

The Variations of the Concept of Justice: An Analysis

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Abstract. The idea of the concept of justice varies from man to man, family to family, locality to locality, state to state, country to country and even continent to continent. The inquiry about justice goes from the crudest to the most refined interpretation of it. The basis of justice can be traced to conscience and morals. Philosophers have different theories of justice. This contributes to the assertion that a definite meaning of justice is hard to come by. Some see it as a shield to the weaker people in the society; others envision a society of equal citizens with equal rights. The ‘rights of citizens’ is one of the basic features of justice. In claiming these rights by citizens, arguments build up as to unjust actions. An example is the nature of secularism in Turkey, the ban placed on the hijab and the violation of the right to freedom of religion of women. Also, an intimate look at current issues in the world brings one to the conclusion that it is not possible for everyone to be just; just like everyone cannot be equal. Pertinently, there are different angles to justice. We have economic justice, political justice, social and Islamic justice. People ascribe justice to the least of their interactions in the society. This paper seeks to examine, through the use of primary and secondary materials, the concept of justice by looking into the foundation of justice and the theories of justice by different philosophers; to dissect the concept of justice into different aspects; and analyse some of the current issues on justice.

Keywords: Justice, Natural justice, Fairness, Ethics, Equality, Constitution, Right to Privacy

1. Introduction

Justice is fundamental in any society. Its importance and significance can never be underestimated in the affairs of men. It is like a sister to law. It is what the law seeks to be effective. A good society is one structured according to the principles of justice.

Justice generally means what is just and fair. The Supreme Court of Nigeria defining justice in the case of *Inakoju v Adeleke* stated that:

Justice is not only one loud and large term, it is most important expression in the judicial system and administration of justice, and here I emphasise justice in the context. Justice in its simplistic content means quality of being just, fairplay and fairness. It has an element of quality of egalitarianism in its functional context.

The popular figure of justice; The Lady Justice, has three recognizable features. She is blindfolded, manifesting her impartiality; she holds the “scales of justice” showing that she is ready to weigh competing claims; and she holds a sword, indicating that she means business. This signifies that justice has the features of fairness and equality. However, it is good to always keep ‘Lady Justice’ in mind when thinking about the concept of justice.

Justice has been prevalent in different societies since the pre-modern days. There was a pre-

modern idea that there was a god; that god had a plan of social life and those who conformed to the plan were good while those who lived by some other plan were evil. For example, in Nigeria, traditional justice is the pillar of igbo judicial and legal systems where there is a belief in a supreme and unique God called Chineke, Chukwu or Czechitoke and believe in lesser spirits and the ancestors. The gods or the ancestors determine what is good and what is evil and whoever goes against the good would be subject to either of the two classes of offences with punishments ranging from death penalty in very extreme cases, ostracism, banishment to seizure of valuable property.

In order to arrive at a just society, the inalienable and inborn rights of all human beings and citizens, the right of all people and individuals to equal protection before the law of their civil rights, without discrimination on the basis of race, gender, or sexual orientation, gender identity, national origin, color, ethnicity, religion, disability, age or other characteristics must be taken in consideration

Also, from a jurisprudential point, the term justice means different things to different people. The natural school of thought views justice as a different concept as does the various scholars from the sociological and historical schools of thoughts. John Rawls sees justice as fairness and envisions a society of free citizens holding equal basic rights cooperating within an egalitarian economic system. Aristotle distinguished between what is meant by 'corrective justice' and 'distributive justice' and posited that goods should be distributed to individuals on the basis of their relative claims. Cephalus, a representative of traditional morality of the ancient trading class is of the view that justice consists in speaking the truth and paying one's debt'. Thrasymachus propounded the radical theory of justice. According to him, justice is "the interest of the stronger" He advanced some more arguments in support of his concept of justice and injustice. Glaucon put forward a social contract theory from historical evolution, arguing that justice has become a shield of the weaker.

The various approaches to justice have revealed that we face an irresolvable pluralism of ideologies of justice and if the structure of legalism embodies one dominant set of ideology of justice, it will appear unjust from another perspective.

In this paper, the concept of justice in relation to the some prevalent issues in the world is examined. An analysis of the variations of the concept of justice which includes constitutional justice, social justice, political justice and religious justice is also made and the ideas of different philosophers and scholars on the concept of justice are discussed.

2. Conceptualization of Terms

Some words are defined for a better understanding of some of the terms used in this study.

JUSTICE – For the purpose of this study, justice generally means the fairness, equality, equity, rightness, virtue or the equal distribution of resources.

RIGHTS – This means the basic entitlements of every citizen in a particular state or fundamental human rights of people all over the world. These rights include: right to life, right to liberty, and freedom of expression amongst others.

ETHICS – Ethics is the moral view about what is good or bad in a particular society. It has to do with the behavior of people in a particular society as how they see things as being right or wrong; whatever is right is good and whatever is wrong is bad.

EQUALITY - In this study, equality means non-discrimination on the basis of sex, race, health, religion, family structure, age, culture, sexual orientation and marriage. It is the impartial treatment of things or persons with the same status equally.

CONSTITUTION - This is the grundnorm of a particular state or the set of laws of a particular government.

FAIRNESS – Fairness also means the quality of making unprejudiced, equitable, impartial, just, objective, dispassionate and unbiased decisions and judgments.

HIJAB - The hijab is a cover used by Muslim women as ordered in the Quran; the Islamic text of Muslims to preserve their modesty and make men deal with them on a mental level as equals, rather than sexual objects.

3. The basis of Justice

Conscience is the basis of justice. It is the mixture of ethical and moral principles that control, inhibit or accuse the actions of an individual. The conscience of a man makes him recognize his inner voice which speaks justice and discerns between what is good and evil; and what is right and wrong. This conscience also leads a man to treat others in a way he wants to be treated in certain situations.

Most of the justice systems revolve around ethics. Ethics resolves questions dealing with human morality – concepts such as good and evil, right and wrong, virtue and vice. Justice is a concept of moral rightness based on ethics, rationality, law, natural law, religion, equity and fairness, as well as the administration of the law. In certain situations, the nation has to make certain laws against live conscience which may be vital for the interest of the nation. For example, in the United States of America, it is common to have citizens unlawfully arrested, detained and tortured by the American courts in the fight against terrorism prominent in the Nation. The fight against terrorism is an excuse against the violation of human rights in the United States.

4. Variations of the Concept of Justice

Justice is a term with varied meanings. The concept of justice means different things to different people and societies. So many scholars and philosophers have also come up with different ideas of this concept of justice. There is no single pattern as regards the concept of justice; pluralism of ideas is the order of the day. For instance, the practice of the female genital mutilation is classified as being justified and is encouraged by some Islamic scholars and some countries while some other scholars and countries see it as a cultural practice which is both unethical and incredibly detrimental to the

victims of such unjust act besides obviously being a direct violation of human rights.

4.1 Natural Justice

The doctrine of natural justice embraces principles and rules of justice and fairness which impose obligation on authorities and persons who have power to make decisions affecting other persons to act fairly without bias in good faith and afford the person the opportunity to be heard and adequately state his case; this term refers to divine law and divine justice.

The opportunity to be heard by an impartial decision maker is at the heart of the rules of natural justice. Justice is being disinterested and/or unbiased in the matter to be decided; it is not only to be done but be seen to be done and the decisions that are eventually made must be based on logical evidence. Faith in courts and the justice system is justice.

4.2 Constitutional Justice

The only way to analyse the nature of justice in a particular society is through the constitution of the people. A just constitution would be a constitution that affects equality amongst the three arms of government; the legislature, the judiciary and the executive; the separation of powers amongst them and fairness to the masses.

We have different set of rules in the provisions of different laws of countries. For instance in Nigeria sodomy is illegal under the criminal law and persons who enter into same sex marriage contract or civil union commit an offence and are liable on conviction to 14 years imprisonment while in other countries such laws practices are not seen as a crime and thus not contained in the constitution. According to Laurie York:

“Gay marriage is an issue that has come to stay. It is not going away until the same-sex couples are extended the same 1,138 rights, benefits and privileges that heterosexual couples are so easily given. Countries around the world are one by one legalizing same-sex marriage”

However, there are some general features of justice that should be contained in the constitutions of nations. These include:

Basic rights

To ensure peaceful coexistence of the people and arrive at justice, the basic rights of the citizens must be protected and entrenched in the constitution. The fundamental human rights of the citizens must be protected.

Freedom of conscience and expression

Herbert Spencer's idea of justice was freedom. He thinks every man should be free to do what he wills provided he doesn't infringe on the equal freedom of any other man.

For instance, these days, academic freedom; the freedom of the academic staff of an educational institution as to the teaching, learning and conducting research duties is spelt out clearly and is also recognized in most countries of the world. This is protected by the provisions of the European Charter of the Fundamental Rights.

It is worthy to note that since 11th September, 2001, America's fight against terrorism has affected and weakened the liberties enjoyed in the States. Is this a form of injustice on the part of the United States government or is this just another means of protecting public order?

Freedom of speech is human's most fundamental and contested right in modern world. It is most significant also in democratic states.

Right to privacy

The right to privacy should be protected by the constitution. People should have the freedom to do whatsoever they want to do without any form of intrusion.

The freedom of information of citizens should be entrenched in the constitutions of nations. For instance, the interception of calls of citizens should not be done except it is lawful.

The United States constitution provides no express right to privacy; this has become controversial in recent times. In Nigeria, Section 37 of the 1999 Constitution provides for the rights to privacy in Nigeria.

Political equality

This involves the right to vote and be voted for. Citizens should have equal rights of participation in government. Both men and women should have the right to participate.

Women should not be discriminated against in government. The United Nations Convention on Elimination of all forms of Discrimination against Women protects the interests and rights of women and also gives women the capacity to access justice. In Nigeria, under the igbo customary rules, if the first born in a family is a girl, she cannot inherit the 'igiogbe'. The inheritance has to be by the first son. Is this a form of injustice? Or does it satisfy what is regarded as being just in that particular society and could pass for justice?

There should also be freedom from slavery and forced labour as contained in Article 8 of the International Covenant on Civil and Political Rights which provides that no one should be held in slavery; slavery in all forms shall be prohibited. The Parliamentary Assembly of the Council of Europe(Pace) adopted a recommendation on "Domestic Slavery" in 2001, in which it called for a number of measures to prosecute and prevent domestic slavery and to protect the rights of the victims thereof.

Equality before the law

The rule of law should be effective. Both the ruler and the ruled should be equal before the law. According to Allan in his book, the rule of law and separation of powers are the "first principles" of constitutional justice. He argued that there should be strict separation of powers between the arms of government and also equality before the law. Law, he insists, must be evenly applied insofar as it cannot impose discriminatory burdens on some citizens and not others without a corresponding rational justification that supports the common good and maintains the dignity of all citizens. He also argued that law should be general and must apply equally to private citizens as well as public officers.

Judicial independence

The independence of the judiciary cannot be over-emphasised. It is one of the key factors of justice. The judges protect the law; however having an unbiased, impartial and fair judge is a step to combating injustice in the world. It is injustice for those at the mercy of justice to have

their rights wavered by the bias judgment passed by the Judges in court.

Access to justice

Access to justice is when victims of injustice have access to court rooms, legal assistance or alternative dispute resolution that are not expensive. In the justice system under Sharia, access to justice is where people particularly the poor, women and children do need help and there are effective solutions available.

4.3 Economic Justice

Economic justice insinuates good life and the ways in which economic systems set conditions for a productive, fair and just life for all members of the global community. This has to do with keeping or distributing economic goods in a fair and equal manner. Aristotle was the first to distinguish between distributive justice and corrective justice. Economic justice however consists of both the distributive idea of justice and the utilitarian idea of justice.

Distributive Justice

Distributive justice is meted out by the legislator and consists in the distribution of offices, rights, honours and goods to the members of any society according to the principle of proportionate equality. According to Aristotle, justice consists in a sort of equality, and demands that the things of this world be equitably distributed and that such distribution be maintained by the law.

Distributive justice connotes that all social primary goods- liberty and opportunity, income and wealth, and the bases of self-respect are to be distributed equally unless an unequal distribution of any or all of these goods is to the disadvantage of the least favored.

In his book, John Rawls stated that distributive justice is a form of fairness; an impartial distribution of goods. It is the idea that the circumstances of life should not result in inequality, and the state should step in to level the playing field. The five rival principles of distribution are each according to equal share,

individual need, personal effort, social contribution and merit.

Distributive justice aims at distributing wealth according to egalitarian schemes where there is equal distribution of goods so that everyone can get what they deserve equally. According to the meritorious theories, goods especially wealth and social status should be distributed to match individual merit. Marx also argued that goods, especially basic ones like food, shelter and medical care should be distributed to meet individuals' basic needs for them. He feels everyone should contribute to the welfare of the generality of the people according to his/her capacity.

However John Stuart Mill, a philosophical thinker argued that the rival principles of justice can be reconciled only on the basis of the principle of utility, such as through consideration of the well-being.

Utilitarianism

Jeremy Bentham and John Stuart Mill are the proponents of this theory. The principle of utilitarianism is where the object of legislation of the state is to promote and secure the greatest happiness for the greatest number.

Bentham does not acknowledge a general or specific human right to justice or the judicial discretion to be given to judges to interpret the laws but justice according to the law as laid down in the legislation. According to Mill, the sense of justice encompasses all moral requirements which are most essential for the well being of mankind and which human beings regard as sacred and obligatory.

According to the utilitarian theory, the totality of the welfare of individuals is maximized across all relevant individuals to amount to justice. Punishment is a necessary sacrifice which maximizes the overall good in the long term.

Corrective Justice

Aristotle's account presents corrective and distributive justice as two contrasting forms of justice. Corrective justice deals with voluntary

and involuntary transactions (today's contracts and torts), focuses on whether one party has committed and the other has suffered a transactional injustice. Injustice arises in the absence of equality, when one person has too much or too little relative to another. The law corrects this injustice when it re-establishes the initial equality by depriving one party of the gain and restoring it to the other party.

For instance, corrective measures are used to achieve environmental justice where the polluters pay for the pollution caused by their activities which has led to the degradation of the environment thereby causing environmental and health hazards. By the 'Polluter Pay Principle' whoever is responsible for damaging the environment would bear the cost associated with it. This principle is mostly applicable in the Niger Delta region of Nigeria where oil spillage is rampant.

4.4 Social Justice

Social justice is based on the idea that the society gives individuals and groups fair treatment and an equal share of benefits, resources and opportunities. Social injustice incorporates social issues that involve the individual, the family, the community, the wider society, and even the international community. It refers to unfair treatment of inequities that have resulted from racism, sexism, socioeconomics, sexual orientation, religion, ableism, all of which affect quality of life.

Social injustice may be experienced in a variety of different ways, ranging from personal affronts to broader kinds of violations that are institutionally based. For example, denial of writing examinations in an educational institution because of wearing the hijab; the muslim cover. Discrimination against pregnant workers. Pregnant women have been fired, denied promotions and pushed to terminate their pregnancies.

Also the religious aspect of social injustice has become notorious and debatable. Religious freedom is social justice. Religious freedoms are always embedded in the constitutions of nations and also some International Conventions and declaration. There will be social injustice as

regard religion where the muslim citizens of a particular state are denied the right of freedom of religion and the right to practice religion.

For instance, in Turkey, from 1930-2013, a ban was placed on wearing hijab to educational institutions by Muslim women. This amounted to several women being barred from the higher education in Turkey each year because of the headscarf. Some were even prevented from writing exams. A school teacher who was also prevented from wearing the hijab at work in a school also made applications in court against the violation of her right to freedom of religion by an educational institution. Several issues of social injustice like gender inequality, discrimination against women, violations of right to freedom of religion and right to education of women came from this case.

4.5 Political Justice

Political justice involves the liberal concept of justice. John Rawls suggested that the solution to the problem of legitimacy in a liberal society is for political power to be exercised in accordance with a political conception of justice. However it is assumed that since all the features of political conceptions of justice will include:

Individual rights and liberties such as rights of freedom of expression, liberty of conscience and freedom of choice of occupation;

Special priority given to these rights and liberties over demands to further the general good (e.g., greater national wealth) or perfectionist values (e.g. the values of cultural flourishing)

Assurance for all citizens the sufficient all-purpose means to make effective use of their freedoms.

According to Rawls, political power is "legitimately" used in a liberal society when it is used in accordance with a political conception of justice. However, the three most fundamental ideas that Rawls finds in the public political culture of a democratic society are that citizens are free, equal, and that society should be a fair system of cooperation.

For instance, in France principle of secularism involves the strict separation of the state from religious institutions also proposes equality of different religions and beliefs before the law;

freedom of religion and freedom to be free from religion. However, in the quest to maintain public order and protect the rights and freedoms of others, the rights to manifesting religious practices of citizens are violated. The question which the European courts and even some National courts have not been able to answer is whether the violation of the right to freedom of religion by the secular states is a form of social justice or injustice?

5. Conclusion

In this work, the concepts of justice have been examined by analyzing the components of fairness and equality in political, economic, social and religious sectors of societies. Striving for justice remains a continuing struggle, since not all individuals or groups receive the same justice, opportunities or rights in similar situations.

It is recommended that all the components of justice, the features of justice and the ingredients of attaining justice should be articulated in the actions of both the ruler and the ruled; and the government and the people to achieve true justice.

Each developing nation should respect the laws of their states and “stop” the economic empowerment of developed nations from forcing them to do things they are not ready for. Just like it is difficult to have universality of human rights, it is also difficult to have universality of the concept of justice.

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