

**Lecture by Justice RituRaj Awasthi,
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“The Idea of Justice after 75 years of Independence”

The preamble of our Constitution begins with the words -

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens:

JUSTICE, social, economic and political.....

So the very opening lines in the Preamble of our great Constitution lay down one of the most significant purposes of our Constitution, JUSTICE.

A very good evening to all the esteemed guests.

Mr. Guru Krishna Kumar, Senior Advocate, Guest of Honour in today's function.

Today we discuss a very interesting topic- The Idea of Justice after 75 years of Independence.

All of us often wonder, what is Justice? What is this wonderful notion? And what is the concept of justice in today's time?

The concept of justice is as old as civilization and society. It is deeply ingrained in the roots of our Indian Civilization. The word 'Justice' finds its roots in the Latin term 'JUSTITIA' which signifies righteousness or equity. It is also derived from the French word 'JOSTISE' which means uprightness, equity, vindication of right, administration of law.

The idea of justice is most frequently linked to the underlying presumption that justice is synonymous with the idea of equal rights and opportunities and to get fair treatment. Justice is the quality that ensures that each person receives their rightful compensation in opposed to any violation or harm. Justice means to give each and every person what they deserve. Justice means the standard of rightfulness, by standard of rightfulness one means to say that the minimum threshold should be applicable of what will amount to right or wrong. 'Justice can also be understood as the correct application of law, as opposed to arbitrariness'.

A society cannot exist without the presence of justice which is one of the most important pillars of any nation. Justice can be

attained in the society only by correct interpretation and implementation of Laws.

The perception of the concept of justice may change over time in every society. This can lead to differences in social and physical systems. My aim today is to focus on philosophical and social interpretation of justice in India and the changes in the definition of justice that have taken place in this society during different periods of time and what Justice means in today's date.

The idea of justice is so ancient that everything has been said about it and at the same time, it is so modern that it constitutes an ever-changing context of contemporary society. From this perspective, we may say that justice has a traditional meaning and has also acquired a more technical and complex meaning in modern times. Traditionally, justice was seen as a moral virtue of character as well as an important and desirable attribute that a political society requires. For Plato, justice is "giving to each person his due". Justice in this sense involves the fair, equal, moral and impartial treatment of all. In a simple sense therefore,

justice traditionally means ensuring that fair results are produced and each person duly receives what he is entitled to.

When we look at the Modern view of justice in the context of a legal system, natural justice is built into the legal rules and their observance becomes compulsory in the realization of justice. Justice dispensed in accordance with such legal rules is legal justice. The Law determines what a person is entitled to and also lays down the circumstances in which he can stake his claim to such entitlement. A person so entitled or having a claim is said to be a right –holder. Another, who has a corresponding duty to recognize and respect the right of its holder, is referred to as the duty bearer. Where the law confers rights, justice is achieved when rights are enforced in accordance with the law. Where the right of another is not respected, it amounts to the violation of the right of the former. In case of a violation of his right, the right –holder would be caused an injustice. This means that for justice to be realized, the right –holder would require a remedy and this remedy is provided by the courts. Hence the existence of a remedy is crucial to the enjoyment of a right conferred by the law as without a remedy the enjoyment of the right becomes

meaningless. According to the modern view, justice is about translating the right into action.

Thus, we can say that the idea that justice as a moral obligation or a religious mandate in the ancient times got secularized with the passage of time in the modern period thereby emphasising the importance of access to justice in today's date.

When we talk about the Concept of Justice in India, we need to focus on two things. One is the traditional Indian (~~or the Hindu~~) view of Justice and second is the concept of Justice enshrined in the constitution. The concept of justice has also been incorporated into the spiritualist philosophy of Indian thought. To the best of my knowledge there is no single treatise on the subject of justice per se in traditional Indian literature; however, ideas related, directly or indirectly, to justice can be gleaned from the Indian scriptures and other philosophical and spiritual literature depicting Indian thought. The Dharmashastras, include some forms of justice under the rubric & "vyahar". The ancient concept finds justice as a recurring theme in aphorisms, codes in various texts, anecdotes and dialogues. One important feature of the traditional Indian idea

of justice that stands out is the predominance of religious code over legal code i.e., if there is a conflict between two legal codes, equity should supersede law which means that fairness and equity is given more importance over legality.

To understand the idea of justice in today's date, it is important to understand the concept of justice is enshrined in the preamble of Indian Constitution. The framers of Indian constitution were aware about the need of establishing justice in a country therefore they made sure that it is included in Indian constitution. Article 14, 15, 16 and 17 of the Indian constitution also reflect the idea of justice enshrined in the preamble of the constitution. All these articles are incorporated under part III of the constitution which gives fundamental rights to every citizen. Provisions relating to 'Equal Justice and Free Legal Aid' are enshrined under article 39A of the Indian constitution. Which give every citizen right to get free legal help from officers of the court. No one can be denied access to free legal aid. It is the duty of the State to secure that working of the legal system is based on justice, it should provide equal opportunity, and also, provide free legal aid, to ensure that any opportunity for

securing justice is not denied to any citizen due to his economic or other disabilities.

One of the important concepts of justice as enshrined in the constitution is the concept of Distributive justice. Distributive justice means fair distribution of resources among those who are in need of it. This has been described in Article 38 and 39 of Indian Constitution. Natural justice, economic justice, political justice, social justice, and legal justice are a few examples of the many diverse types of justice. Indian Constitution defines 3 types of justice:-

Social Justice

Economic Justice

Political justice

Social Justice

Social justice as a concept arose during industrial revolution of 19th century. Different definitions of social justice is provided by different institutions, for few it is fair and comprehensive distribution of goods among people for economic growth and for few its equality of status among individuals.

Social justice means greater good for larger number of people and un-equals should be treated equally. The apex court in the Kesavananda Bharati case held that social justice is part of Basic structure of the Indian Constitution.

Social justice means that equal social opportunities are available to every person for personal development of every person without any discrimination based on race, sex or caste.

No person should be deprived of social conditions necessary for development due to these differences. The concept of social justice is based on the practice of social equality. Social justice can only be enforced in a society where exploitation of man by a man is not present.

In the Case of S.R Bommai v. Union of India, the apex court held that social justice and judicial review are two basic features of the Indian constitution.

Economic Justice

Economic justice is somehow part of social justice itself; the Indian constitution visualizes socio-economic justice as incorporated under Directive principles of state policy.

Economic justice means providing economic opportunity, economic equality and removing economic disabilities. It is always implemented under the umbrella of Social Justice.

Economic justice means there should be economic equality among everyone in the society. There should not exist any inequality among individuals based on their economic status. No one should be deprived of any opportunity due to his/her economic status.

Economic status of any person should not be responsible for the lack of opportunities provided to him. Economic justice means eradication of poverty by adding on to national wealth and resources and distributing this wealth equally among everyone who contributes in its production.

Political Justice

Political Justice means a system free from political arbitrariness. There should be political fairness in the working of the government. Political status of any person should not give him any advantage. In *Raghunathrao Ganpatrao v. Union of India*, the Court attempted to provide a meaning to the term political justice and observed thus: “96. Political justice relates to the principle of rights of the people, i.e., right to universal suffrage, right to democratic form of Government and right to participation in political affairs”

In *Canara Bank v. V.K. Awasthy*, the Court highlighted the fundamental premise of natural justice and observed thus: “9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law.”

Reference could also be had to *State Bank of Patiala & Ors. v. S.K. Sharma* wherein the Court had noted thus: “32. Justice

means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.”

All these types of justice are closely related to each other. One can't be obtained unless and until the other two are present. Social justice can be obtained only when economic and political justice is present. Indian Constitution under part III enforces all three types of justice by making provisions relating to equality under article 14 and 15. Also in 2019, 103rd constitutional amendment was enacted to ensure economic justice for everyone. The jurisprudence behind this amendment was implementation of economic justice.

The Role of Judiciary becomes all the more important in our constitution as judiciary is the protector of civil rights and it acts as a custodian of fundamental rights. It plays an important

role in enforcement of all three types of justice given under the Indian constitution.

Judiciary has played an important role in the establishment of justice in the country and to make the concept of justice given in preamble a reality. The approach of judiciary has been progressive in this regard and it has shown through its decisions that justice is an essential ingredient of a developed and law-abiding society. In cases like *Maneka Gandhi v. UOI* (right of liberty) the court has enforced the concept of social justice time and again.

The role of judiciary has also changed over the years and the courts have taken a more active role in realization of justice through judicial activism. In recent years, courts have risen in power across the world, and the Indian Supreme Court has rightly been pointed to as an example of this global trend. In many ways the Indian Court has become a court of good governance that sits in judgment over the rest of the Indian government. The Court has been able to expand its mandate as a result of the shortcomings (real, perceived, or feared) of India's representative institutions. The Indian Supreme Court's

institutional structure has also aided its rise and it helps explain why the Indian Courts have gained more influence than most other judiciaries in the world. The Indian Supreme Court has been called the most powerful court in the world for its wide jurisdiction, its expansive understanding of its own powers and the billion plus people under its authority.

The Doctrine of Basic Structure was propounded by the Indian Judiciary on 24th April 1973 in Keshavananda Bharati case to put a limitation on the amending powers of the Parliament so that the ‘basic structure of the basic law of the land’ cannot be amended in exercise of its ‘constituent power’ under the Constitution. What constitutes basic structure although not explicitly defined, most of its constituents can be derived from various Supreme Court judgements over the years like supremacy of the Constitution of India, Rule of law, judicial review, federalism, secularism, Fundamental rights, Article 32, balance between Fundamental Rights and Directive Principles of State Policy etc. The basic structure of our constitution is not static but dynamic and continuously evolving.

Judicial activism is seen as a success in liberalising access to justice and giving relief to disadvantaged groups because of the efforts of Justice VR Krishna Ayer and Justice PN Bhagwati. It is an effective tool for upholding the citizens' rights and implementing the constitutional principles when the executive and legislative fail to do so. The shift from locus standi to Public Interest Litigation has made the Indian Judicial process more participatory and democratic. Judicial activism therefore counters the opinion that the judiciary is a mere spectator.

The Higher Courts of the country innovatively interpreted the Constitution in a manner as to give effective rights to the citizens which are important in day-to-day life. The framers of constitution wished to empower citizens with certain rights which are levied as fundamental rights and they cannot be taken away by the government. In the years that followed, the judiciary, on its part innovatively interpreted the constitution and gave to us various rights like right to information, right to education, right to free legal aid, to include right to live with dignity in right to life.

But we must also understand that Judicial activism challenges the concept of separation of power of the three arms of the state. Many times, in the name of judicial activism, judiciary interferes in the administrative domain and ventures into judicial adventurism or overreach. This is when judicial restraint comes into picture. If judges are to freely decide and make laws of their choices, it would not only go against the principles of separation of powers but it would also result in chaos and uncertainty in the laws.

The five rights that shaped India to my understanding are –

1. Substantive equality – India is no stranger to discrimination on the basis of sex. At one point, Air Indian air hostesses were compulsorily retired at 35 years of age or on getting married or pregnant. The Supreme Court in the case of *Air India vs. Nargesh Meerza*, AIR 1981 SC 1829 ruled that this represented official arbitrariness and hostile prejudice.

Similarly, the criteria for promotion of women where they are benchmarked with men shall be same otherwise it is indirectly discriminatory and against substantive equality.

Another such example is the decision of the Supreme Court in the case of eligibility of women officers in short service commission in army for permanent commission. The persistence of the Supreme Court in this case, persuaded the Armed Forces to change their mindset and support equal status for women officers.

The second fundamental right shaped by the Higher Courts is the-

2. Right to creative expression - The Courts in India have developed the law and held that Article 19(1) (a) of the Constitution of India which states that, “all citizens shall have the right to freedom of speech and expression”, includes the right to creative expression. The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression. The Supreme Court has recently said that when the ability to portray art in any form is subject to extra constitutional authority, there is a grave danger that fundamental human freedoms will be imperilled by a cloud of opacity and arbitrary state

behaviour. A declaration attributed to Voltaire: “I despise what you say but will defend to the death your right to say it” encapsulates the essence of the protection of free speech. I may quote from the landmark judgment by Justice Dr DY Chandrachud, in the case of Indibility Creative Pvt Ltd versus Govt of West Bengal “The true purpose of art, as manifest in its myriad forms, is to question and provoke. Art in an elemental sense reflects a human urge to question the assumptions on which societal values may be founded. In questioning prevailing social values and popular cultures, every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticise. Satire and irony are willing allies of the quest to entertain while at the same time to lead to self-reflection.”

Third, is the -

3. Right to practice ones’ religion – The Right to freedom of religion is well described in the Articles 25, 26, 27 and 28 of Indian constitution. Religion is a matter of belief or

faith. The constitution of India recognizes the fact, how important religion is in the life of people of India and hence, provides for the right to freedom of religion under Articles 25 to Article 28. The Constitution of India envisages a secular model and provides that every person has the right and freedom to choose and practice his or her religion. In a number of cases, the Apex Court has held that secularism is the basic structure of the Constitution, the most important being the Kesavananda Bharati case.

Article 25 of the Constitution guarantees the “freedom of conscience and the right freely to profess, practise and propagate religion”. However, this right isn’t absolute and is subject to public order, morality, health, and other fundamental rights. While Article 25 itself does not read any other condition into the protection of this right, courts, over the years, have ruled that the right would protect only “essential religious practices” and not all religious practices. So, this test developed over the years by the Constitutional Courts decides which religious practices are protected under the Constitution.

Similarly, another essential right developed by the Apex Court is the-

4. Right to privacy – which is now a fundamental right that does not need to be separately articulated but can be derived from Articles 14, 19 and 21 of the Constitution of India. It is a natural right that subsists as an integral part to the right to life and liberty. It is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes. It protects an individual from the scrutiny of the State in their home, of their movements and over their reproductive choices, choice of partners, food habits, etc. Therefore, any action by the State that results in an infringement of the right to privacy is subject to judicial review. A nine-judge bench of the Supreme Court in the case of *Puttuswamy v. Union of India* declared the right to privacy as a fundamental right protected under Part III of the Constitution of India. In declaring that this right stems from the fundamental right to life and liberty, the Court's decision has far-reaching consequences. While primarily focused on the individual's right against the State for violations of their privacy, this landmark judgement has

repercussions across both State and non-State actors and lays down the foundation for the enactment of a comprehensive law on privacy. This decision has connected our privacy jurisprudence over the years with our international commitments and established our conformity with comparative laws around the world.

The Supreme Court has also recognized sexual integrity as an aspect of privacy and consensual sexual intercourse between two adults of the same was decriminalized.

And lastly and perhaps one of the most important is the-

5. Right to enforce fundamental rights – Our Constitution has also put in place a legal mechanism through which a person can enforce his fundamental rights where there is an existing or threatened infringement to the exercise of such rights. The law also stipulates the constitutional remedies that can be sought and given to an aggrieved applicant. The Supreme Court under article 32 and the High Courts under Article 226 of the Constitution have the power to issue suitable writs for the enforcement of a citizen's fundamental right. The fundamental rights created

under the Indian constitution are necessary for a democratic society and articles 32 and 226 are very vital provisions, as they give citizens the remedy for enforcement of the fundamental rights medium through which they can enforce their fundamental rights and seek appropriate remedies.

Thus, the Idea of Justice is intricately interlinked with our Constitution. Just like our ever evolving and dynamic Constitution, the Idea of Justice is also forever evolving. Rather, it is our evolving Idea of Justice that drives the evolution of our constitution. We can see examples of this in the landmark changes made in our laws in the recent times like decisions of the Supreme Court on Right to Privacy, Section 377 of IPC, Coparcenary rights of Daughter under Hindu Succession, Triple Talaq, access to internet as fundamental right, and many more.

Thus, we can see that the Idea of Justice has forever been evolving since the adoption of our Constitution. The most general way to understand the Idea of Justice can be to say that

Justice is the enforcement of the fundamental principles and values enshrined in our Constitution, Justice is when a person's fundamental rights are protected, Justice is when the State Machinery functions in accordance with the Constitutional principles and ethos, Justice is when the Constitutional Courts uphold the Constitutional Values. One might also say that to test whether justice has been done or not, one can simply see whether the act conforms to our Constitution, its fundamental principles and values. Justice is not mere literal interpretation of the provisions of the constitution in black and white, but it is to understand the aims and objective of the particular provision and the principles outlined in our constitution by our constitution framers.

Our judicial system is the enforcer and protector of Justice. In this 76th year of Independence, with the society evolving at its most rapid pace, we have to focus towards the goal of a welfare state. The Directive Principles of State Policy contained in part 4 of the constitution set out the aims and objectives to be taken by the state. The idea of welfare state and constitution can only be achieved if the state endeavours to implement them with a high sense of moral duty. We should strive to promote the

Welfare of the people by securing and protecting a social order in which justice social, economic and political shall inform all the Institutions of National life. In the celebrated case of Kesvananda Bharati vs State of Kerala the Supreme Court has said that fundamental rights and directives principles aim at the same goal of bringing about a social Revolution and establishment of a welfare state and they can be interpreted and applied together and that they are supplementary and complementary to each other.

With these thoughts, I conclude my views on our topic for today. I congratulate all the organizers on this successful event and also thank them for inviting me to my very favourite city Bangalore and to share my thoughts with you all.

Thank you. Jai Hind.