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"Ideas of justice onthe lens of Indian point of viewpoint"

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Abstract
Indian Constitution provides Justice, Liberty, Equality, Integrity and Dignity. Indian Constitution talks about 'Equality before Law' and 'Right to live with dignity' under Articles 14 & 21 respectively, which are soul of Governance of Constitution;Indian Constitution cannot be said to be based on one theory, rather, it is a resultant phenomenon of all the jurisprudential theories.
Keywords- Justice, Constitution, Rawls, Civil Justice, Good, Evil

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I. Introduction

Justice is defined in terms of Moral IdeasThere is wide divergence in the prevalent notions of justice. Philosophers like Plato[1] and Aristotle[2] regard justice as a supreme virtue, the source of all others and encompassing within itself the whole of morality. For Kant[3] and Rawls[4] justice is a very important aspect of human existence, the first virtue of society. Hume and Marx and Engels denigrate the concept of justice; and for them it is unnecessary if not entirely irrelevant. Nonetheless, the very charge of inadequacy or redundance or superfluity against justice presupposes its meaningfulness and worth otherwise, all the charges would be irrelevant.As per HLA Hart, justice is far more complicated because of the shifting standard of relevant resemblance between different cases incorporated in it, is also varies with the type of subject to which it is applied.

Part- 1
"Origin & Historical Development of the concept of Justice"

The concept of justice has generated serious controversies in the realm of political philosophy because of the complexities and intricacies involved within the concept itself. Indeed, among all the evocative ideas, that of justice appears to be one of the most eminent and the most hopelessly confused.[5]

The Ancient Greek and Hindu Approach of Justice

In ancient Greek and Hindu approach, the justice concerned with functioning of duties, not with notion of rights. Both Plato and Aristotle hold the state to be prior to the individual. Plato, in particular, identifies justice with the performance of duties befitting one's class. Plato's theory of justice which sought top re scribed duties of different citizens and required them to develop virtues befitting those duties. For Plato,justice is the highest virtue of society.He believed that the"principle of division of labour, that each man and more specially each class, should do that work, for which he is fitted and no other. (is). justice"[6]. Aristotle does not deal with justice in the'Politics' directly. Aristotle believes that the last end of the state is to provide the good life to its citizen. India gained independence in 1947. Social justice was a critical element in the Indian independence movement. National leaders such as Gandhi were able to inculcate awareness of social justice through the use of non- violence and civil disobedience. Since independence, India has become a rapidly developing country with a diverse economy. Although economic liberalization po licies over the last few decades helped spur the country's growth, seri- ous inequities remain deeply entrenched. Some notable examples include poverty, discrimination towards women, and inadequate access to education.

[1]See Plato, 1937
[2]Aristotle, 1966
[3]Immanuel Kant, 1974
[4]John Rawls, 1972

[5] See Perelman, 1963
[6]A.D. Lindsay; Introduction;*The Republic of Plato,p.XXXV*

Traditionally, education in India has been elitist and has served mostly males from certain classes. However, in 1986, under the National Policy on Education, India gained independence in 1947. Social justice was a critical element in the Indian independence movement. National leaders such as Gandhi were able to inculcate awareness of social justice through the use of non- violence and civil disobedience. Since independence, India has become a rapidly developing country with a diverse economy. Although economic liberalization policies over the last few decades helped spur the country's growth, seri- ous inequities remain deeply entrenched. Some notable examples include poverty, discrimination towards women, and inadequate access to education. Traditionally, education in India has been elitist and has served mostly males from certain classes. However, in 1986, under the National Policy on Education,

Historical overview

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Rule of Justice in Ancient India

From the Vedic period onward, the perennial attitude of Indian culture has been justice and righteousness. Justice, in the Indian context, is a humanexpression of a wider universal principle of nature and if man was entirelytrue to nature; his actions would be spontaneously just. Men in three majorguises experience Justice, in the sense of a distributive equity, as moral justice, social justice, and legal justice. Each of these forms of justice is viewed as a particularization of the general principle of the universe seen asa total organism. From the broadest to narrowest conception, then, ancientIndian views on justice are inextricably bound up with a sense of economy(Wayman 1970). Human institutions of justice the state, law, participate in this overall economy; but the belief has remained strong inIndia through the centuries that nature, itself, is the ultimate and finalarbiter of justice.

Buddha (623-543 B.C.)-Law and justice are clearly and closely inter linked in Buddhas concept of justice. The administration of legal justice and infliction of punishment was performed on the basis of Varna system. Manu smriti considers that it is only natural to take Varna into account in the administration of legal justice. Manu indicates that the king, The main institutions and structures of inequality in the context of ancient India were the patriarchal family and household, *varna* (the four-fold classification of Brahmin, Kshatriya, Vaishya and Shudra), *jati* (caste), untouchability and slavery.

Institution of Lawyers Smritis do not refer to the existence of any separate institution of lawyers in the ancient Hindu judicial system. According to Kane, "This does not preclude the idea that persons well-versed in the law of the Smritis and the procedure of the courts were appointed to represent a party and place his case before the Court.

Judicial procedure The judicial procedure was very elaborate. According to Brihaspati a suit or trial (Vyavahara) consisted of four parts: (a) the plaint (poorvapaksha); (b) the reply (uttar); (c) the trial and investigation of dispute by the Court (kriyaa) and (d) the verdict or decision (nirnaya)[7].

The Muslim Period

The Muslim period marks the beginning of a new era in the legal history of India. The Arabs were the first Muslims who came to India in the eighth century and settled down in the Malabar Coast and in Sind but never penetrated further. They conquered the Persians, Afghans and Turks and converted them to Islam; and it was the Afghans and Turks who were let loose on India. Though the Prophet prohibited unprovoked attacks, the Ghaznis and Ghoris who were animated by the lust for gold and pretended zeal for Islam had an easy victory over the Hindus who were enfeebled by their comforts, luxuries and internal disturbances.

The Mughal of Period in India

The Mughal period begins with the victory of Babar in 1526 over the last Lodi Sultan of Delhi. His son, Humayun, though lost his kingdom to Sher Shah in 1540, regained it after defeating the descendants of Sher Shah in July 1555. The Mughal Empire (Sultanate-e-Mughaliah) was administered on the basis of the same political divisions as existed during the reign of Sher Shah. For the purposes of civil administration, the whole empire was divided into the Imperial Capital, Provinces (Subahs), districts (Sakars), Parganas and villages. Just

[7]S.C. Banerjee, *Dharma Sutras:A Study in their Origin and Development*, 99-108 (Purthi Pustak, Calcutta, 1962)

like the Sultans of Delhi, the Mughal Emperors were also absolute monarchs and the Supreme authority in which the entire executive, legislative, judicial and military power resided.

The British Period

The English people came to India in 1601 as a "body of trading merchants". On 31st December, 1600, Queen Elizabeth I granted a Charter to the Company which incorporated the East India Company to trade into and from the East Indies.

Enactment of various Charters such as Charter of 1600, Charter of 1609 [8],Charter of 1661, Charter of 1683[9], Charter of 1686, Charter of 1698.

Administration of Justice in Calcutta- The English Company's settlement at Calcutta was quite different from that of Madras and Bombay. In 1698, Prince Azim-UshShan, Subedar of Bengal and grandson of the emperor Aurangzeb, granted Zamindari rights of three villages-Calcutta, Sutanti and Govindpur to the English Company.[10]

Courts In Bengal-To tackle the problems and to remove corruption from the administration of Justice, Warren Hastings was transferred from Madras to the Governorship of Bengal in 1772. Firstly, he tried to remove all the evils which were the greatest obstacles in the proper collection of the revenue of Bengal, Bihar and Orissa. He replaced the office of Naib-Diwan by British Agency for collection of revenue, farms were let for a fixed term, revenue supervisors were designated as collectors and appointed a Committee of Circuit to find out defects in the administration of justice and to prepare a proper plan on which the whole civil and criminal justice was to be based.[11]

The Post-Independence Period- The independence of India fundamentally made it "welfare state", ensuring social, political and economic justice to its teeming millions. The advent of freedom and promulgation of constitution have made drastic changes in the administration of justice necessitating new judicial approach. The "ultimate goal" of the constitutional instrumentalities is to serve the people of India upholding the letter and spirit of the constitution. The goal of the constitution of India is "to secure to all citizens - Justice, Liberty, Equality and Fraternity".

The constitutional instrumentalities are bound to uphold these constitutional values and principles of democracy. The hopes of teeming millions are focused on the Constitution to protect their life, liberty, property and all the rights, which the constitution of India and laws of land grant and guarantee.

Part-2

"The Idea of International Justice in Rawls's Law of Peoples"

Rawls's Conception of Justice as Fairness Rawls's conception of justice as fairness is directed at working out a just arrangement of the major political, social and economic institutions of a liberal society. Rawls refers to the arrangements of these institutions as the basic structure of a society. While explaining the distinctiveness of the basic structure, Rawls states that "the basic structure is the location of justice because these institutions distribute the main benefits and burdens of social life"[12].Rawls's focus is mainly on the idea of social or redistributive justice. As such, the basic structure is the focus of any principles of social justice whereby social justice is understood as the redistribution of benefits and burdens which arise out of social conflict and cooperation. It is important to explain Rawls's idea of the citizen, or the conception of the self. As mentioned in the first chapter of this study, any theory of justice necessarily begins with a conception of the self and the other, and for Rawls, the citizen encapsulates this conception. A citizen, for Rawls, is one who is free – being entitled to make claims on social institutions in her own right as well as being responsible for planning their own lives; equal – by virtue of having the capacities to participate in social cooperation with an equal political status; reasonable and rational – being endowed with the capacity to abide by fair terms of cooperation, even at the expense of their own interest, provided that others are also willing to do so. It is this conception of the self which lies at the foundation of Rawls's theory of justice. Principles of justice, which are "to govern the assignment of rights and duties and to regulate the distribution of social and economic 79 advantages" should be understood as what would emerge as a hypothetical contract or agreement that would be arrived at by people ignorant of particular aspects of their own beliefs and circumstances. [13] Rawls's 'general conception of justice' consists of one central idea: "all social primary goods – liberty and opportunity, income and wealth, and the

[8]J.W. Kaye, *History of Administration of the East India Company,* (1853), 66 (London, 1953)

[9]Keith. *Constitutional History of First British Empire,* 26-32 (Clarende, 1930)

[10]W.K. Firminger, *Affairs of the East India Company.* Report V, Volume I, Chapter IV, (B.R. Publishing, 1812)

[11]Hastings to Josias Duprea, 6lh January. 1773. Glieg, *Memories of the life of Warren Hastings.* Volume 1, 268 (Richard Bentley. 1841).

[12]John Rawls, *A Theory of Justice,* pp.6-7

[13]John Rawls, *A Theory of Justice,* p. 61

bases 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[14].

Exploring the Idea of International Justice

The Law of Peoples Having worked out a theory of justice for a self-contained liberal society in A Theory of Justice Rawls goes on to extend his approach to international relations in his work The Law of Peoples. The Law of Peoples represents Rawls's reflections on how reasonable citizens and people might live together peacefully in a just world. Rawls published this argument first in 1993 as a short article[15]. The fundamental aim of The Law of Peoples is to examine how the content of a theory of international justice "might be developed out of a liberal idea of justice similar to, but more general than, the idea of 'justice as fairness'".[16]By the law of peoples, Rawls makes reference to "a political conception of right and justice that applies to the principles and norms of international law and practice."Rawls uses the term "Society of Peoples" to mean all those people who follow the ideals and principles of the Law of Peoples in their mutual relations. These people have their own internal governments, which may be constituted by liberal democratic or non-liberal but decent governments. While A Theory of Justice justified the establishment of **two principles of justice**, in The Law of Peoples, Rawls justifies eight principles, which are as follows: **1.** Peoples are free and independent, and their freedom and independence are to be respected by other peoples. **2.** Peoples are to observe treaties and undertakings. **3.** Peoples are equal and are parties to the agreements that bind them. **4.** Peoples are to observe a duty of non-intervention. **5.** Peoples have the right of self-defence but not right to instigate war for reasons other than self-defence. **6.** Peoples are to honour human rights. **7.** Peoples are to observe certain specified restrictions in the conduct of war. **8.** Peoples have a duty to assist other people's living under unfavourable conditions that prevent their having a just or decent political and social regime.[17]However, it is important to realize that the list of particular rights that must be secured is very short. It includes only the following: **a.** The right to life, by which he means the right to the means of subsistence and security; **b.** The right to liberty, which equates to freedom from slavery or forced occupation but also includes some liberty of conscience, enough to ensure freedom of religion and thought; **c.** The right to personal property; and **d.** The right to formal equality, by which he means that similar cases be treated similarly.

Part-3
"Exploring the Concepts of Justice in India Modern Prospective"

Justice is the profound principle of morality and philosophy. The word **'Justice'** is derived from the Latin term 'justitia,[18] meaning righteousness and equity. Justice in its truest form treats equals equally and unequals unequally, as quoted by Aristotle. The Constitution of India guarantees its citizen 'social, economic and political' justice[19].

Justice is a subjective concept which is open to interpretation. What justice means to a set of people might be the opposite for the others. It is dynamic in nature. While taking a bird's eye view, we can categorize 'justice' into these subsets: -

1. Formalistic Justice System: This school of thought treats society impartially and without any stratification. The concept of 'Rule of Law' is one such example, under which "no one is above the law and law stands supreme among all". Although it epitomizes equality, but fails to justify the criteria.

2. Substantive Justice System: In opposition to formalistic justice system, substantive justice system focuses on the outcome of the law. This approach towards justice focuses primarily on the end result. It looks for the practicality in law rather than forming the law ideally.

3. Natural Justice System: This school of thought derives its legitimacy from nature itself. According to 'Natural Law', every individual has been bestowed with rights derived from nature and reason. This system of justice strives for 'universalism' and ignores the omnipresent dynamism in the world. According to natural law theorists, the world is black and white, divided in equal distinction and should be treated in pure spirits of law.

Justice system in India- India is a liberal democracy which emphasizes over its citizens' rights. The constitution of India provides for free legal aid and fundamental right to constitutional remedies in the **Articles**

[14]John Rawls, *A Theory of Justice*, p. 303
[15]See John Rawls, "*The Law of Peoples*"
[16]John Rawls, *The Law of Peoples*, p.3
[17]John Rawls, *The Law of Peoples*, p.37

[18] Available at https://dictionary.cambridge.org/dictionary/english/justice

[19]Available at https://plato.stanford.edu/entries/justice-virtue

39A and 32 respectively[20]. India lacks the ability to uphold the virtue of righteousness when it comes to delivering unbiased and speedy delivery of justice without any discrepancies.

Justice Delayed is Justice Denied: India has a vast and diverse population. With such a big population comes the gargantuan task of managing the legal affairs of everyone efficiently. There are only 672 district courts and 25 high courts in the country to manage the population of 1.3 billion people. The average pendency in the courts is 1,513.996 cases per day. The number of pending cases in Indian courts is 10,656,788. The average time taken for disposal of a case is 782.853 days[21].

Police Encounters: Instant Delivery of Justice or Gross violation of Human Rights--

When we talk about the concept of justice, the subjectivity of this topic directly takes us to the matter of instant justice which compels the application of impulse over reasonableness. Does "a life for a life" uphold the virtue of justice. As rightly quoted by Mahatma Gandhi, "An eye for an eye will leave the whole world blind".[22]Explains the essence of the core issue that this article is going to discuss further. Encounters refer to the extrajudicial killings of the alleged criminals by the police or the armed forces. The basic notion ascribed to this practice is the instant delivery of justice but its antagonists staunchly oppose the premise of this system and term it as a violation of human rights and natural justice.

Hyderabad Police Encounter-Huge protests were laid out throughout the country after the Hyderabad rape case in November 2019. Four men were alleged for killing and raping a young vet. There was a huge outcry for speedy delivery of justice. This led to a huge movement of seeking relief for the victim and demanding death penalty for the accused. A few weeks later, the four suspects were killed in apparent police encounter with little or no police injuries. On the other hand, the dissenters were of theview that the act was completely against the principles of natural justice. Every accused has a right to get a fair trial before a competent court. In this case, the four accused were proven guilty without even being heard. The core of this issue was public sentiment but there is no parameter which decides the soundness of those sentiments. If we give such a power to the armed forces or the police administration, it can't be denied that they would have an authority of power. This authority would further demolish the basic tenets of democracy. India being the largest democracy of the world could not allow such violations of human rights and constitutionalism. Encounters are justified only as a matter of self-defence. It must never be allowed to be influenced by public outcry, political manifestation, personal vendetta, etc. Similarly, The Vikas Dubey Encounter in Mumbai, was applauded by the people on the basis of curbing the local crime. But if we handle the authority of administering justice to the police then what is the point of having an independent judiciary in India. Police is also known as the "law enforcement agency

Challenges Lying Ahead in Front of Indian judiciary--India is the largest democracy with the longest constitution of the world. The constitution of India gives the framework of the judiciary and prescribes its duties. Constitution is the fundamental law of the land. Judiciary has the task of interpreting it in such a way that it benefits the society. The Constitution of India is an exhaustive document, and it is open to interpretation. It is upon the judiciary as to how they bring out its essence. The makers of the constitution were very far sighted and designed the constitution in such a way that it would be equally applicable in the future also. The Supreme Court of India had given many landmark judgements which gave new meaning to the constitutional values. For instance, **Kesha vananda Bharti vs Union of India**,[23] propounded the basic structure doctrine of the constitution. It postulated that the basic ethos of the constitution could not be amended by the legislature. But lately, the judiciary is mired between a number of issues catching the nation's attention. Some directly infringing the constitution while some demanding new elucidations. The recent judgements of **Shayara Bano vs The Union of India**[24]and **Navtej Singh Johar vs The Union of India[25]** upheld the respect of judiciary while the issues related to Citizenship Amendment Act, 2019 and Abrogation of Article 370, still lurks on the Supreme Court's door. On the other hand, the Sabarimala issue, despite upholding the rights of women to enter the temple, still lacks on the implementation. This shows that judiciary has varying respect in different dimensions of society.

Judiciary needs to establish uniformity throughout the nation to strengthen its presence and increase its effectiveness. People could not afford the expenses of lodging a case and fighting it. This issue has given rise to more crimes and an unsafe society. Judiciary need to address these issues before it's too late. A smooth functioning judiciary is needed for the smooth functioning of the society.

[20] Available at https://legislative.gov.in/sites/default/files/COI.pdf

[21]Available at https://kp.dakshindia.org/portal

[22]Available at https://www.bbc.co.uk/worldservice/learningenglish/movingwords/shortlist/gandhi.shtml

[23]*Kesha vananda Bharti vs Union of India,*

[24]*Shayara Bano vs The Union of India,* AIR 2017.

[25]*Navtej Singh Johar vs The Union of India,*

- **The Emergence and Growth of Other Mechanisms-**

Panchayati Raj-The village Panchayat has been the oldest administrative units in India. In ancient time, the villagers enjoyed perfect autonomy and were governed by Panchayat- A body of five leading men of the village. The Directive Principles of State Policy (Article 40) provide "The state shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government".

Lok Adalat's and Legal Aid Programmes-Lok Adalat's is a peculiar process of deciding disputes by negotiations via a benevolent middle agency. The Legal Services Authorities Act, 1987 has been passed to give legal status to Lok Adalat's.[26]This aimed at furthering the Constitutional objective enshrined under Article 39-A the slate has to promote justice on the basis of equal opportunity and to provide free legal aid by suitable legislation or schemes so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. It is rooted in our soil, nurtured and nourished by our culture, languages and -113- traditions, fosters and sharpened by our genius and quest for social justice, reinforced by history and heritage, it is not a mere copy of the English common law, though inspired and strengthened, guided and enriched by concepts and precepts of justice, equity and good conscience which are indeed the hallmark of the common law.[27]

Kinds of justice-

Preambular Classification masses, Justice V. R. Krishna Iye[28]quotes "The first task of the Constituent Assembly, Nehru told its member, is to free India through a new Constitution, feed the starving people, and to clothe the naked and to give every Indian the fullest opportunity to develop himself according to his capacity". "I shall endeavour to show", said Scarman expanding on the new dimensions of justice, "that there are in the contemporary world challenges, social, political and economic, which, if the system cannot meet, will destroy it. "As the saying is, we all want the earth. We all have a multiplicity of desires and demands which we seek to satisfy. The desires of each continually conflict with or overlap those of his neighbours. This dynamic role is in practice, lost in the dreary desert sands of the legal process. These are rooted in our democratic egalitarian social and political order and are basic and fundamental in Izl the governance of the country as expounded in Kesavanada Bharti.[29]

Natural Justice -Natural Justice occupies a prominent place in every legal system. The end of natural justice is to render everyone his due. The two main rules of natural justice which have been evolved through judicial process are**: 1.** No one shall be judge in his own cause (Nemo debet esse judex in propria sua cause) and **2.** No one is to be condemned unheard without his being made aware in good time of the case he has to meet (Audi Alteram Partem). The Donoughe Committee on Minister's Powers 1932 added a third principle that a party is entitled to know the reason for the decision on which it is based. These rules are applicable not only in a court of justice but also before an administrative tribunal or authority. Just as the principle of due process of law in USA guarantees to citizen protection against arbitrary action by executive and administrative action, the rule of natural justice in India provides legal foundation on which administrative procedure rest.

Procedural and Substantive- A demarcation is also there in laws as well as justice in terms of substance and procedure. The ultimate supremacy lies with the notion of substantial justice because even the procedural laws are meant tosubstantiate the justice in substance.Justice is accepted as having both substantive and procedural ramifications. The procedural justice embodies the basic procedure and spirit. Whereas the substantive justice contains provisions concerning social aid, assistance, benefits and facilities, concession, extra privileges and rights for the welfare of those who need or deserve some help which we describe as 'social justice'. The Constitution of India embodies this as is evident in the Preamble and Parts III and IV of the Constitution.

Legal Systems- The term 'system' is used to describe a complex situation or area of activity. According to Oxford dictionary.[30] The term 'system' means group of things or parts working together as a whole; orderly way of doing things. The legal scholars speak of the legal system and mean the entire conglomerate of concepts and processes with which they work. A 'legal system' refers to a more precise and scientific method of analysis and description of the complex structure and functioning of the parts and whole of the law. The complexity of modern life is one of the most obvious facts facing us. In the law, as in every other significant activity, there are just too many things happening at one and the same time for any simple handling of one facet to be effective; as many streams of action must be brought together simultaneously or in an orderly sequence the common description of administration as "getting it all together" is certainly apt. Getting everything together when it is

[26]Legal Services Authorities Act 1987, was enforced from 9th November 1995 in the country.
[27]*Byram Pestinji Garimala v. Union Bank of India*, /UR 1991 SC 2234 at 2243.
[28]V. R. Krishna Iyer, *Social Justice- Sunset or Dawn*, 62 (Eastern Book Company, 1993)
[29]*Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461
[30]*Oxford Advanced Learners' Dictionary,* 1305 (1989).

all so complex undoubtedly requires thinking and acting in the systematic fashion that is known as the systems approach.[31] Therefore the five complementary considerations must be kept in mind. 1. The total system objectives, 2. The environment of the system, 3. Its resources, 4. Components of the system, 5. The management of the system. A 'system', thus, may be defined as a set of elements becoming interrelated through pursuit of a goal. This common activity occurs along systematic lines on the basis of much input being combined to produce some outcome. A system in law would combine human elements with more material ones such as equipment to reach a goal i.e., the stability of society. Thus, we can say that a 'legal system' covers within its ambit the whole of the processes from the commission of a wrong to the final adjudication of the matter, the various resources in terms of infrastructure facilities, the various components involved in the whole i.e., litigant, lawyer, police, court and legislature, as well as the tactics and techniques of managing the whole affair.

Types In the course of centuries, most legal systems of the world have developed a series of rules to govern the Justice Delivery System.

Adversarial System The adversary system is a system that is fundamental to the court system as it is known in England, in Australia, and in the other British Dominions and colonies including India. Its basis is that each party has a full and fair opportunity of presenting his case to the court or tribunal that has to consider it. It is described as a contest in which both sides are trying to win a dispute before a passive and impartial judge.

Inquisitorial System The system is exemplified by the 18th and 19th century European Codes. The inquisitorial system envisages extensive pre-trial investigation and interrogation that is designed to ensure that no innocent person is brought to trial. In this procedure, the state is involved at two different stages; first, when a prosecutor, who is responsible for collecting the facts pertaining to the disputes submits a dossier to the judge and second, when an impartial and independent judge is actively involved in finding truth. Thus, the inquisitorial system is based on the presumption that truth can be discovered through an investigative procedure and the state is best equipped to carry out such investigation.

- **Distinction between the two systems-**

1. The ways of developing proof and argument are significantly different in the two systems, direct and cross-examination by lawyers under the adversarial or accusatorial system and judicial interrogation under the inquisitorial system. 2. Under the accusatorial system, the criminal defendant can waive the right to trial by pleading guilty. Such a practice appears, normal to Anglo-American lawyer. However, under inquisitorial system, all cases regardless of whether the accused confesses or not, most go to trial. 3. Each concept is endowed with different features according to which the discussion forces on criminal cases, civil procedure or the administration of justice in C 1 general.' For example, in the inquisitorial system, one finds feature such as career judiciary, preference for rigid rules and reliance on official documentation, whereas the adversarial system embraces the judges as decision makers, by giving full discretion in decision making and there is an attachment to oral evidence. 4 Under continental civil proceedings, judges are fully aware of the evidence from voluminous dossiers presented to them well before the trial begins and therefore their questioning of witnesses at the trial is merely designed to supplement or verify the facts what they have already from the dossiers. The disputing parties are weaker under this (inquisitorial) model:

Part-4
"Civil Justice in India"

In India the concept of civil justice is not new. It has existed since time immemorial. A large number of related provisions are found in Manu, who compiled the then existing justice system in India of thousands of years ago in his fourteen-volume work titled Manava Dharma Shastra.

Civil Justice System during the Ancient Period(until the Muslim Period) The history of the Indian judicial system goes back to the ancient time when Manu and Brihaspati gave Indians Dharma Shastras, Narada the Smritis, and Kautilya the Artshastra. The equivalent of modern "complaint" was called purvapaksha, and that of "written statement" uttar (or "reply" in modern civil procedure).

Civil Justice System during the Muslim Period The advent of Muslim rule in India began in the 12th century when Muhammad Gouri attacked India and occupied the throne at Delhi. In the beginning, the Muslim rulers were not very much interested in establishing a civil justice system in India.

Civil Justice System during the British Period (under the East India Company) The advent of British rule in the beginning of the 17th century ushered in a new era of civil justice in India. The British located themselves in the presidencies of Calcutta, Madras (now Tamil Nadu) and Bombay. From 1661 to 1726 laws based on equity, justice and good conscience in conformity with the laws of England were followed.

Courts and Judges Today There is a network of judicial courts in India. The Supreme Court is the highest independent court. The Supreme Court has (i) original, (ii) appellate and (iii) advisory jurisdiction. Under

[31]Blair J.Kolasu and Beradine Meyer, *Legal System*, 1844 (1978).

original jurisdiction, the Supreme Court decides disputes "between the Government of India and one or more states or between the Government of India and any state or states on one side and one or more states on the other or between two or more states.[32]However, under Art. 136 of the Constitution an individual can seek the special leave to appeal without such a certificate.

Scope of Civil Procedure Section 10 of the Code of Civil Procedure, 1908 (CPC) provides that the courts shall, except for the provisions otherwise provided, have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implicitly barred. A suit is of a civil nature if the principal question in the suit relates to the determination of a civil right.

Structure (Stages) of Civil Procedure There is a detailed procedure laid down for filing a civil case. If the procedure is not followed, then the registry has a right to dismiss the suit. First, the complaint, along with vakalatnama (a kind of power of attorney) and any necessary court fee, is filed. After the receipt of the complaint, notices are issued to the defendants for reply.

Appeal-An appeal is filed in the form prescribed, signed by the appellant, along with a true certified copy of the order.If the appeal is against a decree for payment of money, the court may require the appellant to deposit the disputed amount or furnish other security. A ground/ objection which has not been mentioned in the appeal cannot be taken up for arguments without the permission of the court.

Revision and Review.if such subordinate court appears to **(i**) have exercised a jurisdiction not bestowed on it by law or **(ii)** have failed to exercise a jurisdiction so vested or **(iii)** have acted in the exercise of its jurisdiction illegally or with material irregularity.

Fundamental Principles The fundamental principle of the Code of Civil Procedure is to consolidate and amend the laws relating to the procedure of the courts of civil jurisdiction1) substantive law from section 1 to section 158, and (2) procedural law in 51 Orders. procedure and indicate the mode in which jurisdiction created by the body of the Code has to be exercised.

Legal Aid. Art. 39A of the Indian Constitution enjoins the government to provide legal aid to poor persons. (i) the promotion of legal literacy and creation of legal awareness among weaker sections of the country; (ii) organization of legal aid camps; (iii) training of paralegals for the purpose of providing support to the legal aid programmes; (iv) setting up legal aid clinics in universities and law colleges; (v) public interest litigation; (vi) holding of Lok Adalat (people's court); (vii) enforcement of and support to voluntary organizations and social action groups by the state in operating legal aid programmes.

JurisdictionThe Indian legal system is based on the fundamental principle of ubi jus-ibi- remedium, which means "where there is a right, there is a remedy" has been adopted in the Indian legal system. It lays down that, subject to what is contained in sections 10, 11, 12, 13, 47, 66, 83, 84, 91, 92, 115 of the CPC, a civil court has jurisdiction to entertain a suit of a civil nature except when its cognizance is expressly barred or barred by necessary implication.

Role of JudgesA judge is the presiding officer of a civil court.[33]

Evidence is an integral part of the law of civil procedure in India. If the plaintiff wants to prove his case, he has to submit evidence in support of his claim. According to Order XVIII, rules 2 and 3 of the Code of Civil Procedure, the party having the right to begin states his case on the date fixed for the hearing of the suit and produces his evidence in support of the issues which he is bound to prove. Sections 101–114 of the Indian Evidence Act, 1972 deal with the burden of proof; section 102 of the Evidence Act, 1972

Summary Proceedings Order XXXVII of the Code of Civil Procedure provides summary procedure in respect of certain suits, such as suits based on negotiable instruments or where the plaintiff seeks to recover debt or a liquidated amount.

Institution of summary suit Order XXXVII, rules 2 and 3 provide the procedure of summary suits

Appeal from an original decreeunder section 96 of the CPC. Sections 96 to 99-A of the CPC and Order XLI deal with the provisions in respect of appeals from an original decree. Section 96 confers the right to appeal against every decree passed by any court exercising original jurisdiction.

Class action in the CPC. Order I, rule 8 of the CPC is quite clear so far as class actions are concerned. Such suits are called representative suits and are governed by Order I, rule 8 of the CPC,

Writ jurisdictionin writ jurisdiction, representative actions or actions brought in the public interest via public interest litigation (PIL) have gained much popularity and are widely used to the Supreme Court for the enforcement of fundamental rights under Art. 32 of the Constitution, or to the High Courts for the enforcementof fundamental rights or any other legal right under Art. 226 of the Constitution of India.

[32] Supreme Court of India, Jurisdiction of the Supreme Court (Dec. 20, 2016), available at http://www. supremecourtofindia.nic.in.

[33] Sec. 2(8) of the CPC, 1908.

Kinds of costs:(a) general costs (section 35, CPC); (b) miscellaneous costs (Order XX-A, CPC); (c) compensatory costs for false and vexatious claims (section 35-A, CPC); (d) costs for causing delay (section 35-B, CPC).

General costs Section 35, CPC deals with general costs. It aims to secure the litigant the expenses incurred by him in the litigation. Miscellaneous costs. Order XX-A, CPC empowers the court to award costs in respect of certain expenses incurred in giving notices.

Compensatory costs Section 35-A, CPC provides the provisions for compensatory costs. Under this section, if the court finds that litigation is inspired by vexatious motive or false claims, it can indemnify the aggrieved party. The maximum amount that can be awarded by the court is Rs.3,000.

Costs for causing delay Section 35-B, CPC is added by the Amendment Act of 1976. **1.** Order XI, rule 3 – cost of interrogatories. **2.** Order XII, rule 2 – costs of proving any document. **3.** Order XXI, rule 72(3) – cost of setting aside the sale where decree holder purchases property without the permission of the court. **4.** Order XXXII, rule 1(3) – costs relating to appointment of guardian ad liteum. **5.** Order XXXIII, rules 10, 11 and 16 – costs relating to suit by indigent persons. **6.** Order XXXV, rule 3 – costs relating to inter pleader suit.

Arbitration and ADR Arbitration Arbitration is one of the modes of ADR prescribed by section 89 of the CPC. Prior to incorporation of section 89 in the Code of Civil Procedure the parties to litigation, with mutual consent, could take recourse to arbitration as a mode of

ADR (alternative dispute resolution) systemADR is formulated with the purpose of reducing the burden of the already burdened system and render expeditious justice. Section 89 of the Code of Civil Procedure was introduced with the purpose of amicable, peaceful and mutual settlement between parties without intervention of the court. 1940 under section 49 and Schedule 10. Section 89 of the CPC came into being in its current form on account of the enforcement of the CPC Amendment Act, 1999 with effect from 1 July 2002.

- **"Justice According to Indian Constitution Law"**

Pre- constitution / Ancient India There were pre-constitutional laws and dharma prevailing in India during the ancient times or the time when the constitution was not brought into effect.

Post- Constitution ERA Constitution represents the will of the people in Part – III, Part – IV and preamble which holds the value of Justice.

Supremacy Of Constitution in India, the supremacy of constitution prevails. In a case, the court observed that "Under the Constitution of India the ultimate authority is given to courts to restrain all exercise of absolute and arbitrary powers. [34]Court has also prefaced its remarks as "The King is under no man but God and the Law"[35]

Rule Of Law Supreme Court has observed that no one in this country is above the law. It is 'Rule of Law' not 'Rule of Men'. Rule of Law permits no one to claim to be above the law and it means "be you ever so high, the law is above you".

Principle Of Natural Justice Principles of Natural Justice are considered as Basic Human Rights because they attempt to bring justice to parties naturally. Natural Justice is another name for common sense justice.

- **The principles of Natural Justice are: -**

Nemo Debet Esse Judex In Propria Causa meaning No person can be a judge in his own case. The first minimal requirement of the Natural Justice is that the Authority giving decisions must be impartial and acting fairly. The objective of this rule is to ensure public confidence in the impartiality of the adjudicatory process. Hearing must be by an impartial i.e., person who is neither directly nor indirectly interested in the case.[36]

Audi Aulteram Partem meaning Listen to the other side

This principle implies that person must be given a fair opportunity to defend himself. It means no one shall be condemned unheard. This rule is expressed through two maxims; i.e., Hear the other side, and No man should be condemned unheard (also known as rule of fair hearing).

- **Constitutional Imperatives (Constitutional Provisions Relating to the Principles of Natural Justice)**

Article – 14 This article guarantees – equality before law and equal protection of law within the territory of India. It binds the State to ensure that there is no discrimination being practiced in the nation. It includes the principle of Rule of Law.In **Delhi Transport Corporation v. DTC Mazdoor Union,** SC held that "The Audi alteram partem rule, in essence, enforce the equality clause in Art 14 and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act in question." Similarly in Maneka Gandhi v. Union of India SC opined that Art 14 is an authority for the proposition that the principles of natural justice.

[34]AIR1956 SC 231
[35]1990 SCR Supl. (3) 259
[36]1959 ILLJ 464 All

Article – 15(1) It prohibits discrimination on the grounds of religion, race, caste, gender or place of birth. It is duty of the state to make special provisions for women and children, and advancement of any social and educationally backward classes if citizens, and Schedule Caste & Schedule Tribe peoples.
Article – 21 No person shall be deprived of his right to life and personal liberty except according to the procedure established by law. In Maneka Gandhi v. Union of India,[37]1978 AIR 597, 1978 SCR (2) 621, SC by realizing the implications of Gopalan during 1975 emergency took 'U' turn and held that "Art 21 would no longer mean that law could prescribe some semblance of procedure however arbitrary or fanciful.
Article – 22 It gives special rights to arrested person in certain cases which within its ambit contain very valuable element if Natural Justice.
Article – 32 and 226 It collectively provides for Constitutional Remedies for violation of Fundamental Rights and Legal Rights. They can be exercised by issuing appropriate Writ, Direction and Orders.U.P.Warehousing Corporation V. Vijay Narain,[38] in this case Court heldthat Writ of certiorari or prohibition usually goes to a body which is bound to act fairly or according to natural justice and it fails to do so Under Art 32 and 226. In Manacle V. Dr. Premchand,[39] speaking for SC, Gagendragadkar, J., remarked: "it is obvious that pecuniary interest, however small it may be in the subject matter of matter of the proceedings, would wholly disqualify a member from acting as judge.

- **Constitutional Provision Relating to social Justice**

Article – 19 It states many Fundamental Rights for the citizens if country. Seven clauses of Article 19(1) guarantee the citizens seven different kinds of freedom.
Article – 23 and 24 It contemplates the Right against Exploitation. Article 24,particularly, prohibits employer from employing child of less than 14 years of age in any factory or mine or in any other Hazardous Employment.
Article – 38 State to secure a social order for the promotion of welfare of the people by effecting Social, Economic and Political Justice.
Article – 39A State shall secure the operation of Legal System promotes Justice in a basis of equal opportunity and Free Legal Aid be provided to ensure that opportunities of securing Justice are not denied to any citizen by reason of economic or other disabilities.
Article – 41 Right to work, to education and to public assistance in certain cases.
Article – 46 It emphasizes in the importance of the promotion of Educational and Economic Interests of SCs/STs and other weaker sections.The core of the commitment to Social Revolution lies I. Parts III and IV.[40]

II. Conclusion And Recommendation

Rawls' theory of justice as fairness involves a central contention that principles of justice essential to the structure of a constitutional democracy must be viewed as political in contrast to more comprehensive moral, philosophical or religious doctrines. The concept of justice is not its being true to an antecedent moral order and given to us, but it's being congruent with our self-understanding within the history of justice as political is not a mere modus vivendi, for it embodies an overlapping consensus that does have a moral basis. Critical reaction to Rawls has been that what is simply a consensus within a tradition of public discourse cannot afford an adequate criterion of moral justification, and that Rawls cannot define the moral basis for justice as fairness without some reference to a comprehensive theory of the good. But it will be argued that critics are missing what is central to Rawls' theory of moral justification as what he sees to be the outcome of a process of "wide reflective equilibrium" in which principles of justice initially given within a tradition are weighed against rival moral theories and in relation to scientific theories of human nature and society in order to establish what seems "most reasonable to us.

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[37]*Maneka Gandhi v. Union of India*,1978 AIR 597, 1978 SCR (2) 621

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