

## Ensuring justice for all: Achievements and challenges after 73 years of independence

Shyam Prakash Pandey

LL.B (University of Delhi), LL.M. (Kurukshetra University, Kurukshetra, Haryana) India

### Abstract

This paper is an effort to study how the modern principles of administration of justice evolved over time, what are the achievements and challenges for ensuring justice to people, and lastly what are the suggestions which are required to ensure justice to all the people. Justice is an ideal representing something that is just and right. Even after 73 years of independence, many people do not have access to justice. Justice is only granted to the rich and not to the poor. Various parameters such as corruption, biasness, nepotism, unethical and immoral ways by public servants, economic problems and unawareness of law are the biggest obstacles in access of justice to all. Various steps have been taken after the enforcement of the constitution in the direction of ensuring justice to all such as enactment of Legal services authorities' act, 1987, Right to Information act, 2005, Grievance Redressal Mechanisms, Public Interest Litigation. However, there is still a long way to go.

**Keywords:** justice, biasness, ethics, morality, Constitution

### Introduction

Justice means "the fair treatment of People" or "the quality of being fair or reasonable". Justice is an ideal representing something that is just and right. The concept of Justice varied from time to time. In the ancient times, Justice was given a religious and moralistic meaning. However, in the modern context, Justice basically means the recognition and implementation of laws made by legislatures. In modern times, what is given by the courts to the people is not what can really be called justice but merely justice according to law. Judges are not legislators and it is not their task to correct the defective provisions of law. Their only function is to administer the law of the country. They are not expected to ignore the law of the country. Thus, in the modern state, the administration of justice is commonly taken to imply recognition of fixed rules.

Justice is most observed word in our daily lives. It is not delivered only in Court rooms but also in our daily lives. It may be in the form of two children quarrelling and going to elders for a decision. An umpire/ referee act as a judge between two teams. It may also be within the individual itself to decide whether his course of action is right or wrong.

According to Salmond <sup>[1]</sup>, the justice implies the maintenance of right within a political community by means of the physical force of the state. It is a modern and civilised substitute for the primitive practice of private vengeance and violent self-help. He points out that men do not have one reason in them and each is moved by his own interests and passions. The only alternative is one power over men. Man is by nature a fighting animal and force is the ultima ratio of all mankind. Without a common power to keep them all in awe, it is impossible for men to cohere in any but the most primitive form of society. Without it civilisation is unattainable. A society in which the power of the state is never called into actual exercise does not mark the disappearance of the control of the government but its final triumph and supremacy.

### Relation of Law and Justice

Law and Justice are two faces of a coin. The main thing that connects law and justice is the origin and foundation of law. Salmond <sup>[2]</sup> and Roscoe Pound <sup>[3]</sup> have emphasized the importance of justice in their definitions of law. They have defined law in terms of justice. According to Salmond, "Law may be defined as the body of principles recognized and applied by the state in the administration of justice." Roscoe Pound observes, "Law is the body of principles recognized or enforced by public and regular tribunals in the administration of justice."

Rule of law is also a concept similar to administration of justice. It implies that every person is subject to the law. No One is above law. The originator of the concept of rule of law was Sir Edward Coke <sup>[4]</sup> in 16<sup>th</sup> Century. However, the concept of rule of law is of old origin. Greek philosophers such as Plato and Aristotle discussed the concept of rule of law around 350 BC. In 1885, Professor A.V Dicey <sup>[5]</sup> developed this concept and propounded three principles or postulates of the rule of law in his classic book 'Law and the Constitution.' The principle of Rule of law has certain distinctive attributes which may be described shortly as below:

- **Supremacy of law-** Law is supreme and every person is subject to law. There must be absence of wide discretionary powers on the rulers so that they cannot make their own laws but must be governed according to the established laws.
- **Equality before law-** Equality before law and equal subjection of all classes to the ordinary law of land is to be administered by the ordinary law courts. This principle emphasizes on the equality of everyone irrespective of their position or rank.
- **Predominance of Legal Spirit** - Citizens are being guaranteed the certain rights such as right to personal liberty and freedom from arrest by many constitutions of the states (countries). Only when such rights are properly enforceable in the courts of law, those rights can be made available to the citizens.

## Evolution of modern principles of Administration of Justice

With the growth of the power of the state, the state began to act as a judge to access liability and impose penalty. It substituted public enquiry and punishment for private vengeance. The origin and growth of administration of justice is identical with the origin and growth of man. In the initial stage, every man was a judge in his own cause and might was the sole measure of right. He avenged upon himself his enemies by his own hand, probably by the hands of his friends and kinsmen where necessary. The second stage started with the rise of political states. The state enforced the concept of “a tooth for a tooth”, “an eye for an eye” and “a life for a life”. Vengeance was not totally abolished but was merely restricted and regulated.

Administration of Justice is the primary functions of the State, is generally divided into administration of civil justice and administration of criminal justice. The main purpose of administration of civil justice is to prevent the wrongdoer from unjust enrichment and to keep the sufferers in the same position as he was. The main purpose of administration of criminal justice is to punish the wrongdoer. With the period of time, the concept of punishment appeared in place of Private vengeance.

Punishment is a process by which the state inflicts some pain to the persons or property of person who is found guilty of crime. From the ancient times, a number of theories have been given concerning the purpose of punishment. These are as follows

- **Deterrent** – The objective of the punishment is to deter the people from committing such crime.
- **Retributive**- The objective of the punishment is to punish the accused for his offence.
- **Preventive**- The objective of the punishment is to prevent the repetition of such offence.
- **Reformatory**- The objective of the punishment is to reform the accused.

## Global efforts for ensuring Justice to all

According to OHCHR, there are 9 core international human rights instruments and several optional protocols. The core instruments are:

- Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 21 December 1965)
- International Covenant on Civil and Political Rights (ICCPR, 16 December 1966)
- International Covenant on Economic, Social, and Cultural Rights (ICESCR, 16 December 1966)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 18 December 1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 10 December 1984)
- Convention on the Rights of the Child (CRC, 20 November 1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 18 December 1990)
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED, 20 December 2006)
- Convention on the Rights of Persons with Disabilities (CRPD, 13 December 2006)

Several more human rights instruments exist. A few examples are

- International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSPCA)
- Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees
- Convention on the Reduction of Statelessness
- Convention on the Prevention and Punishment of the Crime of Genocide
- Indigenous and Tribal Peoples Convention, 1989 (ILO 169)

These instruments have played an important role in the direction of ensuring justice to all the peoples.

## Constitutional provisions dealing with access to justice in India

Various provisions are in the form of Preamble, Fundamental Rights and Directive Principle of State Policy which deals with access of justice to all the peoples of India. Some of these provisions are as below:

**Preamble:** - The goal of the Constitution is to secure to all its citizens, JUSTICE, social, economic and political

**Fundamental Rights:** - Fundamental Rights have been provided in the Constitution to secure Justice to people of India. Some of these Fundamental Rights are as follows

- Art 14- Equality Before Law or Equal protection of laws
- Art 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- Art 16-Equality of opportunity in Public employment
- Art 17-Abolition of untouchability
- Art 18- Abolition of titles
- Art 19-Protection of certain rights regarding freedom of speech etc.
- Art 20- Protection in respect for Conviction of Offences
- Art 21- protection of life and personal liberty
- Art 22- Protection against arrest and detention in certain cases
- Art 23-Prohibition of traffic in human beings and forced labour
- Art 24-Prohibition of employment of children in factories
- Art 25- freedom of Conscience and free profession, practice and propagation of religion
- Art 26- freedom to manage religious affairs
- Art 27- Freedom as to payment of taxes for promotion of any particular religion
- Art 28- Freedom as to attendance at religious instruction or religious worship in certain educational institutions
- Art 29-Freedom of interest of minorities
- Art 30-Rights of minorities to establish and administer educational institutions
- Art 32-Remedies for enforcement of rights conferred by Part III of the Constitution

## Directive Principles of State Policy

- Art 38- State to secure a social order for the promotion of welfare of the people
- Art 39- Certain principles of policies to be followed by

the state.

- Art39A- Equal justice and free legal aid.
- Art 40- Organization of village panchayats
- Art 41- Right to work, to education and to public assistance in certain cases
- Art 42- Provision for just and humane conditions of work and maternity leaves
- Art 43- Living wage etc. for workers.
- Art 43A- Participation of workers in management of industries
- Art 44- Uniform civil code for the citizens
- Art 45- Provision for early childhood care and education to children below the age of six years
- Art46- Promotion of education and economic interests of SC, ST, and other weaker sections.
- Art 47- Duty of the state to raise the level of nutrition and the standard of living and to improve public health
- Art 50- Separation of judiciary from the executive

### **Achievements and challenges for access to justice in India**

Various decisions of Supreme Court which has played an important role for ensuring justice to peoples are

1. In the case of **Hussainara khaton vs. State of Bihar**<sup>[6]</sup>, it was held that if any accused is not able to afford legal services then he has a right to free legal aid at the cost of the state.
2. In **Khatri vs. State of Bihar** <sup>[7]</sup>, it was held that state must arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities.
3. In the case of **D. K. Basu vs. State of West Bengal** <sup>[8]</sup>, the Supreme Court laid down the guidelines to be followed by the Central and State Investigating authorities in all cases of arrest and detention.
4. **Rudal Shah vs. State of Bihar** <sup>[9]</sup> In this case, the petitioner was kept in jail for 14 long years after his acquittal and was released only when a writ of habeas corpus was filed on his behalf. Right to Compensation if confined unlawfully was recognized in this case.

However, there are various challenges which acts as an obstacle in ensuring justice to all. Some of these are as follows

1. Corruption
2. Biasness
3. Nepotism
4. Unethical and Immoral ways by public servants
5. Economic problems
6. Unawareness of law

### **Steps taken in the directions of access to justice to all the people**

1. **Use of forensic science-** Use of forensic science has made investigation and trial of criminal cases simple and now it has become easy to identify the accused by scientific methods.
2. **NALSA/SALSA-** The objective of the NALSA/SALSA is to provide free legal aid to the people who cannot afford the fees of advocates. They have been established under Legal services authorities act, 1987.
3. **Alternate Dispute Resolution-** Settlement of disputes in less complex procedure such as arbitration, mediation, conciliation etc.

4. **Lok Adalat-** It is a forum where cases pending on panchayat or at pre litigation stage are settled. They have been given statutory status under Legal services authorities act, 1987.
5. **RTI act, Citizens Charter and CPGRAM-** These are the methods to receive information and redressal of grievances in a govt. agency.

### **Roles of Advocates, Judges and Public Servants towards ensuring justice to all**

Advocates, Judges and Public Servants play an important role in ensuring Justice.

- Public Servants implement the law passed by the legislature and several times use their discretion while implementation of law.
- An advocate is a person who speaks, writes or acts in defense of another person, usually in a court of law. An advocate deals with legal issues and may use his knowledge and expertise to assist workers or the employer in need of legal assistance.
- The ultimate task of a judge is to settle a legal dispute in a final and public manner, and thus affirm the rule of law.

### **Conclusion and Suggestion**

There are various suggestions which should be implemented in the direction of access to justice to all the people:

1. Stringent action on unethical lawyers
2. Need of more harsh laws for anti- corruption
3. Use of Information and Communication Technology in the day to day work of Public Services
4. Unbiased Judiciary

### **References**

1. Salmond JW. Jurisprudence, Sweet and Maxwell Ltd, 1979.
2. Ibid
3. Roscoe Pound: Law in books and law in action, 44 AM. L. Rev. 12, 1910.
4. Edward Coke: Institutes of the laws of England, 1628.
5. Dicey AV. Introduction to the study of the law of the Constitution, Macmilan and Company Ltd, 1889.
6. Hussainara khaton vs. State of Bihar 1979 AIR 1369, SCR (3) 532, 1979.
7. Khatri vs. State of Bihar 1981 SCR 92) 408, 1981 SCC 91) 627
8. Basu DK. vs. State of West Bengal (1) SCC 416, 1997.
9. Rudal Shah vs. State of Bihar AIR 1086, 1983 SCR (3) 508, 1983.