

## VALUES AND JUSTICE - A NEW PERSPECTIVE

### INTRODUCTION:

This paper on Values and Justice is a humble effort to explore and examine, from philosophical point of view, issues concerning Values and Justice. Both Values and Justice, as they have been presented here, are with least intension to draw any ultimate, final or arbitrary remark or conclusion. What I intend is to explore, to examine and to see problems or the issues with objective clarity and note some probable, positive progressive and hopeful solution or changes visualized. My paper is simply an attempt at visualizing this and nothing beyond that.

In attempting this, two fundamental difficulties have been faced. First, both the Values and Justice are so wide and big concepts to cover up in a small paper, all its details and dimensions. Second, the new perspective(as it is in the title) meaning the model perspective does not simply include the concept of modernity with reference to its formation or forms such as political, economic, social, or cultural but it includes more than 120 nations, almost each of them having unique position. To give Justice to a majority, forget all of them, is even a huge task. This becomes all the more difficult because of my ignorance. I have in many points of views kept my own country in view, and in some references I have quoted Greece, Germany, USA, UK etc., I wish to have your generosity in accepting me as I am, and my feeble maturity may please be simply ignored.

## PART I

### VALUES

#### **The Term: Meaning and Importance:**

The term value means that which is intrinsically valuable in itself; unlike a commodity or a product which gives value only through exchange. In Indian Philosophy all values are derived from Truth (Satyam), Love (Goodness i.e. Shivam) and Beauty (Sundaram). There is hardly any need to talk about the role of Values in life. We are all aware of it. In fact, "They provide a framework, a guide, the rail for purposeful, quick and efficient movement through life"<sup>1</sup> Values bring the element of meaning into life. Values have their sources in culture, which include system of beliefs (religious) and a whole way of life of people. Both religion and culture give meaning to people, their life and actions. The main three features of Indian culture are i) Universal Compassion, ii) Power of Knowledge to bring out liberation, and iii) Transcendental of spiritual dimension. In short openness and tolerance have been the hallmark of Indian Culture and Religions that provide the source and resources. Prof. Stephan Knapp in his famous book, 'The Secret Teachings of the Vedas' says, "The ultimate purpose of religion ('Vedic Literature') is to establish knowledge of self-realization and provide the way to attain freedom from suffering. This means becoming liberated from material and entanglement by using this human form of life for reaching the spiritual platform of existence." The main objective is to know the Self through Values. Religion gives this knowledge through Values, its goal is transformation.

#### **Values in Indian Culture and Tradition:**

Values are the acquired and affective aspect in human life which an individual internalizes through the process of socialization. They become the guiding force to achieve certain cherished goals in life. "Thus Values act as means to generate strong behavioral tendencies. For instance, some may take pains to clean the place, and keep it neat and tidy, some may strive for punctuality, others

to display a sense of justice, fight against exploitation, care for environment, be compassionate to all, work against cruelty to animals, some show patience and tolerance, struggle and suffer for Social Justice, yet others take risk for great sacrifices. All these behavior patterns have emerged from the main spring of cherished or fully internalized Value system.”<sup>3</sup> According to Swami Atma Prabhananda five basic human Values are: Right Conduct, Truth, Peace, Love and Non-Violence. Values, such as we talked, could be National Values, Social Values and Human Values. The report of the National (Indian) Commission on Teachers identifies as many as 80 different Values, all spring from Truth, Goodness (Love) and Beauty. Philosophically, we may classify Values in to Eternal or Permanent Values and Relative or Changing Values. Since I come from India let me tell you that the significance of Indian Philosophical tradition lies in the utmost importance given to the determination of the ideals (eternal value) and ways of life rather than formation of theoretical views of the universe. Dr. S. Radhakrishnan, expressing this, says, “The ideal man of India is not the magnanimous man of Greece or the brave knight of medieval Europe, but the free man of Spirit, who has attained insight in to the Universal source by rigid discipline and practice of disinterested virtues, who has freed himself from prejudices of his time and place. It is India’s pride that she clung fast to this ideal.”<sup>4</sup>

### **Values in the Modern Word:**

Modern age is one of scientific and technological advancement in all walks of life. It is marked by belief in rationality, empiricism and verifiability. It is also an age of democracy, secularism and socialism as proclaimed and accepted by all. At the same time we see cross currents in the sphere of economic, political, social and cultural ideologies and movements, making the life very complex, Present age is an age of propaganda and we all live in a world of social inequalities, economic disparities, moral crisis and political insecurities. The values have deteriorated and there is a mad rush after materialistic and sensual pleasures. Childhood is miles away

from Godhood, youth is simply wasted and caught in frustration, and the old age has become a curse. It seems nothing is value-oriented; everything, everywhere, everybody is out to become rich overnight and enjoy worldly pleasures. Instead of love and compassion hatred and killing is seen; instead of purity and clarity, pollution and foggy disorder is seen; the perverted religiosity, the false patriotism, and narrow political considerations to grab power and money— all these have made the life senseless, meaningless and valueless. As T.S.Eliot says there is knowledge without wisdom and there is life without living. The picture of a vast number of unsecured, unsafe human beings in the modern age is certainly dark and dizzy. In the midst of such a dark and dizzy situation, we even then find, every one mainly concerned with his own upward mobility, material welfare and enjoyment. Such a social contexts compels the question of the relevance of the cardinal values that spring from our traditions. There are four clear-cut view-points in this connection.

- (i) Social and Cultural values of our age deserve to be discarded as they are out of tune (fashion) with the demands of the modern times.
- (ii) Social and Cultural Values are not against the spirit of modernity: Nor are they totally useless.
- (iii) Social and Cultural Values are the very base of which the present shape of our Constitution, Social set-up, Education system and all the aspects of the modern life has evolved.
- (iv) Values are in process of evolution. It is a period of transition - adapting new trends without giving up the age old ideals. It is passing through a process of harmonizing old values with the values with the modern world<sup>5</sup> All these views, except the first one, emphasis the relevance and importance of values.

## **Democratic and Socialist Values:**

There is a great emphasis on the Democratic & Socialist Values in one form or the other, directly as well as indirectly, in the constitution of almost all the nations of the world— including the Human Rights Commission, the UNO etc. With reference to India and its constitution the main concern is the “Promotion of the welfare of the people.” The very preamble to the constitution clears its strong emphasis on democratic and socialist - values Equality of opportunities both to men and women equally, right to ownership, freedom of religion, protection of children, youth and old age, right to work, to education, to just and humane condition of work and relief. The constitutional objectives and directives for a new social order are pursued: The Values and principles of democracy, Socialism, and Secularism form the guiding forces in this massive endeavor.

## **Secularism and Values:**

India, like many countries in the world, has chosen to build itself into a democratic and secular society in which different groups and communities can flourish side by side in confidence or goodwill to grow in freedom and attain personal fulfillment and progress. The concept of secularism, as it is understood, has come to mean different things to different people.

According to Oxford Dictionary Secularism means, “The doctrine that morality should be based solely in regard to the well being of mankind in the present life, to the exclusion of all consideration drawn from belief in God.” Chambers Dictionary defines Secularism as, “The belief that the State, Morals, Education etc. should be independent of religion.” Webster’s Dictionary says that Secularism is, “The belief that religion and ecclesiastical affairs should not enter into the function of the state. It is said, Secularism is a system of doctrines and practices that rejects any form of religious faith and worship.” The word Secularism was first used in the Nineteenth Century by George Jacob Holyday. He derived it from Latin word ‘Saeculum’ meaning ‘This Present Age’ and used it

in the context of Social and Ethical value or system. In the deeper sense Secularism leads to mean that it is not concerned with what is religious and spiritual and is opposed to anything i.e. irrational.

### **Fundamentalism, Fanaticism and Terrorism:**

The term Terrorism and Terrorists' activities, does not need any explanation or discussion. We all not merely know it but hate it and of course, are very much worried of it.

Religious Fundamentalism precisely is an attitude or insistence to stick to Religious Texts - without any modification or interpretation or change. "What I say is scripture and one has to believe or act accordingly. If one does not he will be punished?" This clearly brings the element of force and use of punishment through violence in fundamentalism. Fundamentalism believes that it is his duty to force or even to kill those who do not act according to his understanding of scripture. Force means forcible submission, force means violence. Thus, we find absence of freedom, peace and cordial relationship in fundamentalism. A claim for the absolute truth of knowledge and craze to establish his religion all over the world, to die for it but not to budge, is the essence of fundamentalism. This is essence of Crusade or Jihad in Christianity or Islam. To win back the control from those who belong to non-Christian or non-Islamic sect or religion is reflected in to killing of innocent people and destruction of property.

Fundamentalism and its activities are irrational or anti-rational in nature. No rationalist, in the right sense in the term, can be a fundamentalist. Instead of reason, power of faith and staunchism operate. A belief about fundamentalists being uneducated is not necessarily true. Education does not always include rationality. The myth of belief that modern education will prevent fundamentalism, fanaticism and terrorism is proved to be baseless and false.

Fundamentalism, fanaticism and terrorism thus, have proved to be big threats to values like freedom, co-existence, cordial relationship, universal brotherhood and peace.

### **Students' Unrest:**

The problem of unrest among students is one more hurdle that comes in way to individuals as well as society's progress and peace. Everyday, everywhere in the world we hear about agitation by students. These agitations have brought significant political changes. Students' unrest is a state of disturbance or agitation. When it bursts forth and seeks outward manifestation it is immediately converted into destruction and lawlessness leading to a chaos and disorder. The unrest could be in detail diagnosed through its social, political and economic factors. Some of the measures against students' unrest are to delink education from employment-economic condition should never be a barrier nor a passport to higher studies,

- developing sense of identification with the nation and nation-building activities,

- developing regard for law, a civilian way to protect or seeking justice.

These are some of the measure one can try against students' unrest.

### **For Global Peace and Living Together:**

The entire issue of terrorism is ultimately with reference to peace. When somebody said of truth that, 'Truth is higher than all but truthful living is still higher; we can say of peace that peace is nobler than all but peaceful living is still the noblest'

In his most monumental work "Learning: 'The Treasure Within' (a report to UNESCO of the International Commission on Education for the Twenty-First Century). Mr. J. Delor put emphasis on the four pillars as the foundation of the education. The four pillars are: i) Learning to Know ii) Learning to Do iii) Learning to Live Together and iv) Learning to Be. All these will lead to global peace.

### **Value Free Science:**

Nina Rosenstan in her book 'The Moral of the Story' (a book of ethics and human nature) discusses the question of whether or not

science can be totally value free. In fact, this question has been a burning one thought-out in the later part of the Twentieth Century. "Philosopher J. Hebermas, in his book 'Knowledge and Interest' (1968) claims that science may try to be objective but there is always an element of vested interest present: Society will fund only those projects it deems 'Valuable for further scientific progress, prestige, or making money'.<sup>6</sup> We have debated about science, medicine, agriculture with reference to scientific ethics, animal research is questioned, and harmful agents to the environment are limited. The situation has compelled scientific community to further develop a moral, value based sense of proper and improper project".

Justice is also a value. Justice as a value has been discussed since ancient period in East as well as in West. What is Justice? What is a Just-Life? All these questions are the very fundamental ones. Justice becomes more complex when we talk about the principles of Justice-by the society or the state to its citizens. Let us now talk something about Justice in Part II of this paper.

## PART II

## JUSTICE

### JUSTICE IN WESTERN PHILOSOPHY

#### The Greek Philosophers:

Socrates asks Cephalus: What he means by Justice? According to Will Durant, "Perhaps no where in the history of philosophy is the doctrine, better formulated than by Plato himself in his another dialouge, Gorgias— we have the fundamental problem of ethics, the crux of theory of moral conduct. What is Justice? -Shall we seek righteousness or shall we seek power?"

The opening remark in Plato regarding Justice is: 'there are three things worthwhile in this world-Justice, Beauty and Truth.' and perhaps none of them can be defined four hundred years after Plato a Roman Prosecutor of Judae asked helplessly, what is truth?



And philosopher has not yet answered nor to us what is beauty. But for justice Plato ventures a definition. "Justice" he says, "Is the having and doing what's one's own".<sup>7</sup> Plato further replies to Tharasyrmachus, "Justice is not mere strength, but harmonies strength—desires and man falling into that order which constitutes intelligent and organization, Justice is not the right of the stronger, but the effective harmony of the whole."

Plato, as we all know, belonged to one of the best families in Athens, a family both wealthy and politically influential. His normal career would have been in politics. But Plato, after fulfilling his military services, steered clear of politics. He decided, instead, to develop a sound philosophy. He had spent over 10 years in Socrates' company and was 28 when his teacher Socrates was executed. "His lifelong passion, acquiring a thrust it did as a result of the unjust and tragic death suffered by his beloved teacher, was to arrive at a conception of a state in which such an injustice could not be perpetrated. Justice, or the just state, is thus the subject of many of his works, including the greatest and best known of these, the "Republic."<sup>8</sup>

"The nominal purpose of the "Republic" is to define "Justice". Justice, according to Plato, consists in everybody doing his own work and not being a busy body. The Greek word "Justice" corresponds to a concept which was very important in Greek thought, but for which we have no exact equivalent.

"....The word 'Justice', as still used in the law, is more similar to Plato's conception. Under the influence of democratic theory, we have come to associate justice with equality, while for Plato it has no such implication."<sup>9</sup> 'Justice', at the beginning of the Republic, means that it consists in paying debts.

In his final conclusion, he arrives at in book IV in the Republic, he says, "Justice is a kind of disposition existing in each member of the just society to mind his or her own proper business and not meddle the affairs of the others. In Plato's view a just society is a society where everything has its proper place and everyone does what is proper for him or her.

Aristotle (348-322 BC) when was born Plato was 43 and Socrates had been dead 15 years. At the age of 18 he was sent to Plato's Academy in Athens, where he remained for next 20 years; first as a pupil and then as a colleague of Plato.

"For Aristotle, the fundamental question is not, as for Mill, Hobbes or Kant, What is the fundamental principle of moral right or duty and how might this be defended philosophically? Aristotle, asks, rather, what is the goal of human life What kind of life is best for human beings?"<sup>10</sup> Beginning Aristotle's investigation into Justice in Book V (NE), he established that all moral values are a mean, we must discern between what extremes the just act is intermediate. The unjust man, he says, is characterized by lawlessness and especially grasping less, the just man, by law abidingness. If we want to know what we mean by just acts, Aristotle seems to say, just acts are those that contribute to the happiness of the community. He says, " Perfect distribute justice, according to which all always receive their due is however, impossible. Because of inadequacy of individual judgement as a means to justice, human beings should enlist the help to law."<sup>11</sup> By distributive justice', Aristotle means the distribution of all goods, not just material goods. "Aristotle denies the Christian and Rawlsian claims that we are capable of endless love or empathy for stronger; the Humeah and Rousseauian claims that we are only weakly connected by impersonal sympathy or species compassion; and Kantian claims that only reason grounds our obligation to others. Rather, Aristotle claims that only the perception of goodness or excellence in others, connects us to them and prompts our goodwill and only goodwill prompts our liberality."<sup>12</sup>

Mortimer J Adler, while editing and publishing 'Great Books of the Western World' at the University of Chicago, produced two volumes on the great ideas entitled 'Syntopicon'. In addition in 1980 he published a book, 'Six Great Ideas'. Truth, Goodness and Beauty are the 'Ideas we judge by (according to him), and Liberty, Equality and Justice are the ideas we act on. So to Mortimer Adler,

Justice is an idea we act on. Let us understand Justice through him. His main discussion is on:

- i. The Sovereignty of Justice
- ii. The Dimensions of Equality
- iii. The Inequality that Justice also Requires
- iv. The Domain of Justice, and
- v. The Justice and The Authority of Law A brief summary of all these aspects may be noted.

Both, just act and justice, are rightly regarded as highly desirable goods, and full in the domain of the idea of goodness. To act rightly or justify is to do good. "Justice, is the supreme value, a greater good than either liberty or equality ..... only Justice is an unlimited good. No society can be too just, no individual can act more justly than is good for him or his fellowman."<sup>13</sup>

With respect to liberty and with respect to equality both can be maximized harmoniously if Justice regulates. Justice stands in different relation of liberty and equality. The sovereignty of justice connects and resolves the conflict between the erroneous extremism of the libertarian and the egalitarian .

Two things are equal when one is neither more nor less than the other in an identified respect. When they are unequal, their inequality consists in one being more, the other less in some respect." Equality or inequality could be in two main categories. I) Human equality or inequality, and ii) the external circumstances under which human beings live and act. Both could be subdivided : Human equality and inequality arising from birth, or arising from his achievements. Similarly political, economical and social equalities and inequalities are of external circumstances.

The inequality the Justice requires is with reference to political and economical equalities that are equalities in kind. The resultant inequality in degree occur among those who are already equal in kind. All citizens are equal in kind on the base line, let me quote

two qualifications : (i) none less than enough for the purpose, and (2) none more than is compatible with everyone having enough.

"The domain of Justice is divided into two main sphere of interest. One is concerned with the justice of the individual in relation to other human beings and to the organized community itself - the state. The other is concerned with the justice of the state - its form of government and its laws, its political institutions and economic arrangements - in relation to the human beings that constitute its population."<sup>14</sup>

"The man made laws of the state derives its authority from Justice in three ways : (i) by the enactment of measures that protect natural rights, ii) by legislation that prescribes or safeguards fairness in transactions among individuals, and iii) by regulating matters affected with the public interest for the general welfare of the community. Not any one at all can make a law that has authority. Power to make laws is in the hands of the rulers or government. In democracy, it is absolutely in the hands of the group which holds majority of the people's elected representatives.

To conclude all these aspects related to Western thinking about justice which began with the Greek Philosophers Plato and Aristotle, one can observe that the fundamental issues about law and justice have been discussed. Lack of self interest is an essential requirement for dispensing Socratic justice. Thrasymachus, opposite to Socrates, considers justice as serving one's own interest. Justice for Socrates, is another's good, while injustice is one's own good. In this way, justice is disposed from a disinterested perspective, which, guards against the judgement being affected by goals and values which would serve the judge's aims and pursuits.

Justice, to Aristotle, is the chief virtue comprehending all the other virtues; to Prof. Mortimer J Adler, it is one of the Six great ideas we act one. But in East, to Indians, Justice is a value. In the Constitution of India, in its very preamble there is a declaration as follows:

## **PREAMBLE**

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political:

LIBERTY of thought, expression, belief, faith and worship:

EQUALITY of status and of Opportunity: and to promote among them all:

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation:

**The Nature of Judicial Process:**

**(legal, lawful and just)**

On the nature of judicial process, there is an excellent book "The Nature of Judicial Process" (1921) by Justice Benjamin Cardozo. In fact, the clarity of individual's rights, the awareness of the citizens - students', consumers', employees', tax payers', tenants', and landlords', etc. has made everyone talk about justice and injustice. Courts, to seek justice, have become an inevitable place and in the light of this phenomena of our present day routine life, let us know what is judicial process and let us see the terms "legal", "Lawful" and "Just". What should a judge do when he decides a case? Cardozo in his book, shows the circumstances in which a judge ought to continue. He considers the limit to which the judge should sack logical consistency and symmetry of legal structure. He points out the directive forces of law, philosophy (logic), history, tradition, sociology and morals and how they influence the decision. He points out the importance of social welfare in reaching the decision. He maintains that everyone of us has an underlying philosophy of life, which gives coherence and direction to thought and action. Judges can not escape that current any more than other mortals. Mr. Cardozo says that the total push and presence of Cosmos, which says that the total push and presence

of Cosmos, which when reasons are nicely balanced, must determine where the choice shall fall. He discusses, conscious and unconscious elements that contribute in his decision – the discharge of Justices. Cardozo, here raises an interesting question : ‘Which is the faculty that makes a judicial decision ? Is it reason, instinct, both or neither ? He does not give definite answer. He says that in deciding the case, the decision making process is mysterious. He says that mind and will are inseparably united (111) He further says that the process is a mystery to him.

Let us in short understand the terms: Legal, lawful and Just.

Law lexicon says that the term ‘legal’ means according to law, confirming to law, permitted by law, good and effective in law. With regards to the term ‘lawful’ it has a wider meaning than the term ‘legal’. Legal is what is in conformity with the letters or rules of law as understood in courts. ‘Lawful’ is in conformity with (or not opposed to) the principles or spirit of law. Concise Oxford dictionary says ‘legal’ means ‘of law’ or based on law. In fact the word law comes from LEX means statute which again means positive law, or enacted law. Grammatically, LEX is a common noun and LEGES is its plural. The term legal comes from “Leges”, Legal is an adjective drawn from ‘Leges’.

“Jus” means law. But it does not necessarily mean positive law or statutory law. ‘Jus’ is not man made law. Jus is natural law. It is the law of life. It embodies reason. Natural law is law of reason. JUS is reason. JUS is pure law. “Lawful” is that which accords reason. Statute does not always embodies reason. “Legal” is not always lawful”. ‘Lawful’ is not necessarily “legal”. The central idea of juridical theory is not LEX, but JUS.

JUST, is an adjective of JUS which means reason. ‘Just’ means that which embodies reason. “Just” means reasonable. ‘Justice’ is abstract noun from ‘Just’. ‘Justice’ means a state of reasonableness. In the order of logical conceptions, justice comes first, and law second. Law is derivative. It is derived from the conception of justice.

Justice has a moral flavour. It is a moral value. It is an ethical concept. The general principle of justice is that the individuals are entitled in respect of each other to a relative position of equality or inequality. Justice is traditionally thought of as maintaining a "balance". Themis is the goddess of justice. She has a bandage on her eyes. She holds a scale. She balances the scales without regard to persons. This is the ideal of doing justice.

There is also a distinction between 'legal justice' and 'natural justice'. Legal justice means justice according to law. The natural justice is force from what is based on human nature everywhere and at all times. Natural justice is the fundamental basis of every legal system.

### **John Rawls's 'A Theory of Justice':**

"John Rawls' 'A Theory of Justice' is one of the most influential works in moral and political philosophy written in the twentieth century." Prof. Samuel Freeman on editing John Rawls' papers says, "These papers present nearly fifty years of thought about the nature of justice and its feasibility. It is a career guided by a reasonable faith that a just society is realistically possible."<sup>15</sup>

According to John Rawls the most basic thought in the discussion of Justice is fairness. To him, 'justice is a virtue of social institutions', or what he calls, 'practices'. In one of his papers he says, "I wish to show that the fundamental idea in the concept of justice is fairness, and I wish to offer an analysis of the concept of justice from this point of view..... I shall argue that it is this concept of justice for which utilitarianism in its classical form, is unable to account, but which is expressed, even if misleadingly, by the idea of the social contract."<sup>16</sup> The various subjects of justice when applied in practice, their meanings are not the same. John Rawls says, 'it is important to distinguish these various subjects of justice, since the meaning of the concept varies accordingly to whether it is applied to practices, particular actions, or persons. These meanings are indeed connected but they are not identical.'<sup>17</sup> How is then Justice to be understood ? Answering this question, he says,

'Justice' is to be understood in its customary sense as representing but one of the many virtues of social institutions ..... Justice is not to be confused with an all inclusive vision of a good society; it is only one part of any such conception."<sup>18</sup>

The conception of justice which Rawls develops is in the form of two principles: First; each person participating in a practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all, and, Second; inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage, and provide the position and offices to which they attach, or form which they may be gained, are open to all. These principles express justice as a complex of three ideas: **Liberty, Equality and Reward for Services** contributing to the common goods. The principles of justice, in John Rawls, can be viewed, then, as an understanding between moral persons not to exploit for one's own advantage the contingencies of their world, but to regulate the accidental distribution of nature and social chance in ways that are mutually beneficial for all.'

Understandingly Justice as fairness, with reference to John Rawls, we should be clear that '**Justice**' and '**Fairness**' are indeed, different concepts, but they share, a fundamental element in common, which Rawls call 'the concept of reciprocity'. To John Rawls, justice, first of all, "is a moral virtue in the sense that it arises once the concept of morality is imposed on mutually self interested persons who are similarly situated; it is first moral concept to be generated when one steps outside the bounds of rational self interest."<sup>19</sup>

### **Rawls's Two Principles of Justice:**

In his paper on "A Kantian Conception of Equality" (1975) he gives two principles of justice and then discusses 'the appropriateness of these principles for a well ordered society.' These principles are as follows:



1. "Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all.
2. Social and economic inequalities are to meet two conditions: they must be (a) to the greatest expected benefit of the least advantaged; and (b) attached to offices and positions open to all under conditions of fair opportunity."<sup>20</sup>

Here we find the principles of 'equal liberty' and 'fair opportunity' are natural expression of this equality contained in Rawls' principles of justice. He has described it as 'Kantian' though it is not Kant's conception, but 'sufficiently similar to essential parts of his (Kant's) doctrine to make the adjective appropriate'. Kant's view is marked by a number of dualism, in particular, the dualism between the necessary and the contingent, form and content, reason and desire, and noumena and phenomena. Kant's moral conception has a characteristic structure. The conception of justice suitable for a well ordered society would be fair between individuals conceived as free and equal moral persons.

As late as in 1985, John Rawls in his paper on 'Justice as Fairness: Political and Metaphysical' begins: "I shall first discuss what I regard as the task of political philosophy at the present time and then briefly survey how the basic intuitive ideas drawn upon in justice as fairness are combined into a political conception of justice for a constitutional democracy. Doing this will bring out how and why this conception of justice avoids certain philosophical and metaphysical claims. Briefly, the idea is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial, philosophical and religious doctrines .... The public conception of justice is to be political, not metaphysical."<sup>21</sup>

In the same paper, John Rawls, as late as 15 years after the first paper, in 1985, clears and writes: "One thing I failed to say in 'A Theory of Justice' (1971), or failed to stress sufficiently, is that

justice as fairness is intended as a political conception of justice. While a political conception of justice is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social and economic institutions."<sup>22</sup>

John Rawls' 'Justice as Fairness' is a political conception in part, it actually, starts from 'within a certain political tradition.' 'It is essential to note that citizens in their personal affairs, or internal life of associations to which they belong are very different from the way the political conceptions involves. Their non - public identity help to organize and give shape to a person's way of life.

In the -year 1995, while writing on 'Fifty Years after Hiroshima', John Rawls answering the question 'was it, perhaps, justified? says bombing of Hiroshima on August 6, was very great wrong. He gives six principles and assumptions in support to his judgement. They are:

1. The aim of a just war waged by a decent democratic society is a just and lasting peace between peoples, especially with its present enemy.
2. A decent democratic society is fighting against a state that is not democratic. This follows from the fact that democratic people do not wage war against each other (he assumes)
3. In the conduct of war, a democratic society must carefully distinguish three groups: leaders and state's officials, its soldiers, and its civilian population
4. A decent democratic society must respect the human rights of the members of the other side, both civilian and soldiers for two reasons. One, is because they simply have these rights by the law of people. The other reason is to teach enemy soldiers and civilians the content of those rights by example of how they hold in their own case.

5. Just peoples by their action and proclamations are to foreshadow during war the kind of peace they aim for and the kind of relations they seek between nations.
6. Finally, 'we note the place of practical means and reasoning in judging the appropriateness of an action or policy for achieving the aim or war for not causing more harm than good.'<sup>23</sup>

In our final conclusion on John Rawls's work on justice, which has more commentaries and has aroused wider attention than any other work in moral or political philosophy in twentieth century. He has considered the basic structures of society as "the primary subject of justice". John Rawls's, two to three decades' steady stream of essays and two major treatises, 'A Theory of Justice' (1971) and "Political Liberalism" (1993) - all these volumes work has been just very scantily noted, to give his very basic approach and apprehension of the issue of Justice".<sup>24</sup>

### PART III

#### THE NEW PERSPECTIVE

Having gone through certain conceptual aspects and issues concerning values and Justice, intentionally not drawing any ultimate conclusion, I will now try to view them from the New Perspective; which is nothing but a modern perspective. Where do we stand today with regards to values and Justice? How far the concepts, the emphasis, the approaches of the people and practices in an individual's life in particular and in society in general have changed? I call the picture of all these a New Perspective.

#### Concept of Modernity:

In "Formation of Modernity" it has been mentioned, "Traditionally, modern societies have been identified with the onset of industrialization in nineteenth century. Formation breaks with the tradition, tracing modern societies back to their origins in the rapid and extensive social and economic development which

followed the decline of feudalism in Western Europe. It sees modern societies now as a global phenomenon and modern world as the unexpected and unpredicted outcome of, not one, but a series of major historical transitions.”<sup>25</sup> The term, in its common sense, means recent or up-to-date. India and all most all the developing countries of the world, is passing through a number of emigrant social forces and contradictory processes which are radically reshaping its societies into modern societies, today.

The three key cultural themes in transition to modernity, as mentioned in the formation of Modernity Volumes, are : First, the shift from a religious to secular world view, and from ‘sacred’ to a ‘profane’ foundation for social and moral values; Second, the role which religion played in the formation of the spirit of capitalism - the protestant ethics; and Third, the growing awareness among western philosophers and social theorist at the costs of modern culture - what Freud - called civilization’s ‘discontent’. This has made us notice the following main characteristics of the modern society, i) The dominance of secular power political power and authority and conception of sovereignty and legitimacy; ii) A monetarized exchange economy, based on the large scale production and consumption of commodities for the market, extensive ownership of private property and accumulation of capital on a systematic, large term basis, iii) the decline of traditional social order and the appearance of a dynamic social and sexual division of labour; iv) the decline of religious world view typical of traditional societies and rise of secular and materialistic culture, exhibiting those individualistic, rationalist and instrumental impulses now so familiar to us. To these we can add two more: v) the emergence of modern societies was marked by the birth of a new intellectual and cognitive world; and vi) construction of cultural and social identities as part of the formation process”.<sup>26</sup>

Today, “the post modernism” is challenging the old “modernism”. “It seems, society is seized with and pervaded by the idea of ceaseless development, progress and dynamic change.

It is a shift - materially and culturally - into this new conception of social life".<sup>27</sup>

With reference to India, I would like to mention that most Indian scholars of social sciences agree that contemporary India is marked by divisions and cleavages. There are divisions between rich and poor, division of social class, division between religious and different humanists, between urban citizens and rural citizens, divisions between employees and employers, divisions between sexes, in terms of typical pattern of their position they occupy in the family and at work. All these make 'social structure'.

### **Contemporary Values and Justices:**

Philosophers and Social thinkers are, merely telling us what values are what justice is They bring before us the conceptual aspects. They are not giving advices on how to achieve them. I do not agree that justice is to be found in some place we have not yet reached, or values are all negative and good, positive values are yet to be implanted. This is wrong. We, infact, already know what justice is, we know the value of values and our societies already are, in certain basic way, just and value oriented.

The new perspective clears how policies, everywhere in the world, are based, not on ideologies but on a balanced perspective of the role of markets. "It is based not just on understanding of our economy but of our society, and it goes beyond the materialistic values that are paramount in the growth and efficiently agenda. There are three corner stones: i) social justice - about equality and poverty; ii) political values - particularly democracy and freedom; and iii) views about the relationship between individuals and the communities in which they live."<sup>28</sup> Let us not defend the basic values of social justice - let us simply assert. The need, the utmost need, as I would say, of the day is to think about the plight of the poor. It is a moral obligation, one that has been recognized by every religion. "The commitment to equality" as it is in American constitution or resolved to constitute the nation into Sovereign

Socialist Secular Republic to secure to all its citizens Justice, Liberty, Equality and Fraternity as it is in India's constitution are the most important ones to be practiced.

Everywhere we find peoples' light about taxes, inflation going high and price rising making living struggling, against government programmes - resulting into students unrest, labour's pathetic plight, women feeling unjustified and children, no body to bother for their education and health, the insecurity and uncertainty dragging everyone to a stressful life. We find all these things, but the real battle is more profound: it is about the nature of society; and the relationship between the individual and the society. Neither society is for the individual (as western philosophy puts) nor individuals is for the society (as Indian Philosophy says). Both, the individual and the society, are the better halves of the same one. Both make one. One may call them two sides of the same coin. We are happy with the United Nations on its Universal Declaration of Human Rights on December 10, 1948. But, of "what value is the freedom of speech to a man who is so starved that he can hardly speak, freedom of press to a woman who has not had an education and can not read?"<sup>29</sup>

I would strongly plead for certain traditional values we have under-estimated. Values such as trust and loyalty in making our economic system work, are of great relevance in today's world. The government, even if playing an important role, it is yet limited in working towards social justice. We all believe, while markets are at the centre of the success of our economy, markets do not always work well by themselves, why they does not solve all problems, and why government will always be an important partner to them. All the nations pass through crisis. As the world went into crises after September 11, we realized that we had to act together. "Learning to live together" has become significantly important and a necessity to safeguard our existence.

Often we mention Nietzsche and his philosophy of 'Nihilism', which emerged in Germany towards the end of nineteenth Century.

His argument was that the values of the western civilization, often represented as aspects of Truth and Beauty and Justice, were really simply 'masks' or 'fictions' used in struggle for power - the 'will to power'-among the powerful, which dissolved any objective distinction between 'good' and 'evil'. Same is the case even in the post - independence (1947 - 2006) period of India. Religion and Religious Values are simply the 'masks' for the political leaders to create an image before the utterly poor, illiterate villagers to grasp the votes at the election and get the power. In such countries of Asia and Europe, we find, the technical forms of reason have been established and eclipsed the Critical reasoning about moral and political values. We see Critical rationality almost lost being confused with scientific forms of reasoning. Values are always established by the people through healthy, reasoned debate and not by force. The error, in the modern world, is in the thinking "that science and technology could provide values, or even that societies do not need fundamental values."<sup>30</sup> The results are nihilism, fascism, disenchantment, and unhappiness. In India along with this we have fundamentalism and fanaticism.

Let us remember, with reference to Justice and Law, that the power of punishment is a great power, but "it is given so as to maintain the dignity and authority of the courts and to ensure fair trial - keeping the stream , of justice clear and pure."<sup>31</sup>

The power, obtained as a result of the election or from the 'majoritarianism', should not play with the constitution as a tool by frequent amendments distorting its fundamental character and its basic identity. Mr Soli Sarabji, an eminent lawyer of India's Supreme Court says: "I am saying that there is a concept that says that there are certain essential 'core values', to use the language of the German Constitution, or that there are certain 'Supreme Principles', to use the language of Italian Supreme Court, or as the Bangladesh apex court says, there are certain pillars that you cannot demolish because if you did that you would destroy the constitution, not amend it".

The solution lies , as some think and I agree too, in “reconnecting with earlier ways of thinking about society and its relations with nature - both external nature, the environment, and nature in the human body. “Reason” could and should include such ethical thought. Value neutrality (as in Indian Secularism, European racism or American equality of gender) is a dangerous illusion, a chimera, something to be avoided, not to be treated as a guarantee of academic respectability”.<sup>33</sup> No doubt, the gains injustice and equality from modern bureaucracy is a benefit to modern culture, and yet Freud saw the modern culture as “dominated by a one dimensional form of technical reason.” If reason is not used to provide collective purposes and to criticize existing assumptions then, in his view unreason takes over.

At the close of this discussion on Values and Justice, I would quote the words of Robert Bocock from his article “The Cultural Formation of Modern Society” printed in *Formation of Modernity* (Vol. I P 229-274): “Someone must continue to think about, and write about, human life — there must be someone to weigh up questions of value and the ultimate purpose of existing values, and to debate how we ought to live and how we ought to try to arrange our collective lives together. Who else will take responsibility for this if not intellectuals?



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