

# **JUSTICE AND THE POLITICAL ORDER in INDIA**

*Sobhanlal Datta Gupta*

# JUSTICE AND THE POLITICAL ORDER IN INDIA

*(An Inquiry into the Institutions and  
Ideologies : 1950-1972 >*

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# PREFACE

It won't be surprising if anyone points to the hazards and difficulties involved in writing on such an abstract theme as justice, particularly when the political order in India provides the context of writing. My aims, however, to be honest, are not much too ambitious. It is intended, in the first place, to set the idea of Justice in the correct theoretical perspective, since, I am afraid, the meaning of the concept has got dangerously blurred—if not hopelessly mystified—in the cobweb of highly abstract, and at times ponderously metaphysical, definitions that the whole range of liberal political philosophy has till now produced. In doing so, I have tried to expose the complete hollowness of the liberal democratic standpoint and have, consequently, tried to defend the theoretical necessity of accepting the marxist understanding of the idea of Justice. But theory, one would surely agree, is not enough. And that explains my attempt to relate this understanding to the political institutions and the ideological crosscurrents of Indian politics. For that, quite inevitably, at times the reader will have to go through, surely not always with smiles, a veritable jungle of statistics and a host of political documents.

The present work, it should be mentioned, is based on my doctoral thesis, *The Idea of Justice in the Republic of India*, on the basis of which I was admitted to the Ph.D. degree in Political Science of the University of Calcutta in 1975. In tune with time, the original work naturally had to be a bit updated and I found it quite tempting to add an epilogue in the concluding Chapter.

I take this opportunity to express my deep respect and gratitude to Dr. Ramesh Chandra Ghosh, now ex-Centenary Professor of Public Administration, Calcutta University, who supervised my thesis with great care and offered his invaluable comments. Those of us who have had the opportunity of working under Professor Ghosh know only too well the passionate zeal with which he supervises a thesis. In my case, I should admit, it was rewarding in many ways. While I was engaged in revising the thesis for publication, I took it up as

a research project at the Centre For Studies In Social Sciences, Calcutta, and this has, it goes without saying, considerably expedited and facilitated my work. For that, I am particularly grateful to Dr. Barun De, Director, Centre for Studies In Social Sciences, Calcutta. For valuable comments on the first Chapter, my thanks go to Dr. Amal Kumar Mukhopadhyay, Professor of Political Science, Presidency College, Calcutta. I also wish to thank Sm. Gouri Bandopadhyay, Sm. Sikha Guha Majumdar, Sri Nirmal Chakraborty, Sri Soumitra Chatterjee, Sri Ashok Sen Gupta and Sri Arun Kumar Sanyal, who prepared the typescript of the manuscript for the press.

Finally, I consider it a fine opportunity to dedicate this book to two of my dear old friends, now living quite far away, with whom I learnt to dream of a brave new world of the future that is yet to be born in this country.

Sobhanlal Datta Gupta

Centre For Studies In Social Sciences, Calcutta  
10 September, 1978

## CONTENTS

<b>Preface</b>	:	vii
<b>Abbreviations</b>	:	x
<b>1 The Idea of Justice</b>	:	1
<b>2 The Constituent Assembly and the Idea of Justice</b>	:	27
<b>3 The Institutional Dimension (I) Parliament and the Idea of Justice</b>	:	70
<b>4 The Institutional Dimension (II) The Supreme Court and the Idea of Justice</b>	:	123
<b>5 The Ideological Dimension The Major Political Parties and the Idea of Justice</b>	:	197
<b>Epilogue</b>	:	281
<b>Bibliography</b>	:	286
<b>Index</b>	:	297

## CHAPTER I

### THE IDEA OF JUSTICE

To commence writing on the concept of justice is to invite, I presume, a serious risk. The reason is quite simple. In the realm of political philosophy it is the discussion of this concept that has generated perhaps the worst, and on occasions quite loud and violent, controversies. In fact, while philosophers from the time of Plato down to the present day have spared no efforts in clarifying the concept, our experience, however, has not been a very happy one. The moral philosophers, to say the least, have somehow made the issue more complex and debatable, leaving behind a trail of confusion. That the concept has suffered such a fate is perhaps because of its ambiguity; indeed, if the recorded history of man is any evidence, time and again the concept of justice has been invoked to put oneself in the right and one's opponent in the wrong. Every revolution or counter-revolution, an act of war or an act of peace,—all have been effected in the name of justice. In other words, the striking characteristic of the concept is that partisans of both the old and the new order have invoked the cause of justice to morally defend their respective positions.<sup>1</sup> This abstract, universal and all-pervasive characteristic of justice prompts one to raise two questions. First, how does the idea of justice emerge in human mind? Secondly, since the notion of justice is invoked to defend the righteousness of a cause, is justice essentially a moral concept? A satisfactory clarification of these two issues would enable us to further inquire into the scientific meaning of this concept.

Man's craving for justice can be explained as "the active process of preventing or remedying what would abuse the sense of injustice."<sup>2</sup> In other words, it is man's necessity for

<sup>1</sup>Ch. Perelman, *The Idea of Justice and the Problem of Argument* (London: Routledge and Kegan Paul, 1963), p. 6.

<sup>2</sup>Edmond Cahn, "Justice", in *International Encyclopedia of the Social Sciences* (London: Macmillan; New York: The Free Press, 1968), Vol. 8, p. 347.

remedying injustice that prompts him to resist it through all possible acts of solidarity and thereby justify these acts and urges in the name of justice. This awareness of injustice arises in society in the context of a prevailing system of human relationships. The drive for justice, then, is essentially a drive for changing this state of affairs. The origin of justice, therefore, has to be traced to man's awareness of injustice in society and, consequently, to his search for changing the situation. Hence justice, primarily, is a social concept, which has its origin in man's life in society.

Philosophers representing the classical liberal tradition in social thought are however divided, till now, on this issue. Plato, it may be mentioned, characterised justice as the complete expression of the soul's excellences, the epitome, the totality of virtue.<sup>3</sup> In other words, Plato traced the source of justice to an other-worldly sphere of abstraction, and not to the mundane world of material existence. In our time we have come across the position taken by Walter Kaufmann that the origin of justice has to be traced metaphysically—almost like Kant's "categorical imperative"—to a kind of inherent moral sense in man, to his multiple emotive faculties. Kaufmann calls it the "sense of desert, the notion that a person has something coming to him", and the idea of justice thus originates "in the minds of those to whom the promise has been given".<sup>4</sup> Speaking about the multiple dimensions of this unfulfilled promise or desert, Kaufmann says, "The promise may concern reward or punishment, and this may be deferred or it may never come, in our own sense or in that of others; and this non-event may be met with envy or compassion, with self-pity or guilt feelings, with indignation or concern, with ardent hope or extreme anxiety. No one emotion is the source of justice".<sup>5</sup>

Despite these attempts to explain the origin of justice metaphysically, the overwhelming majority of the liberal philosophers, however, are opposed to this position. Even Aristotle in his *Nicomachean Ethics*, after characterising the

<sup>3</sup> Plato, *The Republic*, I. 353, in *The Dialogues of Plato*. Vol. I. Translated by B. Jowett (New York: Random House, 1892), p. 620.

<sup>4</sup> Walter Kaufmann, "The Origin of Justice", *The Review of Metaphysics*, XXIII(2), December 1969, p. 228.

<sup>5</sup> *Ibid.*, p. 214.



whole of justice with the whole of virtue, explains in his subsequent treatment of the subject that justice is placed in the forefront of all moral goodness because it is exercised not for one's own but for another's benefit. To cite the words of Aristotle: "... justice, then, is complete virtue, but not absolutely, but in relation to our neighbour ... And it is complete virtue in its fullest sense, because it is the actual exercise of complete virtue. It is complete because he who possesses it can exercise his virtue not only in himself but towards his neighbour also; for many men can exercise virtue in their own affairs, but not in their relations to their neighbour ... For this same reason justice, alone of the virtues, is thought to be 'another's good', because it is related to our neighbour".<sup>6</sup> He raises a very significant question whether a man can be unjust to himself, and he has no doubt that this is impossible.<sup>7</sup> This is an implicit recognition of the social base of justice, latent in human relationships in society. In our time, Morris Ginsberg has summarily rejected the metaphysical deduction of justice from the concept of self-consciousness and has, on the contrary, argued, "We are aware of others when we hate, fear, or are suspicious of them, just as much as when we love them, sympathize with them, or respect them. That the latter attitudes or conditions are morally good and the former bad cannot be deduced from the bare idea of self-consciousness".<sup>8</sup> R. W. Baldwin goes to the length of making the observation that justice being "essentially a quality of the behaviour of one man to another, that is of man in society", "all justice is a social justice and the adjective is otiose".<sup>9</sup>

Justice, then, is not an abstract and a static notion; rather it is a concrete and a dynamic concept to be understood in terms of the changing social relations of man. The concept involves an idea of change for the better in a definite direction, away from those human relations which constitute injustice in society. This idea has been corroborated by F. H. Knight,

<sup>6</sup> *Ethica Nicomachea*, V. I. 1129b 25-34, in *The Works of Aristotle*, Vol. IX. Translated by J. A. Smith and W. D. Ross (London: Oxford University Press, 1915).

<sup>7</sup> *Ibid.*, V. 6. 1134b 8-10.

<sup>8</sup> Morris Ginsberg, *On Justice in Society* (Harmondsworth: Penguins, 1965), p. 52.

<sup>9</sup> R. W. Baldwin, *Social Justice* (Oxford: Pergamon Press, 1966), p. 1.

'The real task faced is that of social progress, definable only as a direction of change (in a complex sense, mostly negative) through alleviating some of the grosser injustices that a society can agree upon and find remediable. In short, there is now no such thing as justice "in general"; one can meaningfully discuss only fairly concrete injustices and procedures for their mitigation with existing social machinery or the possible ways of improving the over-all social organisation.'<sup>10</sup> Justice, thus, involves an element of desirability or goodness in social life. In other words, whenever we characterise a thing as just, objectively we pass a moral judgement, justifying its desirability in terms of the canon of goodness. Justice, thus, connotes an idea of interpreting social relations of man in relation to ethics.

## II

This interrelation between the social basis of justice and its normative character puts us on trail of the second question raised at the beginning, that is, whether justice is essentially a moral (normative) concept. This has to be discussed with reference to two other questions. One, how does the necessity of moral judgment arise in society? Secondly, how does the concept of justice conceptually get related to moral judgment?

The necessity of moral judgment has emerged in society with man's growing ability to see a contradiction between what he is, how he lives, and what he could be and how he ought to live. The necessity of ethics is the necessity for codes and rules of conduct by which human relations can be regulated in society and the stability of social life secured. In other words, "Ethics, proper, begins when men seek to find rational grounds for accepted rules of conduct and do not merely follow the rules because they are sanctified by tradition".<sup>11</sup> This ability to see a contradiction between how one lives and how one can, should, or ought to live, however, is not a subjective phenomenon. It is the objective circumstances in society that

<sup>10</sup> Frank H. Knight, "On the Meaning of Justice", in Carl J. Friedrich and John W. Chapman, eds., *Justice* (New York: Atherton Press, 1961), p. 3.

<sup>11</sup> Howard Selsam, *Ethics and Progress. New Values in a Revolutionary World* (New York: International Publishers, 1965), p. 8.

lead to the awareness of this contradiction. On this point, one cannot but agree with the observation that ethical judgments deal with those aspects of life which deeply influence the kind of life we live and the kind of people we are. On the other hand, those aspects of our life which are not within our actual or possible control are natural phenomena and are not subject to moral judgments. Thus a fundamentally natural condition becomes a moral problem when we discover the means of controlling it and thereby make it a problem for man to think about.<sup>12</sup> This explains the objective basis of moral judgment. Moral judgment, meaning the ability to see the contradiction between what one is and what one ought to be, however, becomes a problem for man because of the impossibility of agreement concerning the desired ends of man and society. This, however, happens because of the objective social reality—that the private interests of a minority are in objective opposition to the interests of the many.

It is at this moment that the notion of justice comes in the picture. While injustice is the objective expression of this total situation where the interests of a few are opposed to the interests of the many, the necessity of the concept of justice reflects the objective historical necessity of resolving this contradiction. In other words, the expression “justice” stands for the objective, human necessity of changing the unjust situation by resolving the contradiction between how he lives and how he ought to live. This expands the realm of ethics too, as man, driven by this objective necessity, strives for increasing the knowledge of the nature of human relations in society and thus seeks to resolve the contradiction arising out of the conflict of interests by controlling and thereby determining the direction of human relations in society. This objective and social basis of ethical norms establishes the nexus between justice and ethics.

But, one might argue, how do we assure ourselves that we arrive at this “objective” understanding? For, we cannot talk about justice and morality without “our awareness” of them. In other words, do we not at once invite the risk of being “aware” subjectively? For morality, it cannot be denied, expresses the drives, the interests, the consciousness of the

<sup>12</sup> *Ibid.*, pp. 23-24.

subject. A resolution of this intriguing issue, however, would depend on how one would explain the meaning of "awareness". "Awareness is", as Academician A. Alexandrov has so rightly suggested, "simply the transition from perception or emotional experience to knowledge".<sup>13</sup> While morality begins with the initial, unorganised reflection of man on the consequence of his action in society, over time the totality of the historical experiences transforms the initial strivings for reflection on the consequences of one's act into the *knowledge* of ethics. Knowledge, again, if we are really very keen on using this expression, is objective, and thereby it possesses the elements of science. In other words, the distinction between morality and science does not consist in the assertion, as Alexandrov has so beautifully explained, that "science reflects reality whereas morality does not"; rather the crucial difference has to be viewed dialectically, in the sense that the "difference resides in the nature of this reflection. Knowledge—the statement of objective being—is the product of science. In turn, morality, through knowledge, develops imperatives".<sup>14</sup> This being the rational nexus between ethics and science, and once the essential linkage between ethics and justice is acknowledged, any exploration of the meaning of justice boils down to an inquiry into the knowledge of the social roots of the contradiction between how he lives and how he ought to live. This, quite logically, would satisfy the canon of objectivity in the treatment of the concept.

It is precisely this failure to trace the roots of moral judgment and justice to the objective contradictions in social life—to the conflicting human interests and their causes—that characterises the whole range of the liberal tradition in moral philosophy. The contention is that this, quite inevitably, leads to a subjective understanding of the concept and exposes thereby the failure of liberalism to provide any scientific understanding. Although quite a number of the leading stalwarts of liberal moral philosophy acknowledge, as I have argued earlier, that the origin of the idea of justice has to be traced to society and not to a world of metaphysical abstraction, their

<sup>13</sup> A. Alexandrov, "A Scientific Approach to Morality", in *Science and Morality* (Moscow: Progress Publishers, 1975), p. 35.

<sup>14</sup> *Loc. cit.*

perspective of interpreting the conflict of interests is one of treating it essentially as a moral problem. As Maurice Cornforth points out that the logical outcome of such ethical interpretation of conflicting interests in social life gives rise to the idea that "rational moral judgments are those that promote the reconciliation of interests and mutual tolerance of ideals".<sup>15</sup> The obvious implication is that the solution of this conflict of interests in society is believed to be a moral one. Indeed, it is this idea of reconciliation of interests, i.e., balance of claims, that has been known as justice in the classical moral philosophy of liberalism. Thus C. K. Allen acknowledges that it is the concept of harmony, balance or reconciliation of interests that has been the dominant theme in the treatment of justice from Aristotle to Roscoe Pound. He feels that in a modern democracy it is the function of justice to blend the different tones of society into a satisfying wholeness through the very differences of the parts.<sup>16</sup>

It is evident that once the conflict of interests in society is viewed as a moral problem, the entire orientation of the concept of justice gets necessarily directed toward ethical subjectivism. C. J. Friedrich, for example, recognises the uncertainty and impossibility of evolving any objective criterion for understanding the concept. In his opinion, the element of uncertainty is a reflection of the complexity of so many values that are involved in the concept. To cite his words, "...Justice and injustice cannot be related to any one value, be it equality or any other, but only to the complex value system of a man, a community or mankind".<sup>17</sup> It may be submitted here that, for Friedrich, the problem becomes complicated because he believes that the conflict involving the idea of justice in society is a conflict of values, and, consequently, his search for a solution lands him into a world of uncertainty. To quote his words, "...the conflicts over justice which rend a community are really differences in what is sensed to be unjust. One claims that it is unjust to take his property, another that it is

<sup>15</sup> Maurice Cornforth, *Marxism and the Linguistic Philosophy*. Second Ed. (London: Lawrence and Wishart, 1967), p. 219.

<sup>16</sup> C. K. Allen, *Aspects of Justice* (London: Stevens and Sons, 1958), pp. 16-17.

<sup>17</sup> C. J. Friedrich, *The Philosophy of Law in Historical Perspective* (Chicago: The University of Chicago Press, 1958), p. 199.

unjust that his children should starve; one argues the injustice of putting his white child next to a black one in school, the other rejoins that it is unjust that his black child should be denied equal opportunity for education".<sup>18</sup> Like Friedrich, whose failure lies in his inability to establish any rational, causal relationship between the conflict of values and the conflict of interests in society which shapes the problem of justice, there is the dilemma expressed by Otto Bird that, despite so many ethical theories that have evolved over time, one cannot say with certainty whether the idea of justice is rooted ultimately in man or in society.<sup>19</sup>

Almost a similar position has been taken up by Arnold Brecht. While he does not dispute the importance of looking for a scientific method which would enable us to explore the meaning of justice, he feels that ultimately an element of relativism, evolving out of one's own subjective perception of an ideal state of affairs, prevails in an understanding of the concept. Since such perceptions are bound to differ, Brecht draws the inevitable conclusion that science cannot, after all, help much in providing an objective understanding of the concept.<sup>20</sup> This, quite logically, leads him to take the position that the concept of justice, in the final analysis, limits the scope of any scientific inquiry. "Science, therefore," he writes, "is thrown back on human ideas or feelings about justice. These, however, have a relative character; they are relative even twice over, namely, always relative to some state of affairs that is considered desirable, and secondly, at least to a considerable extent..., relative also to particular ideas as to which state of affairs is desirable".<sup>21</sup>

Almost in the same vein Morris Ginsberg contends that while the problem of justice in society arises because of conflict of interests, they cannot be resolved "by appealing to a single, or supreme good". Consequently, we have no other alternative but "to accept a plurality of goods, possibly conflicting", since

<sup>18</sup> *Loc. cit.*

<sup>19</sup> Otto A. Bird, *The Idea of Justice* (New York: Frederick A. Praeger, Inc., 1967), p. 171.

<sup>20</sup> See Arnold Brecht, *Political Theory. The Foundations of Twentieth-Century Political Thought* (Princeton, N. J.: Princeton University Press, 1959. Bombay: The Times of India Press, 1970), p. 147.

<sup>21</sup> *Ibid.*, p. 161.

"Justice is concerned with problems of balance and adjustment".<sup>22</sup>

There is a fundamental similarity between the positions of Friedrich, Brecht and Ginsberg. All of them look for the resolution of the conflict of interests in society in terms of reconciliation of a multiplicity of indeterminate value-goals. As a result, either social injustice is sought to be resolved by the reconciliation or adjustment of values over which there is no agreement (Ginsberg) or the problem of justice itself, although viewed as a conflict of interests, is basically interpreted in terms of a conflict of values (Friedrich, Brecht). Hence none of them can think of any objective, and thereby scientific, explanation of the concept.

The central difficulty of these moral philosophers of liberalism is that they never take the trouble of inquiring into the *material* causes that lead to this conflict of interests in society. They refuse to address themselves to the fundamental question of social thought, which so many thinkers away from the mainstream of liberalism have tried to answer over the centuries, namely, what is the origin and essence of social and national oppression,<sup>23</sup> of injustice. Instead, since the conflict of interests is believed to be essentially a moral problem, the search for justice is believed to be not an inquiry into the problems of removing the social roots of the conflict of interests but an exploration of the moral principles which would effect their reconciliation. The perspective of inquiry, then, is bound to become subjective and unreal. It follows that if the problem of justice is treated essentially as a normative one, the thrust of inquiry, too, is directed toward sustaining the existing social order by evolving principles of reconciliation of conflicting interests. In other words, it becomes a classic defence of the status quo, of inequality,—a case for the moral defence of liberalism.

Broadly speaking, there are two such principles of reconciliation of interests as recognised by the normative concept of justice. The first of these principles is known as commutative justice. The idea of commutative justice has been well ex-

<sup>22</sup> Ginsberg, *op.cit.*, p. 59.

<sup>23</sup> Cf. G. P. Frantsov, *Philosophy and Sociology* (Moscow: Progress Publishers, 1975), p. 13.

plained by W. B. Gallie, when he defines it in these words, "Commutative justice is best assured when each individual is left free to decide in what ways he will use his own capacities and property, subject to the proviso that his way shall not prevent others from using their capacities and property in their ways;... The fact is that the idea of commutative justice logically requires that the individual shall be a freely choosing agent".<sup>24</sup> The principle of commutative justice suggests that it is the defence of the negative view of liberty, the implication of which is that the individual is in a position to best realise his own self if his activities are interfered with by others to the minimum. In other words, it becomes a defence of what Gallie characterises as "liberal morality".<sup>25</sup> Carefully analysed, the principle of commutative justice implies two things. It suggests that the conflict of interests in society can be best reconciled if a policy of non-interference is agreed upon by the individuals. This is based on the classical assumption of the liberal democratic theory that every individual is equally free to choose his own station in society. Now, this assumption is possible only if it is quietly ignored that the capacity of an individual to make his choice is determined by the material conditions of social inequality in which his position is structured. Moreover, it is rather a puzzling contention that persons born in unequal circumstances would be expected to exercise their liberties in such measured ways as not to prevent others from using their optimal capacities and property. The other implication is that the principle of commutative justice is an apologia for the sustenance of the existing order in terms of the canon of moral obligation and not in terms of the facts of social life. In other words, justice as a concept becomes an expression that stands for what Baldwin characterises as a stringent type of moral obligation, the one whose breach gives rise to keener resentment.<sup>26</sup> To put it more clearly, the traditional concept of justice, with its emphasis on morality, takes it for granted that men are selfish and, simultaneously, that one self is as im-

<sup>24</sup> W. B. Gallie, "Liberal Morality and Socialist Morality", in Peter Lastlett, ed., *Philosophy, Politics and Society* (Oxford: Basil Blackwell, 1956), p. 123.

<sup>25</sup> *Loc. cit.*

<sup>26</sup> Baldwin, *op. cit.*, p. 230.



portant as another, and hence the function of justice becomes one of regulating these conflicting interests by emphasising the principle of equality of liberty for all in the form of commutative justice.

The difficulty involved in this approach is that the principle of commutative justice is justified on the ground that this is a moral obligation, deeply rooted in human values. It becomes almost a self-evident principle, the rationale of which is traced to subjectivism in morals. It is true that Baldwin does make a distinction between the awareness of commutative justice and the feeling of beneficence which, in his opinion, springs from man's altruism.<sup>27</sup> It is also true that the author acknowledges that the knowledge of obligation stems from reflection upon the situation and the relation to the other person involved;<sup>28</sup> but, conceptually, the central difficulty that remains is that the awareness that one's liberty should not be interfered with cannot be explained in terms of an instinctive sense of moral obligation, but in terms of social necessity in a given situation. The emphasis on moral obligation would thus provide a completely wrong and distorted orientation to the understanding of the problem.

One may further argue that the emphasis of the commutative principle on the ethical rationale of moral obligation is integrally related to the philosophical concept of man in liberal-democratic political theory. Rajni Kothari, a very able exponent of this school in our country, observes in his recent writings that the problem of justice centres around the problem of realising best the autonomy of man. Now, whenever the point of departure is the man qua man, abstracted from the material social conditions which condition this "autonomy", it comes down to a sordid defence of the values of "autonomy" and dignity of man without disturbing the status quo. In other words, as soon as the premise of one's theoretical inquiry would shift from the material social relations to the values and "autonomy" of the individual, that would lead him to philosophically share the classical laissez-faire position. It is thus no surprise that the exponents of the commutative principle would be always prone to treat

<sup>27</sup> *Loc. cit.*

<sup>28</sup> *Ibid.*, p. 247.