Focus

- By interim order final relief should not be granted. 572
- Plea of adverse possession is not a pure question of law but a blended one of fact and law. 661
- When a custom has been repeatedly recognized by Courts, it is blended into the law of land and proof of the same would become unnecessary under Sec. 57 of Evidence Act, 1872. 599
CONCEPT OF DHARMA, JUSTICE AND LAW: A STUDY

By

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1. Any Government will have a strong basis for its survival, "if it is founded on liberty and justice." Justice under law without social justice, no longer has any meaning or significance.

2. It is no doubt that people since times immemorial hoped for justice and its survival at all times and 'justice' has been the watchword of all major social and political reform movements. Endless and ceaseless efforts were made to abolish injustice, tyranny and exploitation. In the common parlance justice is equated with everything that is good, mercy, charity and truth and other equivalent expressions. However, in the words of a Greek thinker Thrasymachus, it cannot be defined as the interest of the stronger. Justice is not an irrational idea and the search for it is an eternal quest.

3. Whatever is considered as 'just', according to a reasonable man is considered as 'justice.' Gandhiji emphasized the need for establishing a 'just society' which he considered as a necessary ideal for India's survival as an independent and vibrant nation in his concept of Ram Rajya and Swarajya which he elucidated as follows:
   
   (1) Poorest shall have an effective voice in the making of the Country;
   
   (2) No distinction/existence of rich and the poor;
   
   (3) All communities shall live in peace;
   
   (4) No curse of untouchability or curse of intoxicating drugs or drinks; and
   
   (5) Women shall enjoy the same rights as men. Nehru highlighted the need for 'social justice', and "only through social justice, chronic poverty in India will be solved... ending of poverty, ignorance, disease and inequality of opportunity to wipe every tear from every eye.

4. In ancient Indian Society, Law and Dharma were not distinct concepts. In Dharma Sastras, Smritis and Arthasastra, the concept of Justice, law and religion were not distinguished and invariably justice was equated to Dharma and Vide-versa and the Mosaic Law of Israel considered 'Law' and justice' as inextricably inter-woven and "justice" is considered as a distinct segment of morality to which law must conform.

5. Stammel classified the principles of justice in two categories:


(1) Principles of respect; and
(2) Principles of participation.

Respect for human person and means of participation shall be ensured and no one shall be subjected to arbitrary will of another and no member shall be arbitrarily excluded from the legal community. John Rawls proposed a general concept of justice in these terms: “All social primary goods – liberty and opportunity, income and wealth, and the basis 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”. To establish justice in the world is to destroy the bad and the evil, to stop the strong exploiting the weak, to develop knowledge and welfare of the people. Verily that which is justice is truth and the law is a means to an end and justice is that end.

6. A Knowledge-based society is basis to social justice and to serve mankind is service to God and thus concept of service becomes a national ideal. It is therefore, necessary that every rule must promote which is good to people. In the happiness of the subject lies the King’s happiness, in their welfare his welfare. What pleases himself, the king shall not consider good but whatever pleases his subjects the king shall consider good. This is conveyed in unequivocal terms by Bentham thus: “The public good ought to be the object of the legislator, General utility ought to be the foundation of his reasonings. To know the true good of the community is what constitutes the science of legislation, the art consists in finding the means to realize that good”.

Commandants of Dharma like Nature’s laws, admit of no meddling.

7. It has been emphasized that those who exercise political power must wear the hand glove of Dharma and ‘principles of Dharma governs every sphere of activity including governance of the Country’. The duty of the king was clearly defined in Dharma Sastras and for violation, the king becomes unfit to rule and Dharma Rajya means ‘rule of law’. King respected by the people only if he acted according to law (Dharma). Rules of Dharma not alterable according to whim and fancy of the king and it was essential that the exercise of political power must be in conformity with Dharma – an essential aspect of governance. This is what is meant by ‘Rule of law’ in the present day context. According to Dr. S. Radhakrishnan, “Dharma righteousness is the king of kings. It is the ruler of both the people and the ruler

15. The great King of Babylong (2124-2083 BC) Hummurali proclaimed.
16. The Upanishad 1-4-14.
20. Kautilya ‘Artha sastra’ P.39
themselves. It is the sovereignty of the law". Dharma in Indian tradition also stands for law and morality and no State can be devoid of law and morality. "Dharma is right action ...... Dharma or virtue is conformity with the truth of things". Dharma protects those who protect it and those who destroy it get destroyed and the entire concept of rule of law is incorporated in Dharma. According to K.M. Panikkar, the King's coronation ceremony is a Diksha – devoting his life to the cause (service of the people). Support to the king depended on king conforming to Dharma or justice.

8. The first legal code of Hindus enshrines both philosophy of life and of law with special stress on morality, Danda (punishment) and justice. Justice is a moral State. Gandhiji observed: “My soul refuses to be satisfied so long as it is a helpless witness of a single wrong.”

9. As Friedmann observed: “The tale of natural law is the search of mankind for absolute justice and of its failure”. Legal justice i.e., according to law has several inadequacies and fails to meet, what Salmond described it as 'justice in indeed and justice in truth'. The efforts are required to be made to induct more and more moral content in the law and raise the level of legal justice to absolute justice standards.

10. In conclusion, it may be stated that rule of law rests on the strong foundation of effective enforcement of laws. If the laws are not effectively enforced, the rule of law breaks down. When rule of law breaks down, democracy collapses and when it happens the essence of ‘free Government disappears and the Government ceases to be a Government of laws but gets converted into ‘rule of men’. That would be the end of democracy, liberty and freedom and the system of Government becomes dictatorship and becomes an engine of oppression.

EXECUTION OF DECREES FOR MAINTENANCE AGAINST RESPONDENT UNDER ORDER 21 RULE 37 OF C.P.C

By

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Order 21 Rule 37 to 40 of C.P.C, deal with arrest ad detention in the civil prison of JDR after due enquiry. Order 21 Rule 37 deals with show cause notice to be issued to the JDR when EP is filed for arrest of JDR and detention in civil prison for violation of money decree. Under Order 21 Rule 38 C.P.C., if the JDR does not respond to summons issued to him then arrest warrant under Order 21 Rule 38 C.P.C., would be issued to procure the presence of JDR and after his appearance in the concerned court due enquiry would be conducted with regard to means of JDR to pay decreal amount. After due enquiry, if

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