

Administration Of Justice In Contemporary Era: From An Individualistic To A Collectivist Approach

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ABSTRACT:- As the author of Leviathan tells us, “the life of a man, in the state of nature is nasty, brute poor & solitary’. In such a state, without an institutionalized law, man proceeds to redress the wrongs done to him or which he considers done to him. The situation furnishes sufficient mandate for everyone to try & execute whatever he deems proper, by employing whatever means. Thus ‘might’ becomes the sole measure of right & administration of justice becomes concentrated in a small sect of population, with only the capable carrying out their will. Resultantly people with no means to settle their claims are left undone. This irrational & anti-social approach of settling disputes to claim continued for a quite long time in ancient societies. However collective rights assumed importance in due course of time, leading to the development of institutions by the society to carry out administration of justice. The private vengeance transmuted into present day criminal justice administration while as the violent self-help culminated into present day civil justice.

I. INTRODUCTION:

An Eminent Philosopher, Locke Observed,

In The State Of Nature, Law Of Nature Alone Is In Force & Every Man Is In His Own Right Charged With The Execution Of It. While as In A Civil State, Law Of Nature Is Supplemented By Civil Law’. In The Former Situation, Every Man Turns To Be A Judge In His Own Cause, while as In The Later, State Itself Sits In Judgement For Him. To Judge & To Be Judged Are Two Different Things & The Juxtaposition Of The Two In The Former Case Violates The Notion Of Justice. The Maxim, “Nemo Judex Causa Sua”, I.E., No Man Can Be Judge In His Own Cause, A Well Established Doctrine Of Natural Justice, Will Not Permit An Individual’s Whimsical Or Self-Centric Approach To Settle Claims. The Journey Traversed By Developmental Jurisprudence Viz The Law Of Nature To That Of The Civil State Has Been An Eventual Breakthrough, An Outcome Of A Larger Revolution, Which Shattered & Shook Some Age-Old Philosophies To Their Very Roots Giving Birth To Certain New Ones. The Birth Of The State Was A Huge Turn Around In The Course Of History. The Reason For The Birth Of This Institution Was Purely Two-Fold In The Beginning, The Administration Of Justice & Defence. However The Meaning & Content Kept On Changing, Depending Upon The Tending Inquisition & The Philosophy Of The Ruler. For Instance, The Saxon Ruler, Alfred Did Not Prevent Private Recourse To Justice During His Reign. His Approach Was Not An Absolute Prohibition To Private Vengeance But Merely Its Regulation. This Way The Victim Played Judge In His Own Case But With A Semblance Of Regulation, Which Ensured The Victim Didn’t Turn Into An Absolute Judge With Unbridled Powers. Contrastingly In Totalitarian States As In Nazi Germany, State Assumed Unfettered & Indefinite Powers Of Judgement, While Administering The So Called Justice. The Absolute Prohibition Of Private Recourse On One Hand & The Absolute Exercise Of Whim On The Other Was The Hallmark Of Such Rule. Although It Sought To Advance Justice On The One Hand By Empowering A Third Party, The State To Stand In Judgement & Deliver, Yet It Took The Whole Thing By The Other By Exercising Untrammelled Discretion Bereft Of Any Rule Of Law. Apparently Wherever There Is A Room For Absolute Discretion, There Is Room For Arbitrariness . Some Scholars Even Consider The Two Antithetical To Each Other. One May Also Refer To Norman Times, A Transitional Period From The Ancient Recourse To That Of The Present Public Recourse. In This Period In England, Especially A Concept Of “Trial By A Battle” Took Emergence. Between The Claimants, A Battle Came To Be Made A Legal Device To Settle Disputes. As Per This Philosophy The Triumphant Took The Spoils For The Reason That Victory In Such Cases Was Believed To Have Been Facilitated By “Judicium Dei”, I.E., The Judgement Of Heavens To The Merits Of The Case. The Lacunae Of These Approaches As Is Abundantly Patent, Was Considered As A Serious

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Roadblock To The Real Administration Of Justice. This Thought Prompted Reformists To Seek A Change, Wherein They Proposed To Vest Authority In Someone Who Enjoyed Public Mandate. This Paved A Way To The Present Day Democratic Notion Of Governance Doing Away With The Autocratic Norm. Thus The Government Of The People, By The People & For The People Became A New Slogan. This Measure Was Seen To Be An Instrument Of Change Which Could Take Care Of The Community As A Whole & Not A Single Individual. The 'Might' As A Sole Measure Of 'Right' Was Discarded To Facilitate The Righteousness Of One's Claim Or In Other Words Introduced The Much Needed 'Justness' In The Administration Of Justice In Word As Well As Deed. Saint Augustine's Proposition Is Worth To Quote Here, "Lex Ineusta Non Est Lex", Which Means An Unjust Law Is No Law At All. The Proposition Came Handy For The Reformists Who Wanted To Break The Shackles Of The Narrow Conception Of Justice, Facilitating Its Incorporation In The Present Day Law-Making & Law Enforcing, From The Substantive As Well As Procedural Standpoint. Thus Rule Of Law & Not Rule By Law Was Supposed To Prevail. The Justice Further Was To Be Administered Without Fear Or Favor.

At The Same Time It Was Proposed That Justice Ought To Be Administered Without Passion, As When The Passion Comes At The Door, Justice Flies By The Window . This Thesis Was Possible Only In Civilized Societies, Which Rawls Calls The 'Basic Structure'. As Per Him The Fundamental Idea Of A Well Ordered Society , I.E., A Society Effectively Regulated By Public Conception Of Justice-Is A Companion Idea Used To Specify The Central Organizing Idea Of A Society As A System Of Fair Co-Operation . He Further Adds That A Political Society Is Well Ordered Conveys Three Things. Firstly, & Implied By The Idea Of Public Conception Of Justice, It Is A Society In Which Everyone Accepts & Knows That Everyone Else Accepts, The Very Same Political Conception Of Justice. Moreover This Knowledge Is Mutually Recognized; People Know Everything They Would If Their Acceptance Of These Principles Were Matter Of Public Agreement. For Instance The Recent Demonetization In India Could Be A Precursor Of Catastrophic Consequences. Since The Decision Is Completely Averse To The Notion Of Public Agreement. As Majority Of The Population Would Never Have Voted In Favor Of Such A Radical Change Given The Loopholes Which Outweigh Its Positive Impact. Imposing A Decision Of Such A Kind Inflicts Pain & Avoids Pleasure. The Notion Of Arresting The Circulation Of Black Money (As Intended) By This Drastic Measure Is Akin To Punishing The Whole For The Sin Committed By A Few. Secondly, & Implied By The Idea Of Effective Regulation Of Public Conception Of Justice, Society's Basic Structure, I.E, Its Main Political & Social Institutions & The Way They Hang Together As One System Of Co-Operation Is Publicly Known For Good Reason Believed To Satisfy Those Principles Of Justice. Here The System Of Checks & Balances Assumes Paramount Significance. Most Of The Modern Constitutions As Such Insist On The System Of Checks & Balances. If We Take The Example Of Indian Set Up In Consideration, We Will Notice The Forefathers Have Given This Conception A Serious Thought, Making A Sincere Effort To Separate The Three Vital Organs Viz The Judiciary, Legislature & Executive From Each Other, Which Are Co-Ordinate & Equal In Their Respective

Sphere. All Deriving Power From The Constitution. Thirdly, & Also Implied By The Idea Of Effective Regulation , Citizens Have Normally Effective Sense Of Justice, That Is One That Enables Them To Understand & Apply The Publicly Recognized Principles Of Justice, & For The Most Part To Act Accordingly As Their Position In Society, Which Its Duties & Obligations Require .For Instance If A Person Is Drowning & Is Crying For Help. A Passerby Observing The Same & Ignoring The Call For Help, In Most Of Law States Would Consider Him Guilty As He Legally May Not Be Duty Bound To Protect A Person Other Than His Own Self. However In Societies With Strong Moral & Religious Inquisition, The Same Shall Be Considered A Serious Wrong & Shall Be Considered Condemnable. Thus Right_Duty Co-Relation In Such A Case Loses Relevance

With Only 'Duty' Taking The Centre-Stage. The Proposition "The Only Right A Person Has Is Always To Do His Duty ", Becomes A Norm In Such Society. The Orderly Societies In The Contemporary Era Prefer Popularity Of Action. Thus Public Opinion Plays A Vital Role, Both In The Matter Of Declaration Of Rights & Duties As Well As Enforcement Of Claims. The Private Vengeance Gets Transmuted Into Criminal Justice Administration Whileas Civil Justice Takes The Place Of Violent Self-Help . And Interestingly In The Case Of Criminal Justice The Law Does No Longer Merely Seek To Punish The Offender But In Fact Goes A Step Further By Making An Effort To Reform The Individual Charged With A Misdemeanor, So Much So To Return A Reformed Citizen Back To The Social Milieu, Capable Of Obeying The Law By Understanding Its Context &

Implications. Thus The Prevalent Deterrence Was Done Away With. Based On The Notion That “The Deterrence Looks Primarily At The Offender Outside The Dock While as Reformation Aims At The Actual Offender Before The Bench . Thus While Salmond Holds Deterrence & Expiation Blot Out The Guilt By Suffering SoImposed. Consequently He Says, Guilt+Punishment=Innocence. However The Modern View Is Even More Feasible. The Notion Of Reformation Has Attained Wide Import. It Reinstates The Erstwhile Behavior Of A Normal Man & Restores The Original Innocence Disturbed By The Sin. And This Seem To Have Assumed Acceptance In The Public Eye, As People Mostly Consider To Forgive A Sin On The Bond That The Person Will Promise Improved Behavioral Tendencies, As It Yield Greater Dividends. For Me Thus GUILT+REFORMATION (NotPunishment)+FORGIVENESS=INNOCENCE. As The Forgiveness Essentially Absolves The Sin &Exonerates The Person From All Liability. This Appears Viable Not Only From The Legal But The Moral Standpoint As Well. In This Case The Right Of The Victim Is Guaranteed By Avoiding Any Futuristic Repetition Of The Stated Behavior By The Delinquent, Further It Also Avoids The Abridgement Of The Well Established Doctrine Of Natural Justice, Nemo Judex Causa Sua, As Private Vengeance Gets Banned, Yet The Victim Continues To Exercise His Say As The Collective Community Interest Gets Sustained Which In A Broad Sense Includes His Right As A Member Of Such Community. The Present Day Constitutions, World Over, Vesting Pardoning Powers In The President Or Some Other Parallel Authority Is The Consequence Of The Present Day Public Opinion, With The Voice Representing The Community As A Whole. It Was The Same Public Opinion Gathering Validity That Led To The Abolition Of Death Penalty In Most Parts Of The World. For Cure, Not Kill & Bail Not Jail Came To Be An Accepted Paradigm. For Instance If A Person Steals, Putting Him Behind The Bars Won’t Serve. Better Approach Would Be To Isolate Him For A While, In An Environment Where He Would Learn To Earn. Reward For Labor & Reprimand For Non-Compliance. Thus Carrot & Stick Policy Would Augur Well In Such A Case Rather Than Stigmatic Confinement. Under This Philosophy The Delinquent Is Treated As A Patient Who Is Suffering From Some Serious Ailment. The Recourse Is To Facilitate The Cure Of His Disease, Eliminate The Same & Reinstates The Diseased Person Back To Healthy Life Sans Any Behavioral Or Psychological Problem. Again Professor Rawls In His Theory Of Civil Justice Denounces The Sitting In Judgement By An Individual To Espouse His Own Cause. To Sustain His Argument He Exemplifies How A Privilege Is Usually Abused. Citing The Case Of A Person Entrusted With Division Of A Cake Between Himself &Other Individuals. He States That For Obvious Reasons The Self-Interest Will Play Spoilsport &Motivate The Sense Of Judgement. If He Is To Take The First Share, It Will Assume Larger Dimension To The Other Shares As He Will Cut The First Piece Asymmetrically To Facilitate His Bargain. Similarly If He Is Supposed To Take The Last Share, Then He Will Cut The Pieces In A Manner Which Facilitates The Bigger Dimension Of The Last Share, Meaning Thereby The First Shares Will Again Be Asymmetrically Cut To Ensure The Last Remains The Vital Share. In All Circumstances He Would Seek The Lion’s Share No Matter What. Thus The Judgement Should Further Not Be Vitiating By Any Bias Or Prejudice On The Part Of The Judge. This Invokes The Question Of Neutrality & Impartiality Of A Judge In Settlement Of Disputes. Thus Despite The Fact That A Judge Is An Agent Of State, If He In Any Manner Becomes Interested In The Outcome Of The Cause Say For Illegal Gratification, The Same Will Frustrate The Cause Sought To Be Achieved. To Be Just Is To Be Fair, To Treat All Alike, Measure All Under Similar Circumstances With An Equal Rod. The Chief Object Of Law In Today’s Contemporary Era, Is The Balancing Of Interests Between Individuals Which It Is Composed Of. In The Present Welfare State, Law Has To Be An Instrument Of Justice In The Modern Sense Of The Term. It Has To Cope Up With The Ever Changing Concept Of Law. For This The Law Has To Be Dynamic & The Law Maker Aware. So To Sum Up A Continual &Systematic Experimentation Is Required To Make The Law A Living Law. “Experiment Involves Initiative & Ceaselessly Engineered Law Suggests A Picture Of Science, Which Is Always Seeking New Instruments, New Expedients, For New Needs, In Short For A Good Life. The Picture Is Accurate Enough For Great Deal Of What Is Called Social Legislation In The Modern State. The Law Must Be Dynamic & To Make It Usefully Dynamic, A Great Deal Of Knowledge Is Necessary. As Rosco Pound Based His Philosophy , Which He Calls “Social Engineering” On The Very Pretext That Law To Be Valid Has To Apply Social Principles To Specific

Social Problems Giving Due Regard To The Balancing Of Different Interests Of Different Set Of Groups. This Transformation Has Been A Watershed Moment Which Has Revolutionized The Jurisprudence. Thus All Civilized Societies In The Present Era Have Been Able To Recognize Certain Principles Which Are

Inviolable. Take For Instance The Norm Setting Principles In International Law Which Have Attained The Stature Of “Jus Cogens”. The Human Rights Are One Of The Many Rights Which Have Attained Such Inviolable Significance.

II. CONCLUSION:

Despite The Fact That Jurisprudence Has Travelled An Impeccable & Long Journey, Prompting A Paradigmatic Shift From Individualistic To Collectivist Approach, There Is Still A Mighty Scope To Further & Build On The real Work Done By The Intellectuals & Scholars. There Are Still Laws In Many Parts Of The World That Leave Enough Leeway In The Hands Of Autocratic & Brute Forces Which If Assume Power Could Exploit The Same For Wrong Ends. The Colonial Laws Still Exist In India. Controversial Laws & Acts Like The PSA, SPA, & Similar Other Laws Have Most Often Been Misused By The Implementers. From The Jurisprudential Standpoint, It Is Better To Let A Hundred Guilty Men Escape Punishment Than To Harm An Innocent. Further Since The Society In Agreement With The State Vests Power In It Only To Safeguard The Community As A Whole. If The Majority Amongst The Ruled Resist A Particular Enactment, There Is No Fun In Persisting With It. For Example If ‘The Armed Forces Special Powers Act In Kashmir’ Is Discarded By The Majority In Kashmir, No Government Be It Central Or State Should Insist For Its Obedience Even If Leads To

Costs For The Government. It Is The Plain Responsibility Of The State To Bear Pain & Not To Shield Behind An Innocent. The Violent Revolutions Erupting Every Now & Then Are An Evidence That The Majority Resents Certain Draconian Measures. Even The Most Patriotic Indian Will Accept The Fact That Something Is Wrong Somewhere & Needs Immediate Attention Well Before The Problem Spirals Out Of Control. Similarly Measures In Other Parts Of The Country Favoring Influential People At The Cost Of The Common Man Has Also Resulted In Protests. The Policies Like Enhancement Of Reservation In Government Jobs Every Now & Then, Which Most Believe To Be A Retrograde Step In The Sense That Minority Population Interests Get Served At The Cost Of The Majority Population, Which Destroys The Very Conception Of Justice. So It Is Imperative To Engineer A Social Change By Furthering Justice In A Manner That Serves Everyone In The Society. Everyone Receives Similar Standard Treatment & The Hard-Working, Deserving & Intellectually Gifted People Get What They Actually Deserve. The Systematic & Analytical Approach Is Required To Tackle The Modern Day Complications Of An Ever Evolving & Complex Society. The Socialistic & Collectivistic Notions Have Afforded Enough Scope To Further The Phenomenon Of “Social Solidarity”. Prof Duguit Conceptualized The Theory Of Social Solidarity Wherein He Laid Emphasis On The Complimentary & Co-Operative Approach Wherein Every Individual Of A Particular Community Contributes In One Or The Other Way. He Becomes A Useful Asset To Society & Not A Burden Or Parasite. This Way All Become Co-Related To Each Other, Essentially Supplementing & Complimenting Each Other. Thus Deguit Insists That Instead Of Investing Specific Rights In Specific Individuals, The Individuals Must Be Made To Observe Duties. Once All Fulfill Their Duties As Assigned To Them, The Claims Of All Will Automatically Become A Reality As It Is The Non-Fulfillment Of Duty Which Leads To Abridgement & Consequently Conflict Ensues. Conclusively It May Be Submitted That No Specific Theory Or Philosophy Eventually Leads To Happiness Of The Greatest Number. It Is The Balanced, Systematic & Analytical Usage Of All Theories Which Could Build A Stable “Social Structure”. However It Won’t Be Out Of Place To State That Of All Theories & Practices, It Is The Collectivistic Thinking & Approach Which Has Received Primacy & Taken A Central Stage In The Ever Evolving Socio-Legal System.