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**Law and Justice in a Globalising World- Distributive Justice & Its Relevance  
In Contemporary Times**

**Mibiya Mol Mohanan**

# **1. DISTRIBUTIVE JUSTICE & ITS RELEVANCE IN CONTEMPORARY TIMES**

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## **INTRODUCTION**

The term distributive justice refers to theories that address the fairness of allocation of economic resources and social welfare within a society. Such theories both criticize and prescribe basic arrangements in society. The term distributive justice refers to fairness in the way things are distributed, caring more about how it is decided who gets what, rather than what is distributed. In modern society, this is an important principle, as it is generally expected that all goods will be distributed throughout society in some manner. In a society with a limited amount of resources and wealth, the question of fair allocation is often a source of debate and contention. This is called distributive justice. In this paper, the researcher tries to explore this concept. This paper mainly deals with the importance of distributive justice and its relevance in contemporary times. Firstly we shall look at the history and its concept. Then we shall look deeply the idea of distributive justice and its connection with modern world.

## **NEED AND SIGNIFICANCE OF THE STUDY**

The requirement of practical reasonableness is not satisfied by a general disposition, in one and all, to favour the well-being of other members of the community or communities in question. Few will flourish, and no one will flourish securely, unless there is an effective collaboration of persons, and co-ordination of resources and enterprises. Such an ensemble of conditions of collaboration which enhance the well being of all members of a community is, indeed, often called the common good. And when we wish to consider the concrete requirements of justice, we need to consider the term 'common good' used in formulating the general principle of justice, as taking on now this more concrete meaning. A full analysis of what is for the common good is of course far behind the scope of this project, but we can at least orient ourselves on the bafflingly complex field, by observing that the problems of realizing the common good through a co-ordinated ensemble of conditions for individual well being in community can be divided into very broad classes. First, there are problems of distributing resources, opportunities, profits and advantages, roles and offices, responsibilities, taxes and burdens— in general, the common

stock and incidents of communal enterprise, which do not serve the common good unless and until they are appropriated to particular individuals. The theory of distributive outlines the range of reasonable responses to these problems. Second, there are all the other problems concerning what is required for individual well being in the community, which arise in relations and dealings between individuals and/or groups, where the common stock and what is required for communal enterprise are not directly in question. And the range of the responses to these problems regarding the distribution is outlined as the theory of commutative justice.

## **STATEMENT OF PURPOSE**

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Distributive justice is concerned with what is right with respect to the allocation of goods in a society. Allocation of goods takes into thought the total amount of goods to be headed out, the process on how they in the civilization are going to dispense, and the pattern of division. Civilizations have a narrow amount of resources and capital. Distributive Justice is concerned in giving all the members of the society fair share in the resources available. The main criteria of distribution of the resources are Equity, Equality and the Need. Distribution on the basis of need means that those people who need less will be given less and those who are in need of more resources will be given more. Distributive justice is a very crucial element to testability of a society and for the well-being of its members in that society. When the issues of Distributive Justice are being inadequately addressed and also if the item which is to be distributed is being highly valued, then it results in frequent conflicts. Why should people have more than enough resources within their hands while smoothers are struggling to meet theirs? This question has motivated a very large number of political activists. The sole purpose of this paper is to analyze the basics of distributive justice and its relevance in contemporary times.

## **OBJECTIVES OF THE STUDY**

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The researcher intends to

- Provide a basic understanding of distributive justice.
- Provide some important theories related to distributive justice.
- View distributive justice in Indian perspective.



- Analyze distributive justice and its relevance in contemporary times.

## **RESEARCH QUESTIONS**

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- What are the concept and principles of distributive justice?
- The ethic concept and challenges of distributive justice in allocating scarce resources?
- What are the basics of distributive justice and its relevance in contemporary times?

## **CHAPTERIZATION**

**Chapter 1** includes the Introduction, Scope, Need and Significance of the study, Objectives and Research Questions.

**Chapter 2** includes the Concept and Principles of Distributive Justice.

**Chapter 3** includes the Eye on Ethics; Challenges of distributive justice.

**Chapter 4** includes the Relevance of Distributive Justice in Contemporary times And in Indian Perspective.

**Chapter 5** includes the Summary of the Study and Bibliography.

# 1. CONCEPT AND PRINCIPLES OF DISTRIBUTIVE JUSTICE

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## **INTRODUCTION**

Part of being a member of a modern society is accepting that all goods will be distributed through society by some means. This is not a concept that is universal throughout history. In kingdoms and empires, the monarch would own all goods, but permit his or her people to enjoy them in his or her name. There is no central power which owns all goods in Western society. Distributive justice addresses who owns these goods and how they are acquired. Distributive justice is a concept that addresses the ownership of goods in a society. It assumes that there is a large amount of fairness in the distribution of goods. Equal work should provide individuals with an equal outcome in terms of goods acquired or the ability to acquire goods. Distributive justice is absent when equal work does not produce equal outcomes or when an individual or a group acquires a disproportionate amount of goods.<sup>1</sup>

## **BASIC UNDERSTANDING**

Distributive justice is concerned with the distribution and allocation of common goods and common burdens. These benefits and burdens span all dimensions of social life and assume all forms, including income, economic wealth, political power, taxation, work obligations, education, shelter, health care, military service, community involvement and religious activities. Thus, justice arguments are often invoked in connection with minimum wage legislation, Affirmative Action policies, public education, military conscription, litigation, as well as with redistributive policies such as welfare, Medicare, aid to the developing world, progressive income taxes and inheritance taxes.<sup>2</sup> Since the common goods and resources of the community cannot be said to belong to any individual but are to be distributed according to the judgment of what is judged to be in the interests of the common good, a judgment which only the political institutions of the State are fit to pronounce, no individual may claim any personal right to any part of the common stock. The principles of equity, equality, and social need are most relevant in the context of distributive justice.<sup>3</sup>

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1 <https://study.com/academy/lesson/distributive-justice-definition-theory-principles-examples.html>

2 Distributive Justice (28th September, 2013), [myweb.lmu.edu/jkonow/Distributive%20Justice.pdf](http://myweb.lmu.edu/jkonow/Distributive%20Justice.pdf)

3 Rashmi Raman & Nisha Venkataraman, Grafting Faith- Legal Aid Services in India, 3rd International Conference on Therapeutic Jurisprudence (2006)

The idea of a fair distribution of resources is generally linked to concepts of human rights, human dignity, and the common good, and is grounded in what civilization is said to owe its individual members in equal proportion. Governments continuously make and change laws affecting the distribution of economic benefits and burdens in their societies. Almost all changes, from the standard tax and industry laws through to divorce laws have some distributive effect, and, as a result, different societies have different distributions.<sup>4</sup>

## **IMPORTANT THEORIES**

- Much of the modern interest in justice can be attributed to the publication of John Rawls's major work, *A Theory of Justice*, in 1971. This book builds upon the theory of the social contract associated with Locke, Rousseau and Kant, and equality, duty and need are central to it. Rawls conceives of a hypothetical original position in which people are behind a "veil of ignorance" of their places in society. Under these conditions, Rawls claims that people would unanimously choose a particular conception of justice. The greatest attention has been paid to his so-called difference principle, according to which all goods are distributed equally, unless an unequal distribution is to the advantage of the least favoured.<sup>5</sup> A few points that are seen here are social cooperation, terms of cooperation and difference principle, the original position and the end result principles, macro and micro situations, positive connection, negative connection and collective assets.<sup>6</sup> Some economists have criticized the difference principle on theoretical grounds, but various surveys and experiments also suggest that his theory is not a good description of actual values. One can delve into the entitlement theory and see how liberty upsets patterns based on the theory of patterning seeing a contrast between the historical and end-result principles.<sup>7</sup> Nozick argues that justice is exclusively concerned with rights that are determined by the historical acquisition by and transfer of property among individuals. For Nozick, individual choice trumps social choice, and he believes in a limited role for government. Individuals are held responsible for everything. At the

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4 Distributive Justice (27th September, 2013), <http://plato.stanford.edu/entries/justicedistributive>

5 Distributive Justice (28th September, 2013), [myweb.lmu.edu/jkonow/Distributive%20Justice.pdf](http://myweb.lmu.edu/jkonow/Distributive%20Justice.pdf)

6 Robert Nozick, *Distributive Justice*, 3 *Philosophy & Public affairs*, Princeton University Press, 45 (Autumn 1973)

7 In contrast to end-result principles of justice, historical principles of justice hold that past circumstances or actions of people can create differential entitlements or differential deserts to things. An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people's entitlements or deserts; it may not fit the actual history.

other end of the political spectrum, individual responsibility is seen as minimal and state redistribution as necessary to remedy unjust inequalities occasioned by arbitrary factors such as birth and brute luck.<sup>8</sup>

- The second category of theories is consequentialist. These include utilitarianism and welfare economics. The most widely embraced concept in economics is the *Pareto Principle*<sup>9</sup> and the *Compensation Principle*.<sup>10</sup> The usual definition of equity in welfare economics; however, is the absence of envy criterion. A review of the literature on distributive preferences indicates that people care about the happiness or subjective value derived from allocations. Absence of envy, on the other hand, is at most a second order concern. Together, these studies show that people often seek to maximize surplus, sometimes at a monetary cost, and that this is regarded as “fair.” Another approach that relates individual actions to desired outcomes is equity theory. Equity theorists often trace their origins to the Nicomachean Ethics, in which Aristotle proposed proportionality as the foundation for justice. Specifically, fair outcomes for individuals are in proportion to their inputs.<sup>11</sup>
- Marx regarded capitalism as unjust primarily because, as an exploitative system, it does not proportion reward to labour contribution, and because it is not oriented to satisfy human needs, least of all the needs of the producers, within its own productive possibilities. Capitalist distributive arrangements issue in a morally objectionable comparative treatment of individuals belonging to the different social classes, or in an objectionable allotment of benefits and burdens, leading to inequality and non-freedom.<sup>12</sup> Affirmative action devices are important aspects of the policy repertoire that contemporary egalitarians use in their struggles against human stratification and the ways of life-individualism and hierarchy that persist in differentiating humans through markets and bureaucracies, respectively.<sup>13</sup> Martha Nussbaum’s theory of distributive justice runs roughly as follows. The first element of her theory is an account of the essential features of human beings which turn out to be limits and certain basic capabilities for engaging in

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8 <http://docs.manupatra.in/newsline/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf>

9 Any change that makes someone better off without making anyone else worse off.

10 Any change in which the gains of some are more than sufficient to compensate any and all losses of others, even if the prescribed compensation does not actually occur.

11 <http://docs.manupatra.in/newsline/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf>

12 Ziyad I. Husami, Marx on Distributive Justice, 8 *Philosophy & Public Affairs*, Princeton University Press, 27 (Autumn 1978)

13 Charles Lockhart, Socially Constructed Conceptions of Distributive Justice- The Case of Affirmative Action, 56 *The review of Politics*, Cambridge University Press, 38 (Winter, 1994)

various sorts of activities. The second element is a list of basic human functional capabilities on the essential providing a minimal theory or conception of the good.<sup>14</sup> Finally, the third part of Nussbaum's theory is a principle of distributive justice.<sup>15</sup>

- The three forgoing elements of justice that are important are the Need Principle, the Efficiency Principle and the Accountability Principle. The fourth element of justice is context.<sup>16</sup> The rapid growth of empirical research on distributive justice has provided a rich source of data. Distributive justice can no longer be considered as an amorphous or hopelessly differentiated subject matter.

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14 Christopher Bobonich, Internal Realism, Human Nature & Distributive Justice- A Response to Martha Nussbaum, 90 *Modern Philology*, Chicago Journals, 81 (May, 1993)

15 Principle for the just distribution of society's goods and resources in light of the minimal theory of the good.

16 Distributive Justice (28th September, 2013), [myweb.lmu.edu/jkonow/Distributive%20Justice.pdf](http://myweb.lmu.edu/jkonow/Distributive%20Justice.pdf)

## 2. EYE ON ETHICS; CHALLENGES OF DISTRIBUTIVE JUSTICE<sup>17</sup>

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### INTRODUCTION

DEBATE ABOUT CRITERIA FOR ALLOCATING SCARCE RESOURCES CONCERNS WHAT PHILOSOPHERS CALL DISTRIBUTIVE JUSTICE. DISTRIBUTIVE JUSTICE INVOLVES THE USE OF ETHICS CONCEPTS AND CRITERIA TO DETERMINE HOW SCARCE RESOURCES SHOULD BE DIVIDED AMONG PEOPLE, GROUPS, ORGANIZATIONS, AND COMMUNITIES.

Historically, social workers and others have based their allocation decisions on four key concepts: need, equality, compensation, and contribution. Sometimes these criteria are used independent of one another and sometimes in combination.

In many instances, social workers allocate limited resources based on need. In principle, social workers could rank-order potential recipients based on their vulnerability, a form of triage. Of course, assessing need often is difficult.

In contrast, equality is one of the most popular criteria for allocating scarce resources. On the surface the concept of equality seems straightforward and fair: individuals who are eligible for services or resources simply have an equal stake. However, equality is a much more complicated concept.

One way to define equality is in terms of equal shares. That is, when resources are in short supply, all eligible people, groups, communities, and organizations would receive an equal share of what is available. This approach emphasizes the outcome of the distribution; every recipient should receive an equal amount.

This approach may be feasible in some instances, such as when those standing in line at a food pantry receive equal portions of available commodities. This may not be the most ideal outcome, since some people may not receive what they need, but it is fair. Similarly, low-income communities might divide available community development funds into equal portions.

In many instances, however, this approach would not be feasible. Amanda and her colleagues cannot divide available shelter beds into equal "pieces" or divide up the hours or minutes during which each eligible person would occupy a shelter bed. Similarly, dividing an overwhelmed social

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<sup>17</sup> The Challenge of Distributive Justice-Social Work Today, [www.socialworktoday.com](http://www.socialworktoday.com) >eoe\_011515

worker's caseload into evenly sized portions for all of her clients would likely result in a meaningless amount of time for each client.

Another way social workers sometimes think about equality is to emphasize the procedures used to allocate limited resources rather than the actual outcome. Under this arrangement resources are not necessarily distributed in equal portions; rather, potential recipients have an opportunity to compete for them equally. This could take the form of a random lottery or a first-come, first-served arrangement. Of course, not all potential recipients are in a position to compete—for example, if they are disabled or live in remote locations and would have difficulty traveling to a program to get in line early.

Some social workers argue that allocating scarce resources based on need or equality is not fair. For example, social workers sometimes advocate for the use of affirmative action criteria, with some preference given to people who have been victimized by various forms of discrimination (for example, based on race, ethnicity, sexual orientation, gender expression, or religion).

Finally, some claim that the concept of contribution is relevant to allocation protocols. According to one interpretation of this principle, scarce resources should be distributed in proportion to the contribution that recipients have made or might make to their communities or the broader society. For example, potential recipients who have contributed to the costs associated with the resources might receive priority. An extreme argument is that preferential consideration should be given to people who are most likely to be able to contribute to society in meaningful ways and not be a drain on society's resources. Of course, this is not a popular perspective among social workers, given the profession's longstanding commitment to serving the most vulnerable members of society.

### **A PRINCIPLED APPROACH**

Social workers have a responsibility to think carefully about the moral criteria they use to allocate limited resources. In some instances the principle of equality, in one of its several forms, might seem more compelling than the principle of need or compensation. In other situations the principle of need might seem appropriate. The most important point is that social workers must be aware of, and thoughtful about, the various criteria and distributive mechanisms they use and the profoundly ethical nature of their decisions, and must be willing to justify and defend their choices in any given instance. Indeed, this key principle is reflected in the NASW Code of Ethics: "Social workers should advocate for resource allocation procedures that are open and

fair. When not all clients' needs can be met, an allocation procedure should be developed that is nondiscriminatory and based on appropriate and consistently applied principles"

Further, social workers should not be complacent when they encounter insufficient resources to meet the needs of clients and other vulnerable people. Ethical social workers recognize their duty to advocate for essential resources whenever possible. This, too, is an inherent element of social workers' ethical duties. As the NASW Code of Ethics says, "Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to develop fully. Social workers should be aware of the impact of the political arena on practice and should advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice".



### 3. RELEVANCE OF DISTRIBUTIVE JUSTICE IN CONTEMPORARY TIMES AND IN INDIAN PERSPECTIVE

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#### **INTRODUCTION**

Justice in one way or another concerned with issue of distribution. In modern discourse, this is a concept which has tended to be treated largely as a matter of distribution of wealth and materials goods. And whether this should be 'rights' or laissez-faire based. These are important arguments, but it is clear that a properly ordered society must involve some principles by which the relations of its members inter se and with the society itself will be regulated. The focus of concern is not only upon the distribution of material goods.<sup>18</sup> Distributive justice is concerned with the distribution of both material resources and legal rights to material resources. Distributive justice contains the elements of power. The distribution of goods of a community among its members is the responsibility of the individual entrusted with authority to distribute them, so distributive justice pertains to the exercise of power. Distributive justice is the basis of all other justice. Economic justice, whether in participation or distribution of wealth or property, would remain untouchable without distributive justice. Legal justice will be meaningless without access to it. Distributive justice can create a social condition where everyone will be able to receive legal justice. It is not mere distribution of wealth or property the distributive justice covers. Rather, in the present world, it would include education, employment and other necessities of life. Distributive justice, which conditions justice in other fields would help in removing inequalities and bring in social justice.<sup>19</sup>

#### **INDIAN PERSPECTIVE**

In its substance the Indian notions of justice closely resemble the Western concept of fairness as a variant of the larger spectrum of justice.<sup>20</sup> People often frame justice issues in terms of fairness and invoke principles of justice and fairness to explain their satisfaction or dissatisfaction with

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18 Penner, J.E., *Justice Theory*, McCoubery & Whites Textbook jurisprudence (5th ed.).

19 Priyanka Kansara, *International Journal of Law and Legal Jurisprudence Studies* :ISSN:2348-8212: Volume 2 Issue 4

20 M. RAMA JOIS, *ANCIENT INDIAN LAW : ETERNAL VALUES IN MANU SMRITI* at page 232, (Universal Law Publications, Delhi, 2002)

their state or government. However, in the Indian context, we see a strange drift away from this rather Western line of thought. The average Indian, being ignorant of his rights, does not really bother much with social policies of justice; he is content if in his own life, he sees justice being played out in acceptable terms of society; albeit tinged by shades of religion and divine intervention.<sup>21</sup> The principles of equity, equality, and social need are most relevant in the context of distributive justice, but might play a role in a variety of social justice issues. However, because these principles may come into conflict, it is often difficult to achieve all of these goals simultaneously<sup>22</sup>. According to the principle of equity, a fair economic system is one that distributes goods to individuals in proportion to their input. While input typically comes in the form of productivity, ability or talent might also play a role.<sup>23</sup>

A principle of need, on the other hand, proposes that we strive for an equal outcome in which all society or group members get what they need. Thus poor people would get more money, and richer people would get less. This principle is sometimes criticized because it does not recognize differences in productive contributions or distinguish between real needs and manifested needs.<sup>24</sup> This is where reservation policies in India become academically relevant. India's policy of reservation is a daring attempt to remedy the past injustices suffered by those who are at the lower levels of India's four-tier caste hierarchy.<sup>25</sup> Before India declared independence in 1947, the British maintained separate electorates and reserved seats for these groups in Indian Parliament. Soon after Independence, by recommendation of the Kaka Kalelkar First Backward Classes Commission, the Indian government implemented the model of reservation schemes for the Scheduled Castes and Tribes in government employment.<sup>26</sup> The Mandal Report of 1980 suggested reserving an additional 27% of government positions for Other Backward Classes. Amidst violent protest, the Supreme Court<sup>27</sup> validated this plan.<sup>28</sup>

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21 Rashmi Raman & Nisha Venkataraman, *Grafting Faith- Legal Aid Services in India*, 3rd International Conference on Therapeutic Jurisprudence (2006)

22 Tom R. Tyler and Maura A. Belliveau, *Tradeoffs in Justice Principles: Definitions of Fairness*, in *CONFLICT, COOPERATION, AND JUSTICE*, ED. BARBARA B. BUNKER AND JEFFREY Z. RUBIN, 291 (Jossey-Bass Inc. Publishers, San Francisco, 1995)

23 Morton Deutsch, *Justice and Conflict*, in *HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE*, 54 (Jossey-Bass Inc. Publishers, San Francisco, 2000)

24 Robert Folger, Blair H. Sheppard and Robert T. Buttram, *Equity, Equality, and Need: Three Faces of Social Justice*, in *CONFLICT, COOPERATION, AND JUSTICE*, 262 (Jossey-Bass Inc. Publishers, San Francisco, 1995)

25 *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226 (invalidating under Article 15 quotas for various castes and non-Hindus for admission to state institutions of higher education).

26 Nicole Lillibridge, *The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and The United States*, 13 *Wm. & Mary Bill of Rts. J.* 1301, (2005)

27 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217

Articles 142, 144 and the Fundamental Rights enshrined in Part III of the Constitution provide for a just and fair society and ensure distributive justice as has been seen even before the enactment of the Constitution.<sup>29</sup> Many judgments originating from the Public Interest Litigation also strengthened the idea of distributive justice.<sup>30</sup> Also, all the litigation about the various environmental issues decided by the Supreme Court highlights its attitude to establish 'distributive justice' and 'corrective justice'. Whether it be the application of '*Polluter Pays Principle*'<sup>31</sup> or the '*Public Trust Doctrine*'<sup>32</sup>, the core idea behind them is distributive and corrective justice. The huge debate that occurred in *Maneka Gandhi v. Union of India*<sup>33</sup> on the concepts of 'procedure established by law' and 'due process of law' has its source from distributive justice only. That case saw a complete shift in the attitude of the judiciary that even if there is some procedure that has been established by some statute passed by the legislature, the justice will still be done keeping in mind the 'due process of law' taking us away from the *A.K. Gopalan v. State of Madras*.<sup>34</sup> Law declared by the Supreme Court is binding on all the courts. But it also provides that Supreme Court is not bound by its own decisions and it may reverse its own decision.<sup>35</sup> Thus, where the question of public good comes and fairness<sup>36</sup> is to be seen, or the need of distribution of the rights and responsibilities come, Supreme Court has always been in favour of the public, or rather, public good.

### **CONSTITUTION OF INDIA AND THEORY OF JUSTICE**<sup>37</sup>:

The survival of India as a nation depends on how we the people implement the provisions of our constitution. Therefore all citizens need to have a closer look at, and understand its broader features, because the law of the constitution is not only for those who govern- or for the intellectual and scholarly- but also for the bulk of the people, especially for the common man, for whose benefit and safeguard the document of governance has been written and enacted. The

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28 Priya Sridharan, Representations of Disadvantage: Evolving Definitions of Disadvantage in India's Reservation Policy, 6 Asian Law Journal (1999)

29 In Re: Llewelyn Evans, AIR 1926 Bom 551; P.K. Tare v. Emperor, AIR 1943 Nagpur 26

30 Hussain Ara vs State of Bihar, AIR 1979 SC 1360; M.C. Mehta Vs Union of India, AIR 1988 SC 1037

31 M.C. Mehta v. UOI, AIR 1987 SC 1086; Indian Council for Enviro-Legal Action v. UOI, (1996) 3 SCC 212; Vellore Citizen's Welfare Forum v. UOI, (1996) 5 SCC 647; Rio Declaration, Principle 16, 1992

32 M.C. Mehta v. Kamalnath, (1997) 1 SCC (736); K.M. Chinappa v. UOI, AIR 2003 SC 724

33 AIR 1978 SC 597: (1978) 1 SCC 248

34 AIR 1950 SC 27

35 Constitution of India, Article 141; I.C. Golaknath v. State of Punjab, AIR 1967 SC 164; His Holiness K Keshvananda Bharati v. State of Kerala, AIR 1973 SC 1461; S.P. Gupta v. Union of India, 1981 Supp SCC 87

36 International Covenant on Civil & Political Rights, Article 14, 1966

37 Priyanka Kansara, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212: Volume 2 Issue 4

people are influenced by what the judges in the country's highest court think and by what they say. One must never underestimate the power of the judiciary under a written constitution.

The Constitution of India, by and large is linked to the theory of Distributive justice. Distributive justice says that, "the procedure established by law must be not only having semblance of the attribution, but in reality and practice it must have connotation according to changing the values of society and human justice." Our Constitution provides justice i.e. Social justice, Legal justice and Economic justice on the basis of Social needs and societal environment. The meaning of distributive justice is justified not only on the fair distribution of goods and resources, but rights and duties also. Our Constitution, on par with the theory, has provided different provisions for different sects of the society; i.e. Women, children, Schedule Class, Schedule Tribes, or many; so that a balance can be established for 'Empowerment of Justice'.

Distributive justice is the base of all other justices. Economic justice, whether in participation or distribution of wealth, would remain unreachable without Distributive justice, because Distributive justice provides for adequate distribution of wealth, which gives an opportunity to develop and participate economically in the society. Legal justice will be meaningless without access to it; as distributive justice can create a social condition where everyone will be able to receive Legal justice. It is not merely the distribution of wealth and property that distributive justice covers; rather, in the present world, it would include education, employment and other necessities of life. Distributive justice, which conditions justice in other fields would help in removing inequalities and bring in social justice. Constitutional Amendments are evolved in the way of social revolutions and substantive democratization with the mission of realizing developments, distributive justice and social inclusions.

Indian constitution does not specifically guarantee to an accused person the right to speedy trial, yet the speedy disposal of cases is desired as an objective of a rule of law in India; the ethics of distributive justice in India also necessitate it. The very spirit and soul of Article 21 read in conjunction with Articles 14, 39, 39A make it a necessary concomitant of distributive justice promised in the preamble. Right of speedy trial being an internationally recognized human right is thus a part of our national ground norm by virtue of article 51 of the constitution.

Article 21 guarantees that the state shall not deprive any person of his life or personal liberty except according to procedure established by law. The procedure contemplated by this article must be just fair and reasonable one. The procedure established by law must be not only having a semblance of these attributions, but in reality and practice it must have connotation according to changing values of society and human justice.

The idea of Justice is deemed a legitimate object of rational enquiry, worthy of sustained attention by jurisprudential thinkers and social scientists? Aristotle stated that Distributive justice means each and every individual of a society should be given an opportunity to develop his inherent potentials. In the distribution of such material resources all person should have equal consideration and chances.

Indian Constitution is right-based and it evolved on the principle of Equality. A Scottish philosopher William Sorley, claimed that no satisfactory doctrine of justice could be developed without finding a place for both equality and freedom in the scheme of societal organization; a similar principle was evolved in Vishakha v. State of Rajasthan<sup>38</sup> , the Apex Court had held strongly against sexual harassment in working places. The only panacea to liberate women from the clutches of harassment and exploitation is empowering them so as to create a congenial atmosphere to develop and progress.

A fundamentally divergent attitude toward Justice was taken by the English philosopher and sociologist Herbert Spenser; the supreme value he linked to the idea of justice was not equality, but freedom. Each man should be allowed to assert his selfhood, acquire property, carry on a business or vocation of his choosing, move freely from place to place, and express his thoughts and religious feelings without hindrance. The liberty of each is to be limited only by equal liberty to all. Every person is free to do that which he wills, provided he infringes not the equal freedom of any other man.

Immanuel Kant took a position similar to that of Spenser. He defined justice as “the aggregate of those conditions under which the will of other person can be conjoined with the will of another in accordance with the universal law of freedom.

A much more egalitarian view of justice was advocated by the American sociologist Lester Ward, in his opinion, equal individual regardless of sex, race, nationality, class or social origin, was to be given a full chance to make good in life and lead a worthwhile existence. It was ward’s belief that this condition could be achieved only by deliberate educational schemes aimed at equalizing intelligence among the members of the upper and lower classes in the society.

It is the notion of justice which directs our attention to the fairness and reasonableness of the rules, principles and standards that are the component parts of the normative edifice. The aim of justice to satisfies the reasonable needs and claims of individuals and at the same time promote productive effort and that degree of cohesion which is necessary to maintain a civilized social

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<sup>38</sup> AIR 1997 SC 3011.

existence.<sup>39</sup>13 The mandate of 'reasonable opportunity of being heard' encompasses the Principles of Natural Justice which is a wider and elastic concept to accommodate a number of norms on fair hearing. Violation of Principles of Natural Justice enables the courts to set aside the disciplinary proceedings on grounds of bias and procedural defects.<sup>40</sup>

## **DISTRIBUTIVE JUSTICE IN CONTEMPORARY TIMES**

The recent years have witnessed a growth in the attention paid to the distributive effects of economic development policies. A very important question here is as to what is the distributive share to which everyone is entitled, regardless of the opportunity cost in future growth of output. The answer to this question is determined jointly by the appropriate principle of distributive justice for the present generation and a principle establishing the extent of this generation's obligation to save for the future.<sup>41</sup>The minimum level of welfare that a government should assure to its citizens will vary with the production possibilities of its economy. The remaining problem is to identify more precisely the needs.

I have described vaguely as most urgent. The most urgent interests are those associated with survival. These interests-in food, shelter, sanitation and health, and in primary education are often referred to as basic needs. Once these needs are satisfied, life expectancies lengthen and the actual causes of death become more diverse. This is not necessarily to say that governments should not concern themselves with eliminating causes of death that are less urgent than those associated with basic needs.

The subject of reservations has exercised the public mind for some time. The subject is not only of immediate interest; it raises questions of great importance to social and legal theory that ought to be examined more fully and systematically than has been done so far. The fundamental issue in distributive justice is equality. There can be no doubt that the concern for a more equal distribution of benefits and burdens figures in our Constitution, most prominently in the part on Directive Principles of State Policy.<sup>42</sup>It is essential to keep in sight both inequalities between individuals and disparities between groups. Disparities between groups have been historically of great significance in the Indian society, although they are not unique to it.<sup>43</sup>

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39 Beitz, C., International liberalism and Distributive justice: A survey of recent thoughts: world politics 51 (1999).

40 14 Massey, I P, Administrative Law pp.161-212 (2003).

41 Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest and Ors., (2013) 6 SCC 476; UOI v. Rakesh Kumar & Ors., AIR 2010 SC 3244

42 *Childline India Foundation and Anr. v. Allan John Waters and Ors.*, 2011 CriLJ 2305

43 Andre Beteille, *Distributive Justice & Institutional Well Being*, 26 Economic & Political Weekly, 295 (March, 1991)

In a world in which equality appears to be becoming the most powerful moral imperative of our time, purely on prudential grounds it is difficult to deny the need to take seriously the problem of world poverty. There may be some debate about exactly where it ranks in the hierarchy of important issues on the agenda of international politics, but it can hardly be denied a place near the top of the list. Those who say that the peace movement must come to grips with this issue if it is realistically to deal with the sources of international conflict today have a point.

It is one thing to say this, however, and quite another to say that the industrialized nations have a duty founded on distributive justice to secure a minimum standard of living for the world's poor, or that distributive justice defined in this manner will yield peace. That as a matter of justice the industrialized nations have some obligation to help the developing nations secure food, clothing, shelter, and medical care for their people is not disputed. The obligation which they have in this regard is probably much greater, in fact, than most of them are presently willing to acknowledge. But the range of this obligation is far from universal. Development is at least one of the names for peace. But in the short run, the prospect in the developing nations is not a peaceful one; and this is not likely to be changed by the attitudes taken toward distributive justice in the industrialized nations.<sup>44</sup><sup>39</sup> Distributive justice is generally associated with the goal of alleviating economic deprivation and with the methods of policy-making and social reform. The role of psychotherapy in such a profession seems to be indirect and severely limited at best. As a result, social workers who see justice-related goals as the mission of social work may reject psychotherapy as a legitimate or significant part of the profession's task.<sup>45</sup><sup>40</sup>

A Rawlsian approach to distributive justice has the power to make sense of the social work profession and its disparate activities in ways not yet generally appreciated. Social work can be conceived as a profession engaged in alleviating deprivation in all its varieties, from economic to psychological; social workers identify people who fall below the social minimum in any justice-related good. Although health is not a social primary good, the opportunity to be served by those who are expert in preventative or curative health care is a social good and the fair distribution of such health care opportunities is a part of distributive justice. The distributive justice tells us that social work takes place at the interface between individuals and institutions. The essential and ineradicably social nature of distributive justice is what puts the social in social work.<sup>41</sup> Developing countries base much of their demand for global redistribution on the assertion that

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<sup>44</sup> R. Bruce Douglass, *Is Distributive Justice the New name for Peace*, 141 *World Affairs*, Heldref Publications, 161 (1978)

<sup>45</sup> DAVID BEVERLY AND EDWARD MCSWEENEY, *SOCIAL WELFARE AND SOCIAL JUSTICE* at page 239 (Englewood Cliffs, Prentice-Hall, 1987)

they have been exploited by past imperialism and in the present by globalization and the core-periphery structure of the world economy and for resource and environmental issues. A third source of claims is global poverty and relative inequality, a concern because of moral reasons or undesirable consequences (e.g. political instability).<sup>46</sup> Distributive justice theories can be used to evaluate the equity in a tax system.<sup>47</sup> These theories can be classified into two broad categories: purely economic approaches and social interaction approaches. A social interaction approach has not been used to analyze the fairness of a tax system. If such an approach is used, then it is inappropriate to use equity theory in determining whether a distribution system (tax system) is just. Distributive justice requires a determination of one's deservingness and is multidimensional. It is more appropriate to use a theoretical foundation; distributive fairness is one such theory.<sup>48</sup> Keeping in mind the above significant areas, it is pretty evident that Distributive Justice in today's world is important. All key areas like industrialization, poverty, education, etc. are seen in this light. Further attempts to specify the cultural, social, and economic determinants of the perceived fairness of distribution schemes will facilitate linking equity theory and theories of distributive justice to the analysis of social change more generally. The politics of scarcity may well involve the strategic use of distribution rules, conflict over distributional policies, and the mobilization of collective reactions.<sup>49</sup> Thus, the potential exists for integration of justice theories with more traditional theories of conflict, power, and coalition formation.<sup>50</sup>

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<sup>46</sup> John A.C. Conybeare, *Entitlements and Deservingness: Perspectives on International Distributive Justice*, 14 *Review of International Political Economy*, Taylor & Francis, 401 (August, 2007)

<sup>47</sup> *Samatha v. State of A.P. & Ors.* AIR 1997 SC 3297, *Welfare Assn. A.R.P., Maharashtra and Anr. v. Ranjit P. Gobil and Ors.*, AIR 2003 SC 1266

<sup>48</sup> Thomas M. Porsano, *Distributive Justice & Tax Policy*, 59 *The Accounting Review*, 623 (October, 1984); *Mafatlal Industries Ltd. and Ors. v. UOI and Ors.*, (1997) 5 SCC 536

<sup>49</sup> *Akshil Bharatiya Soshit Karamchari Sangh v. UOI & Ors.*, AIR 1981 SC 298

<sup>50</sup> 47 Karen S. Cook and Karen A. Hegtvedt, *Distributive Justice, Equity & Equality*, 9 *Annual Review of Sociology*, 239 (1983)



## 4. CONCLUSION

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In his work *A Theory of Justice*, John Rawls used a social contract argument to show that justice, and especially distributive justice, is a form of fairness: an impartial distribution of goods. Rawls asks us to imagine ourselves behind a veil of ignorance. Instead, we should endorse Rawls's two principles of justice.<sup>51</sup> The principles of equity, equality, and social need are most relevant in the context of distributive justice, but might play a role in a variety of social justice issues. These principles all appeal to the notion that fair treatment is a matter of giving people what they deserve. It is not as though there is some single determined outcome reflecting them.<sup>52</sup> The attempt to pin down the exact modalities of a state of just distribution is a here and now exercise, essential enough, but transient. It is much more useful, as a long term position that one can adopt and maintain, to understand by just distribution the full reflection of the operative virtue of justice in its various forms in individual, community and governmental actions. In the same way, an ideal human life is best understood as the reflection in diversity of such criteria as one chooses to apply, say righteousness or genius. After all, human behaviour is the first target of moral assessment, with external facts and institutions a secondary, though essential, concern. Be it poverty, education, development, peace talks, every important aspect in today's world can be seen in light of Distributive Justice and the need today is to take significant steps to ensure the same.

Supremacy of Justice in India and has a wider connotation in the socio-legal sphere. It upholds the sanctity of the legal system in meting out justice to whoever knocks on its doors. 'Satyameva Jayate'- this one phrase highlights the essence of the visions and ideals of the judicial system in India. Therefore, we must not allow ourselves to be diverted by the declaration that what we should have in India is not just equality of treatment or even equality of opportunity, but equality of result. The access to justice movement recognises the structural inequalities in our society and seeks to implement policies that will assist the poor in achieving effective "equal" access to the law.

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<sup>51</sup> Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all; Social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged, consistent with the just savings principle, and attached to offices and positions open to all under conditions of fair equality of opportunity

<sup>52</sup> <http://docs.manupatra.in/newslines/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf>

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8. <http://docs.manupatra.in/newslines/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf>
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10. Any change in which the gains of some are more than sufficient to compensate any and all losses of others, even if the prescribed compensation does not actually occur.
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