



REVIEWING the views

Justice: Price v. Value

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WHETHER justice is action as per the requirements of law? Dry words of law refers justice as judgment or verdict involved in the determination and discovery of rights and the assignment of rewards and punishments reflecting the proper functionality or due process of law. The word justice was once 'justitia' an old French word that descended from Latin to denote 'justness or righteousness and equity'. A similar word from the same Latin root was 'justus' meaning 'upright, and just'. In social sense, justice is a concept of moral rightness based on rationality, value, equity or fairness, natural law and state law, theology, and ethics along with the punishment or correction for the breach of the said issues. Questions of justice are questions about what people are due, but what that means in practice depends on context.

The basis of justice, according to Socrates, is that you do what is socially most beneficial or what you do best. His disciple Plato identifying justice with happiness maintains that a just man is happy and an unjust man unhappy adding justice is not the right of the stronger but the effective harmony of the whole. Aristotle stands for expressing justice as 'a virtue of the soul distributing that which each person deserved.'

In the words of Martin Luther King justice is opposite to injustice focusing injustice anywhere is a threat to justice everywhere. Nelson Mandela regards justice as a duty to uphold dignity of all mankind and also to cry out united against discrimination and injustice as opposed to the basis of justice. Matma Gandhi terms justice as peace which will not come out of a clash of arms but out of unity and non violence lived and done by unarmed nations in the face of odds. Justice is fairness in accordance with John Rawls relying on "just society" founded on liberty and equality. Justice is a value in line with words of Amartya Sen as he thinks that 'just society' is a vague concept as a society may be more just' in a comparative approach. In essence, justice is not one dimensional but a multidimensional approaches varying on contexts and situations.

Justice: Price vs. Value

Theories of justice are perhaps the good sources of thought provoking discourses and sometimes of hectic debate leading to a constructive criticism, philosophical controversy, confrontation, and intellectual tussle among the philosophers and sometimes among the laymen as well. John Rawls' "A Theory of Justice" is the most dominant theory in the 20th century. This theory is familiar as "social contract" between the citizenry and the state.

Rawls in his theory begins with the statement that "justice is fairness" which the "first virtue of social institution" meaning that a "just society" is well structured coupled with his principles of justice viz. "liberty and equal-

ity". A "just society" is produced through "perfectly just state institutions and social arrangements and the right behaviour" of the citizens. Central to his theory of "justice as fairness" is the outcome of the concepts of liberty and equality from behind what he terms a "veil of ignorance". Rawls's veil of ignorance is a component of the way people can construct society. He refers to an "original position" in which a person is attempting to determine a fair arrangement for society without any preconceived notions or prejudices.

According to him justice can be thought of as distinct from and more fundamental than benevolence, charity, mercy, generosity or compassion. He openly acknowledges that the world's poor have no place in his theory of justice. So, here justice is a product of social contract to be gained after being free and equal resembling first deserve then desire. Like Thomas Hobbes, John Locke, Immanuel Kant, John Rawls is an exponent of 'social contract' theory of justice reflecting status quo, capitalism, elitism and liberal egalitarianism. Rawls published this transcendental and monolithic theory of justice in 1971 and revised in 1975 and 1999. In his revised theory he answered the critiques turning into a more liberal focusing on "political liberalism" and concerns of global justice.

On the other hand, distinguished scholar Amartya Sen's "The Idea of Justice" is a recently developed "social choice theory of justice" where he brands justice as a "social value" based on diverging ideals and philosophies. Sen has also exemplified the divergent views of justice with the example of three children and a flute. Anne, Bob and Carla fight over a flute. Anne says the flute should be given to her because she is the only one who can play it; Bob says he should be handed to him as he is so poor and has no toys to play with. Carla says the flute is hers because she made it using her own labour.

Theorists of diverging schools of justice would have different views, Sen opines. The economic egalitarian who is committed to reducing social gaps might feel that Bob should get the flute because he is poor; the utilitarian hedonist will argue a bit but eventually settle for Anne because she will get the maximum pleasure as she can play the flute while the libertarian would say that Carla should get the flute because she has made it. What really enables us to settle the dispute between the three children is the value we affix to the pursuit of human fulfillment, removal of poverty, and the entitlement to enjoy the products of one's own labour. Who gets the flute depends on your philosophy of justice.

Sen who is a harsh critique of "A Theory of Justice" charges Rawls in a way that "just society" is a utopian term which is neither possible nor desirable rather a society may be "more" or "less" just. So, a comparative, result oriented, pluralistic and practical reasoning approach



can be an effective alternative model of justice lessening injustice and advancing justice irrespective of social class or status forwarded by Karl Marx, John Stuart Mill and Jeremy Bentham. Sen's gentle and polite deconstruction of Rawls is the distillation of his and his cohorts existing theories of justice. The synthesis of his theory reveals justice must be free from the domination of the will of majority and one that touches lives that people actually live and also it should not be of the few, by the few and for the few. According to him justice - a central feature of the traditional Indian perspective of "Naya" (Justice) and in contrast to "Niti" (Rules). The mainstream system of existing justice has taken us to a wrong direction. He advocates justice is not confined in a single theory and to any thumb rule rather justice depends on the clashing principles of social choice. He further points out those theories of justice that exclude, by definition, the poor or issues of global injustices only perpetuate injustice.

The concept of justice is not merely affixed to the proper functional parts of law in a just and perfect state under a social contract rather profusely attached to the diversifying social values. The longing for justice is human being's eternal longing for relief against the prevailing injustices in the entire globe searching amity, unity, harmony and truth exploring and avoiding clash and confrontation. To me, justice may not be paraphrased as the outcome of the clash of civilizations but may be rephrased as the aftermath of the alliance of civilizations. Justice is neither a destiny nor a destination rather it is a steady journey for the eternity, tranquility and bliss. Lastly, justice is the ray of hope, foundation of human rights, fabric of freedom, forgiveness and reconciliation to restore relationship between the creator and the created. Only multi dimensional approaches can put a barricade to injustice.

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Outgoing CJ Karim slated at farewell

Attorney General Mahubey Alam blamed outgoing Chief Justice Mohammad Fazlul Karim of violating the constitution by not administering oath to two high court judges appointed by the president. In a written statement, he said Justice Fazlul Karim has satisfied a section against the Liberation War through violating the constitution. The attorney general placed the statement while according farewell to Justice Fazlul Karim at court No-1 of the Appellate Division of the Supreme Court. The chief justice goes into retirement. -The Daily Star, September 30, 2010.

Makeshift court house to be built near Dhaka jail

The government will build a makeshift structure near Dhaka Central Jail to house a special court for trial of two criminal cases filed for the BDR headquarters carnage in the capital last year. It took this decision recently considering the record number of accused -- 824-- in the cases, and gravity of the offences, official sources said. The home ministry has already asked the Public Works Department (PWD) to build the structure as soon as possible on the playground of Naba Kumar Institute. An official of the home ministry said it might take a couple of months to make the structure ready for trial of the two cases. -The Daily Star, September 30, 2010.

Culture of secrecy still big barrier to RTI law

One of the major challenges in implementing the Right to Information Act 2009 is the mindset of bureaucrats who are not yet open to the idea of providing information, said speakers at a roundtable. They pointed out that the RTI act overrides some outdated legislations, such as the Official Secrets Act 1923, Evidence Act 1872, Rules of Business 1996 and the Government Servants (Conduct) Rules 1979. However, the culture of secrecy that developed for the years still impedes the RTI. The speakers called for special attention to some loopholes in the act. -The Daily Star, September 29, 2010.

5-year plan to cover all fears

In an attempt to pull the plug on human rights violation in the country, the National Human Rights Commission is set to announce a five-year strategic plan. The plan will accumulate commission's mission and vision as well as a roadmap of its activities to end violation of human rights in the areas including repression against women and children, extra judicial killings and violation of rights of ethnic minority groups. "A guideline will be integrated to the comprehensive plan to address all the fundamental issues concerning human rights," the NHRC Chairman Prof Mizanur Rahman told The Daily Star. Eminent human rights consultant and former chief of the National Human Rights Commission in New Zealand, Peter Hosking is assisting the commission to prepare the plan. -The Daily Star, September 29, 2010.

BSF says only criminals killed

Indian Border Security Force (BSF) Director General Raman Srivastava said yesterday people killed by BSF personnel in the bordering areas were 'criminals', and almost half of them were Indian nationals. "All these people are dying inside the Indian territory not in Bangladesh territory," he said. They move across the border in various ways at dead of night with certain motives such as smuggling. And BSF troops open fire without finding any alternative. Srivastava added. The BSF chief made the remarks at a press briefing on conclusion of the six-day BDR-BSF conference at the Bangladesh Rifles headquarters at Pikhana in the capital. BDR Director General Maj Gen Md Rafiqul Islam however told the press briefing that they protested frequent shooting and killing of unarmed Bangladeshi people by BSF men. -The Daily Star, September 28, 2010.

EC ready to challenge HC stay order

The Election Commission is making preparations to begin legal battle against the High Court's order that stayed for six months its gazette notification, declaring Awami League leader Mohiuddin Khan Alamgir's seat in parliament vacant. The lawmaker joined the parliament sitting, the day after obtaining the HC's stay order. "We are waiting for the certified copy of the court's rule. Our lawyers will respond to it," Election Commissioner Muhammad Sohel Hussein told reporters after an EC meeting at the commission secretariat. The meeting discussed the next course of action to this end. -The Daily Star, September 28, 2010.

Frauds used court to speed up recruitment

The government was forced to hastily appoint the 190 fake staff of the Mujibnagar government as they filed contempt of court petitions against the government for making delays in appointing them. They filed writ petitions with the High Court placing forged documents and asked to be absorbed into government service since they were staff of the Mujibnagar government, the enquiry conducted by the law ministry revealed. The petitions were filed between 2003 and 2005. According to the findings of the probe body, the government, while trying to avert the contempt proceedings against it, could not find the time to examine the authenticity of their claim that they served in the Mujibnagar government in exile during the Liberation War. -The Daily Star, September 27, 2010.

Court even can't review deals

A proposed legislation allowing the government to quickly award energy sector contracts on unsolicited negotiation basis precludes the court's jurisdiction to review actions done under this law. "All acts done or purported to have been done, actions taken or orders made under this law shall not be called in question in any court," says a provision of the bill placed in parliament. The proposed legislation styled "Power and Energy Fast Supply Enhancement (Special Provision) Act, 2010" would empower the government with sweeping authority to take and implement any projects for quick generation, distribution and marketing of power and gas for next two years. A number of legal experts however observe it cannot oust the jurisdiction of the apex court to look into allegations of misuse of power. -The Daily Star, September 27, 2010.

UK goes after cyberstalking

A new survey has been launched in an effort to find out the true level of cyberstalking in the UK. It comes a day after the Crown Prosecution Service (CPS) unveiled new guidance to prosecutors and promised to get tough on cyberstalkers. More than one million women and 900,000 men are stalked in the UK every year, according to the British Crime Survey. But until now no research has been done to find out how many people are stalked or harassed online. On Friday the Electronic Communication Harassment Observation (Echo) survey, commissioned by the charity Network for Surviving Stalking, was launched by researchers at the University of Bedfordshire. -The Daily Star, September 26, 2010.

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LAW lexicon

- Deficient** - Incomplete; defective; not sufficient in quantity or force.
- ***
- Defunct** - A corporation no longer operative; having ceased to exist.
- ***
- Deliberation** - The jury's decision-making process after hearing the evidence and closing arguments and being given the court's instructions.
- ***
- Delinquency** - The commission of an illegal act by a juvenile.
- ***
- Demurrer** - A pleading filed by the defendant that the complaint as filed is not sufficient to require an answer.
- ***
- Dependent** - One who derives existence and support from another.
- ***
- Deposition** - Testimony of a witness or a party taken under oath outside the courtroom, the transcript of which becomes a part of the court's file.
- ***
- Digest** - An index or compilation of abstracts of reported cases into one, set forth under proper law topic headings or titles and usually in alphabetical arrangement.
- ***
- Direct evidence** - Proof of facts by witnesses who saw acts done or heard words spoken.
- ***
- Direct examination** - The first questioning of witnesses by the party on whose behalf they are called.
- ***
- Deficient** - Incomplete; defective; not sufficient in quantity or force.
- ***
- Disbarment** - Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law.
- ***
- Discharge** - The name given to the bankruptcy court's formal discharge of a debtor's debts. In probate, the release of the estate's representative from fiduciary responsibility.
- ***
- Disclaimer** - To refuse a gift made in a will.
- ***
- Discovery** - The name given pretrial devices for obtaining facts and information about the case.
- ***
- Dismissal** - The termination of a lawsuit.
- ***
- Directed verdict** - In a case in which the plaintiff has failed to present on the facts of his case proper evidence for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it.
- ***
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Source: Jurist International.

LAW news

Support domestic war crimes trials in the former Yugoslavia

THE Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) on September 28, 2010 officially launched a major regional project aimed at strengthening the capacity of judiciaries to handle



war crimes cases. The four-million euro War Crimes Justice Project is funded by the European Union and carried out in partnership with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the United Nations Interregional Crime and Justice Research Institute, as well as OSCE

field operations in Belgrade, Podgorica, Pristina, Sarajevo, Skopje, and Zagreb. "This project is a key element in the transfer of responsibility for war crimes cases from the ICTY to national judiciaries. It is essentially about national ownership and capacity building - also in the

working together with our partners in the region and elsewhere to help that process." The project focuses on transferring knowledge and materials from the Tribunal to legal professionals in national jurisdictions. The purpose is to address identified gaps in the professional capacities of practitioners and their resources in a manner that is both sustainable and appropriate in the local legal context.

The launch was followed by a meeting of ICTY judges with their colleagues from national jurisdictions handling war crimes cases to discuss common concerns and exchange views. Such peer-to-peer meetings form a key component of the project.

A wide range of other regional and national activities designed to facilitate the professional development of legal professionals working on war crimes cases, including defence lawyers, are planned throughout the project. Additional project activities include transcribing ICTY proceedings into local languages and translating the Tribunal's Appeals Chamber Case Law Research Tool for use by regional justice actors.

The War Crimes Justice Project will also develop, in co-operation with national judicial training institutions, curricula on international criminal and humanitarian law and a manual for defence lawyers, as well as various research and analysis tools. In addition, the project funds support staff in domestic judicial institutions to bolster capacity in areas such as prosecutorial analysis and legal research.

Source: The Organization for Security and Co-operation in Europe (OSCE)