

## CONCEPT OF DHARMA, JUSTICE AND LAW: A STUDY

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Any government will have a strong basis for its survival, "if it is founded on liberty and justice".<sup>1</sup> Justice under law without social justice<sup>2</sup>, no longer has any meaning or significance.

It is no doubt that people since times immemorial hoped for justice and its survival at all times<sup>3</sup> and 'justice' has been the watchword of all major social and political reform movements. Endless and ceaseless efforts were made to abolish injustice, tyranny and exploitation. In the common parlance justice is equated with everything that is good, mercy, charity and truth and other equivalent expressions. However, in the words of a Greek thinker Thrasymachus, it cannot be defined as the interest of the stronger.<sup>4</sup> Justice is not an irrational idea<sup>5</sup> and the search for it is an eternal quest<sup>6</sup>.

Whatever is considered as 'just', according to a reasonable man is considered as 'justice'.<sup>7</sup> Gandhiji emphasized the need for establishing a 'just society' which he considered; as a necessary ideal for India's survival as an independent and vibrant nation<sup>8</sup> in his concept of *Ram Rajya* and *Swarajya* which he elucidated as follows:

- Poorest shall have an effective voice in the making of the country;

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<sup>1</sup> Ranganath Mishra, CJ. *In All India Judges' Association v. Union of India*, 1992 A.I.R. 165 at 177.

<sup>2</sup> International Conference on Human Rights at Teheran, 1968.

<sup>3</sup> JOHN CHING HSIUNG WU, *CASES AND MATERIALS ON JURISPRUDENCE* (West Publishing Co. 1958).

<sup>4</sup> COHEN & COHEN, *JURISPRUDENCE AND LEGAL PHILOSOPHY* 621 (Boston:Little, Brown & Co.1951).

<sup>5</sup> E. BODENHEIMAR, *JURISPRUDENCE* 178 (1951).

<sup>6</sup> HANS KOHEN, BISHIN & C.D. STONE, *LAW, LANGUAGE AND ETHICS* 39 (New York 1952).

<sup>7</sup> LORD WRIGHT, *FUTURE OF COMMON LAW*, at 114.

<sup>8</sup> M.S. DESHPANDE, *LIGHT OF INDIA: MESSAGE OF MAHATMA* 172 (Wilco Publishing House 1956).

- No distinction/existence of rich and the poor;
- All communities shall live in peace;
- No curse of untouchability or curse of intoxicating drugs or drinks; and
- Women shall enjoy the same rights as men. Nehru highlighted the need for 'social justice', and "only through social justice, chronic poverty in India will be solved...; ending of poverty, ignorance, disease and inequality of opportunity to wipe every tear from every eye".<sup>9</sup>

In ancient Indian society, law and *dharma* were not distinct concepts. In *dharma Sastras*, *Smritis* and *Arthashastra*, the concept of justice, law and religion were not distinguished and invariably justice was equated to *dharma* and vice-versa.<sup>10</sup> The Mosaic Law of Israel considered law and justice as inextricably inter-woven<sup>11</sup> and justice' is considered as a distinct segment of morality to which law must conform<sup>12</sup>.

Stammler<sup>13</sup> classified the principles of justice in two categories:

- principles of respect
- principles of participation

Respect for human person and means of participation shall be ensured and no one shall be subjected to arbitrary will another and no member shall be arbitrarily excluded from the legal community. John Rawls<sup>14</sup> proposed a general concept of justice in these terms:

"All social primary goods-liberty and opportunity, income and wealth, and the basis of self-respect are to be distributed equally, unless an unequal distribution of any or all of these goods is to the advantage of the least favoured."

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<sup>9</sup> V.R. KRISHNA IYER, HUMAN RIGHTS AND THE LAW (Indore: Ved Pal Law House 1994).

<sup>10</sup> N.C. SEN GUPTA, EVOLUTION OF ANCIENT INDIAN LAW 336 (Calcutta 1954).

<sup>11</sup> JULIUS STONE, HUMAN LAW AND HUMAN JUSTICE, p. 22.

<sup>12</sup> H.L.A. HART, THE CONCEPT OF LAW 152, 153 (1972).

<sup>13</sup> *Supra* note 3, at 499, 500.

<sup>14</sup> DAVID MILLER, SOCIAL JUSTICE 40 (1976). *See also* JOHN RAWLS, A THEORY OF JUSTICE 103 (Oxford 1972).

To establish justice in the world is to destroy the bad and the evil, to stop the strong exploiting the weak, to develop knowledge and welfare of the people.<sup>15</sup> Verily that which is justice is truth<sup>16</sup> and the law is a means to an end and justice is that end."<sup>17</sup>

A knowledge-based society is basis to social justice<sup>18</sup> and to serve mankind is service to God, and thus concept of service becomes a national ideal<sup>19</sup>. It is therefore, necessary that every rule must promote which is good to people. In the happiness of the subject lies the king's happiness, in their welfare his welfare. What pleases himself, the king shall not consider good but whatever pleases his subjects the king shall consider good.<sup>20</sup> This is conveyed in unequivocal terms by Bentham as: "The public good ought to be the object of the legislator; general utility ought to be the foundation of his reasoning. To know the true good of the community is what constitutes the science of legislation, the art consists in finding the means to realize that good".<sup>21</sup> *Dharma* is a special attribute of man. Bereft of *dharma*, man is equal to animal.<sup>22</sup> The *Vedas* are considered as the 'first source of *dharma*'.<sup>23</sup> *Dharma* constitutes the foundations of all affairs in the world. Everything in this world is founded on *dharma* and it is therefore, considered 'supreme'.<sup>24</sup> Commandants of *dharma* like nature's laws, admit of no meddling.<sup>25</sup>

It has been emphasized that those who exercise political power must wear the hand glove of *dharma* and 'principles of *dharma* governs every sphere of activity including governance of the country<sup>26</sup>. The duty of the king was clearly defined in *Dharma Sastras* and for violation, the king becomes unfit to rule<sup>27</sup> and *Dharma Rajya* means 'rule of law'. King respected by the people only if he acted according to law (*dharma*). Rules of *dharma* not alterable according to whim and fancy of the king and it were essential that the exercise of political power must be in conformity

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<sup>15</sup> The great King of Babylon (2124-2083 BC) proclaimed!

<sup>16</sup> THE UPANISHAD.

<sup>17</sup> Krishna Iyer, J. in All India Judges' Association v. Union of India, 1992 A.I.R. 1992 176.

<sup>18</sup> Mohini Jain v. State of Karnataka, (1992) 3 S.C.C. 666. See also Unni Krishnan v. State of A.P., (1993) 1 S.C.C. 645.

<sup>19</sup> K.L. SARKAR, TAGORE LAW LECTURES 437, 438 (1905).

<sup>20</sup> KAUTILYA, ARTHA SASTRA, p. 39.

<sup>21</sup> UPENDRA BAXI, BENTHAM'S THEORY OF LEGISLATION, p. 1.

<sup>22</sup> HITOPADESHA PRASTAVIKA, p. 25.

<sup>23</sup> M. RAMA JOIS, I LEGAL AND CONSTITUTIONAL HISTORY OF INDIA, p. 1.

<sup>24</sup> MAHANARAYANOPANISHAT.

<sup>25</sup> K.R. SRINIVASA IYENGAR, SITAVANA, pp. 166, 167.

<sup>26</sup> FREDRICK MAX MULLER, INDIA: WHAT CAN IT TEACH US, p. 6.

<sup>27</sup> R.C. MUJUMDAR, ANCIENT INDIA, pp. 154,155.

with *dharma*-an essential aspect of governance. This is what is meant by 'rule of law' in the present day context. According to Dr. S. Radhakrishnan: "*Dharma* righteousness is the king of kings. It is the ruler of both the people and the ruler themselves. It is the sovereignty of the law".<sup>28</sup> *Dharma* in Indian tradition also stands for law and morality and no state can be devoid of law and morality.<sup>29</sup> *Dharma* is right action; *dharma* or virtue is conformity with the truth of things.<sup>30</sup> *Dharma* protects those who protect it and those who destroy it get destroyed<sup>31</sup> and the entire concept of rule of law is incorporated in *Dharma*.<sup>32</sup> According to K.M. Panikkar, the king's coronation ceremony is a *diksha*-devoting his life to the cause (service of the people).<sup>33</sup> Support to the king depended on king conforming to *dharma* or justice.<sup>34</sup>

The first legal code of Hindus enshrines both philosophy of life and of law with special stress on morality, *danda* (punishment) and justice.<sup>35</sup> Justice is a moral state.<sup>36</sup> Gandhiji observed: "My soul refuses to be satisfied so long as it is a helpless witness of a single wrong."<sup>37</sup>

Friedmann observed: "The tale of natural law is the search of mankind for absolute justice and of its failure". Legal justice i.e., according to law has several inadequacies and fails to meet, what and justice in truth. The efforts are required to be made to induct more and more moral content in the law and raise the level of legal justice to absolute justice standards.

In conclusion, it may be stated that rule of law rests on the strong foundation of effective enforcement of laws. If the laws are not effectively enforced, the rule of law breaks down. When rule of law breaks down, democracy collapses and when it happens the essence of 'free government disappears and the government ceases to be a government of laws but gets converted into 'rule of men'. That would be the end of democracy, liberty and freedom

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<sup>28</sup> SHIV RAO, II THE FRAMING OF INDIA'S CONSTITUTION.

<sup>29</sup> L.M. SINGHVI, FREEDOM ON TRIAL, p. 85.

<sup>30</sup> S. RADHAKRISHNAN, THE HINDU VIEW OF LIFE, p. 66.

<sup>31</sup> Manu.

<sup>32</sup> Dr. Shankar Dayal Sharma, in his convocation address at National Law School, Bangalore, 1993.

<sup>33</sup> K.M. Panikkar, *Ideas of Sovereignty and State in Indian Political Thought*, pp. 35-36.

<sup>34</sup> MANU, MANUSMIRITHI, Chapter VII, p.19. *Manusmriti* consists of 2694 verses in 12 chapters.

<sup>35</sup> *Code of Manu* was constructed between 200 BC and AD 200.

<sup>36</sup> W.D. ROSS, THE WORKS OF ARISTOTLE 1134 (1954).

<sup>37</sup> *Supra* note 8, at 34.

and the system of government becomes dictatorship and becomes an engine of oppression.

