



Evolutionary process of the philosophy of administration of justice

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Abstract

Justice has been called as a basic attribute of a civilized society. In the present article an attempt has been made to find out the genesis of justice and then try to find how it evolved in to a institutionalized form with the courts doing the duty to administer it. It has also been also tried to find out that how administration of justice has now become one of the first and most important aspects of modern day's State administration. The present article concludes that we can judge the happiness of inhabitants in a State through the fact that how justice is administered in that society or State.

Keywords: philosophy, administration, justice

Introduction

The prosperity of a country and the happiness of its inhabitants depend to great extent upon the efficiency of its Government and the ideals, which inspire its administration^[1]. All social thinkers from Plato to Gandhi ji and others have been making supreme endless efforts in the quest of justice in order to abolish social injustice, tyranny and exploitation. All their energies whether material, mental or moral have been devoted to the sole cause of justice^[2]. Thus the aspect of administration of justice is regarded to be as one of the aspects upon which the civilisational progress is depended upon.

Meaning of administration of justice

The concept of justice is one of those aspects of jurisprudence which have defied a proper definition in spite of efforts from the philosopher like Plato to Kant, to define it. It seems that it is one of those that men cannot find definite answer but can only try to improve the question^[3]. Justice is generally equated with truthfulness, righteousness, goodness, quality, mercy, charity etc., and all these expressions being relative and vague has been universally as worthy of emulation and application in the regulation of human behavior and relations. However what constitutes 'justice' at a particular time and place is not definite. The standard of 'reasonableness' 'truth' and 'justice' has to be measured necessarily on the basis of such shared moral values which are common to humanity^[4]. The term 'justice' is derived from Latin term 'jus'. This is cognate with jussum, meaning what is ordered. A just men means 'one who obeys moral order of Laws'. A just law or government on the other hand means that possess the qualities that belong to, or ought to belong to, a law just, namely the qualities of fairness and impartiality^[5]. So justice is fixed and abiding disposition to give to everyone his right^[6]. Justice is said to consist of a set of universal rights that entitle all to uniform treatment in certain matters^[7]. 'Justice' says Barani in his *Fatwa-i-jahandari* is the balance by which the action of the people good and bad' are weighted^[8]. St. Thomas places himself in the Roman law tradition defining justice as the habits according to which a person, by a constant and perpetual will grants to everyone

his own Rights^[9]. In India justice have been extolled as the very embodiment of God. Manu says, "justice is personified as the revered bull and he who commits the violation of it, him the gods regard as VRSALA, i.e. low born; hence one shall not violate justice^[10]. It seems that the concept of justice has defied a uniform definition. This may have been an unintended benefit because if justice meant the same thing to everyone the concept would have become static^[11].

Practical application of the concept of administration of Justice

Concept of justice vest on the assumption that an individual is not an isolated self, free to do whatever he likes but an dependent member of a universal order, who must subordinate his personal wishes and preferences to the organic unity of the collective whole^[12]. Justice is not a matter of choice or accommodation but it is a method to set standard or criteria. It is not the function of justice to render an account of the technicalities of life. It only afford a sense of the purpose and virtue in life. Private pleasure or particular benefit is not a value in life. The value consist in the good, which is universal, and in happiness which is general. Justice is not a concession to suit private dealings but it is a commitment to the consequences which are general. Pleasure or pain is only private particular but happiness is general and universal. Justice does not gives but it gives happiness because the law does not work in the terms of the general and the universal. A private person may gain or lose in a legal proceeding but there is no leakage in the system as a whole^[13]. If there was only one man in the world, no action of that person would be called just or unjust. He would not be called moral or immoral. Because morality and justice are always manifested in the attitude of individuals of men towards others. As they are manifested in the attitude of individuals, they are private virtues, because the morality in a person is judged through his attitude towards life and others. It is in this since that morality and justice are called virtues. But justice is a public virtue and there for it is an inseparable constituted of both Law and the morality^[14]. Plato opined that justice is not an artificial or external thing but it was eternal thing that existed by nature in every human being^[15] Sukra defines

Law as the embodiment of eternal justice^[16]. According to Aristotle Law is means to achieve justice^[17]. But according to V.R. Krishna Iyer law represents the norms of the existing social order, justice visualizes as a system, which ensures social happiness guaranteed by norms^[18]. There is no doubt that law derives its legitimacy from justice and in the last analyses, its sanction from the community not the court and if we incisively examine the sociology of Law, we discover that futility of statutes and judgments which are rejected by the law consumers are not directed towards justice. People make law valid and obey if it is just^[17]. But if there were no laws, there could be no justice. Man must have an organized framework in which to operate before law and justice can exist. Hence justice depends upon society which has the power to enforce whatever its social order deems a basic norms. Thus justice can vary from Society to society because the agreements governing them differ^[18]. To add more law defines and determiner the rights and relations of men and serves as a vehicle of justice which otherwise would have remained as abstract idea^[19].

Administration of Justice in the State of Nature

A time very well be imagined when the whole of humanity was on the level with infantile intelligence and when each savage man would find justice in the idea of the like ranging from a tooth for tooth a head for head. According to Hooker state of nature is a state of strife. The Leviathan of Hobbes declares that the state of nature is a state of war, and of no rights. A non-State thus conceived to be a war of "all against all", an anarchy of 'birds and beats' or a regime of 'vultures and harpes'^[20]. If everyone was allowed to do as he pleased the very condition of living together would have been annulled. All family life would have been disrupted and conjugal love and paternal attention brought to an nothing. Such an uncivilized civilization of the ego would have been a source of unending sorrow^[21]. Justice Maughan says "justice as used in its popular since didn't existed in the state of nature. Justice in the state of nature was another name for revenge, or it can be said revenge was wild justice prevailing in the state of nature."^[22]

Administration of justice from Society to State

Human needs and the dependency on others compelled humans to form a civil society. The first incident of a civil society is that nobody shall take the law into its own hand. Taking the law into its own hands and being a judge in his own cause are two names of one and the same thing. To become a judge in once cause is revenge; but to transfer the power of judging to a third authority, other them the wronged and the wrongdoer is justice. In the interest of self-preservation men had to curb both the natural claim for recompense and the natural impulse for retaliation, they had to agree to transfer the instinct of revenge to public arbitration^[23]. To achieve this objective society laid down certain conventions as rules of conduct^[24] later came to be known as norms^[25] Members in a society were expected to act according to the established norms and laws. Mal adjustment of an individual led to the breach of these norms resulting ultimately in crime which had its origin in the conflict of the self-seeking tendencies of the individuals with the prevalent customs of any social group that ensured its survival in the struggle for existence^[26]. In the course of time when the civil society developed into an administrative unit, the rules of conduct acquired a political sanction and a

break of them was made culpable through legislative sanction. As the time passed a strong feeling arose in the society. It was realized that state of nature had to be gradually evolved into a just order of society^[27]. It was philosophized that society can exist only under the shelter of state^[28], as law and Justice being permanent conditions for peace and security in a State or society.^[29] Plato emphasized that the state was a combination of individuals that came together for the sake of living together and continue for living well^[30]. The formation of a political society excluded the private judgment of every member, and ever since then there was an emergence of man from the state of nature in to the state of laws; justice no longer remained a private enter prize but became a public affair. It was transferred from the vagaries of man to the wisdom of a mediator^[31]. With the advent of State and it taking the responsibility of administration of Justice The right of justice became a basic attribute of a civilized society^[32]. The judicial system attempted to protect justice by providing a pragmatic and a principled based response to crime^[33]. In recent times justice has become a basic attribute of a civil society and how it is administered in a society gives a tangible index of the excellence of its Governance^[33]. In modern times justice has become more reformative in nature. It is working as a tool in positive social transformation. The transformation is guaranteed by applying norms to a given problem when it is brought before the courts for adjudication.

Conclusion

With the institutionisation of justice the duty to administer it has been carted upon the courts. The courts are expected to administer justice with the help of laws. Where too much strict Interpretation of laws makes justice a district dream too much liberal approach makes the judicial system vague and hypothetical leading to a chaotic state of affairs. A balance is needed to be maintained where law and justice go hand in hand to provide a system of governess where maxim happiness is guaranteed to each and every citizen within the provisions of law by reconciling individual interest with that of the society. The governing maxim needs to be justice not only needed to done, but seems to have been done.

References

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