *Future of Common Law*, p 114.

15. Deshpande, M. S., *Light of - Message of Mahatma*, Wilco Publishing House, 1950, p 172.

16. Quoted by V. R. Krishna Iyer, *Human Rights and Law*, Vedpal Law House, 1994.

17. Sen Gupta, NC, *Evolution of Ancient Indian Law*, Calcutta, 1954, p 336.

18. Mosaic Law of Israel as quoted by Julius Stone, *Human Law and Human Justice*, p 22.

19. See Art. 14 of the Indian Constitution.

20. Hart HAL, *The Concept of Law*, 1972, pp 152-53.

21. Rawls John, *A Theory of Justice*, Oxford, 1972, p 103.

domain of ethics and religion, which are unanalysable.”²² Justice Krishna Iyer observes: “..... if law shoots justice, people shoot down law and lawlessness paralyzes development, disrupt order and retards progress.”²³ According to King of Babylon Hammurabi proclaimed: “To establish justice in the world to destroy the bad and the evil, to stop the strong exploiting the weak, to develop knowledge and welfare of the people.”²⁴ Advocating respect for every religion, it was stated religious dictatorship will not contribute to absolute justice.²⁵ Judges have to be well-learned in all aspects of *Dharma* to impart absolute justice.²⁶ Duty to do justice is a basic service.²⁷ Koutilya points out that in the happiness of the people, the King’s happiness lies.²⁸ Absolute justice attainable only when one acts according to *Dharma*.²⁹ Everything in this World is founded on *Dharma* which is considered supreme.³⁰ Principles of *Dharma* for the guidance of human-beings in every sphere of activity including governance of the States.³¹ *Dharma* is the ruler of both the people and the King. “...It is the sovereignty of the law...”³² *Dharma* stands for law and morality and no State can be devoid of both.³³ *Dharma* is right action or virtue which is in conformity with truth.³⁴ Absolute justice is realisable only through Natural Law - part of God’s law as revealed in *Vedas* and *Dharma Sastras*. As Friedmann points out: “The tale of natural law is a search of mankind for absolute justice and of its failure”.³⁵ Attempts have been made to reach the level of absolute justice and due to several factors, it remained unattainable. Every step towards reaching absolute justice is pushed down by opposing elements- in the form of law, procedures and court decisions. Time is now ripe now, with a knowledge-based society to think of new initiatives, procedures and methods to reach the peak of absolute justice.

The re-structuring of the law is needed which can be stated thus:-

- ❶ Laws require reframing to provide more elements and contents of natural law;
- ❷ Laws must be based on *Dharma Sastras* or God’s law which can alone enable us to reach absolute justice standards. These principles can be evolved through study of Divine Revelations, Scriptures such as *vedic* literature;
- ❸ No law should be devoid of morals which are considered as basic to legal structure;

22. Kelson, *Pure Theory of Law*, 50 LQR 474, p 482.

23. Krishna Iyer, J., *All India Judges Association v. Union of India*, AIR 1992 SC p 165 at 176.

24. *Code Hummarabi*, 2124-2083 BC.

25. *33rd Shankaracharya of Sringeri Dialogues with Guru*, p 1.

26. *Unnikrishnan v. State of AP*, (1993) 1 SCC p 645.

27. *Hitopadesha – Mitralabha*, p 150.

28. Kautilya, *Artha Sastra*, p 39.

29. *Hitopadesha Prastavika*, p 25.

30. *Mahānārāyaṇopaniṣad*, Sec 79-7.

31. Fedric Max Muller, *India-What it Can Teach Us*, p 6.

32. Dr. S. Radhakrishnan quoted in *The Framing of India’s Constitution*, Shiva Rao, Vol II, pp 11-18.

33. Dr. Sanghvi, L. M., *Freedom on Trial*, p 88.

34. Radhakrishnan, S., *Hindu View of Life*, Chapter IV, p 55 and see also AIR 1996 SC p 1765 paras 62 to 82.

35. Friedmann, *Legal Theory*.

- ④ No law should violate the principles of natural justice;
- ⑤ Laws should respect the human person and no one shall be subjected to arbitrary will of another;
- ⑥ No member shall be arbitrarily excluded from the legal community;
- ⑦ All technical rules like limitation, adverse possession *etc.*, require rethinking. Property rights of an individual shall be protected consistent with the concept of social justice;
- ⑧ Laws should not contain any provision by which a person's right to get justice due to him is taken away;
- ⑨ Procedural laws should promote absolute justice obtainable and any procedure which comes in the way of getting absolute justice should not be given effect to;
- ⑩ All procedural laws should be fairer;
- ⑪ Poorest shall have an effective voice in the making of the Country;
- ⑫ No existence or differentiation of poor and the rich;
- ⑬ All religion are to be equally respected and religious dictatorship will not lead to obtaining absolute justice;
- ⑭ In all laws, the paramount consideration should be the welfare of the people;
- ⑮ Rulers are not wielders of power, but an instrument of public service;
- ⑯ Rule of law as fashioned on principles of natural law should be held supreme and must be binding on rulers as well as the people;
- ⑰ The rulers must think that in the happiness of the people, their happiness lies. Therefore, administration should be transparent, free of corruption and ensure treatment of all with equality and utmost fairness;
- ⑱ In the recruitment of judges, preference to be given to those who have sound knowledge of *Dharma* in all spheres of judicial actions, knowledge of *Dharma Sastras*;
- ⑲ Natural law disqualifications must be further strengthened by certain essential requisites like adherence to *Dharma* as a desirable qualification;
- ⑳ Laws should strive to assist all communities to live in peace;
- ㉑ All forms of untouchability should end;
- ㉒ Intoxicating drugs and drinks should be banned;
- ㉓ Women shall enjoy same rights as men;
- ㉔ Social justice should pervade in all our thinking, action and deeds;
- ㉕ Absolute justice standards shall motivate all administrators and judges.