

## The Concept of Justice and Its Appeal to Some Theories in Jurisprudence: An Overview

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### Abstract

The word justice is one of the most controversial concepts that is used by jurists, academics and legal writers to unravel thorny legal problems, yet it does not have made several attempts to narrow down the meaning to species for the purpose of arriving at a fairly acceptable definition but without success. The Latin word for justice is "justice" which means contract and perpetual wish to give man his due. What becomes his due in an ever changing and fluid society in the midst of other contending variables becomes the central focus of this paper. In this regard, we shall attempt to do a review of its definitions and relevance to contemporary Nigeria using various theories of law in Jurisprudence to juxtapose on how relevant such theories will be in proffering solutions to socio-legal problem that has besieged Nigeria in recent times.

### 1. Introduction

In ordinary parlance. Justice could be defined to mean the following:

1. Just being righteous;
2. Being impartial and fair;
3. Giving sound reasoning and rightfulness;
4. Reward for virtue and punishment for vices.

Working within this parameter. Lord Denning (MR) argued that it is only the spirit and not the intellect that can appreciate the meaning of justice<sup>1</sup>. In the same vein. Akin Ibidapo Obe<sup>2</sup>. a cerebral, academic, while ruminating on this concept, asked the following questions:

- (1) Is justice a moral value or a criteria for evolution of law?
- (2) What is legal Justice?
- (3) Does it imply the existence of legal injustice?
- (4) What is the point of convergence between Law and Justice?
- (5) Do they intact coincide?

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<sup>1</sup> Dertning A "The Family Story" Butlerwonhs London 1981 P3

<sup>2</sup> Obe A "The Jurisdiction of Society" Justice in, Nigeria Ifa Press Lagos 1984 P.5

Certainly, these questions only serves to illustrate the heavy task that is involved in giving a simple definitions of what Justice entails.

Ibidapo Obe's posers must have been in line with St. Augustines<sup>3</sup> thought process where he argued that "Remove Justice from Society and what you have is a gang of criminals in Society".

These illuminating remarks now makes it relatively imperative for us to examine the relevant theories of Justice that is situated within the context of contemporary societies with a view to searching for solution solving socio-legal problems in Nigeria. These theories restates an obvious fact that Justice cannot be *realize-any* Society where the law remains the product of the unrestrained will of an individual.<sup>4</sup> Several schools in jurisprudence alluded to this fact. The first is the Sociological School. Sociological jurists argued that a just I must take into account the particular needs of the Society which must be predicated upon the prevailing circumstances of that Society.

Proponents of legal Justice differed in tradition. They argued that: concept of Justice can only apply wherever there are code of rules whether legal or non legal.<sup>5</sup>

This then makes the comparison between legal justice and justice according to Law very difficult to discern. In this regard, most legal<sup>6</sup> systems become modeled along the line of formal justice to reflect the time essence of law whom features in the circumstance are:-

- (1) The existence of rules;
- (2) Their generality: and
- (3) Their impartiality.

Commencing on this dichotomy Agbede<sup>1</sup> (Prof.) stated that:

I am one of the lawyers that cannot perceive the differ--between law and justice ... Certainly. I fail to see what law the common man can look up to as his Saviour apart from the baric laws of the dictator. I also fail to see what tool or weapon *the* lawyers will

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<sup>3</sup> Ouciedin LASU JURIST" Journal of Law Students Society (Vol. 1) No 2P11 19S2

<sup>4</sup> Chan E SenseofJustice1949P 6

<sup>5</sup> Campbell A 'Historical and Philosophical Essay London 1924 P 6

<sup>6</sup> Agbede I. On Hon. Dr T Akinola Aguda, The Man His Works and Society Nigeria Institute of Ar.: Legal Studies Journal 1986 P. 13

use to see the common man beset with this plight. I must equally confess my inability to see how the court can strive to do justice outside the laws of the land.

The Utilitarian school had a different view. This School posited the: theory of justice encapsulates the purpose of law which should promote the quality of life of the individual or the society and that business of a just law is to promote the welfare of the people either individually or collectively<sup>7</sup>.

For proponents of social justice, it entails amongst other things fairness distributing of natural resources. In other words, what nation owes society will form the content of social justice. But what the Government and her functionaries owe her citizen will certainly be the subject distribution Justice. In this regard, it becomes very fair to say that justice is an integrally which does not readily admit partitioning as the three modalities overlap and failure at any level to align with all of them will result to injustice. The next concept is Substantive Justice: which implies conformity of the law with societal cherished values. Any valid law that is in conflict with such values becomes unjust law. Substantive justice therefore concentrates on the context of the law itself not on the procedure. It also seeks to answer questions as to how a Society should be run, how political institutions should be preserved to ensure fairness to all.

Finally procedural justice simpliciter means due process. This means that the law must be known, and that everyone must be treated equally and fairly.<sup>8</sup>

Having examined these theories, the next question that comes to mind is access to justice.

## **2. Access to Social Justice**

Access to justice entails access to political order, economic empowerment and technological development in a country. Any political order that prevents majority of its populace from access to it is an unjust Society. Again, a legal order can be said to be unjust when majority of its people are ignorant of that order or are so poor as to avail themselves of its protection or benefit.

In summary access to social justice will include the following:

(1) Access to social right-like education for all at all levels, proper health care, security of life and property, guarantee of shelter etc.

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<sup>7</sup> Aybede I Law and social Justice, The Nigerian Experience Lagos Concord Press 1935P2

<sup>8</sup> Holborn law Tutors. Jurisprudence and legal Theory Book, London 1986 P 3

(2) Access to economic rights, like full employment, provision of basic infrastructure, agriculture, economy and equitable distribution of wealth.

(3) Access to political rights like participation in political process, right to vote and to be voted for without discrimination, right to aspire to the highest political office of the Country without discrimination.

Its application.

### **3. Application of Social Justice**

Invariably social justice is predicated upon the notion that Societies are organized and creates reasonable expectation which cannot be compromised. Therefore it gives rise to certain claims such as

(1) Providing food, shelter, clothing and other basic necessities of life for her citizens.

(2) Social protection of its citizens against wants, poverty destitution, disease, idleness to avert various hazards and vicissitudes of social life, notable, loss or suspension of subsistence resulting from sickness, maternity, accident, invalidity or death of the breadwinner.

(3) Equal respects on fundamental human rights equality of obligations, physical security of life and property and equal treatment in exercise of legislative and executive powers.

(4) Official corruption is also within the purview of social justice especially as it relates to recovery of public funds<sup>9</sup> etc its attainment in Society.

### **4. Attainment of Justice: The desire of every Society**

The world all over, it is the desire of every Society to attain Justice. Throughout history, there has been this continuous struggle between law and justice with the sole aim of attaining justice. Recorded-history noted the significant milestone in man's attempt to shake off the shackles that often tend to hold man down from freedom, liberty and justice<sup>10</sup>.

Such efforts included, the Magna Carta Bill of 1215, the bill of Human Rights of 1688, the French revolution of 1791. The 1918 Russian Revolution etc. All these are persistent struggles against Colonialism and neocolonialism which are but subtle forms of veiled slavery.

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<sup>9</sup> Frankens W' The Concept of Social Justice in R B Brandi(ed) Social Justice(1962)P2

<sup>10</sup> Oputa J In the Eyes of the Law Friends **Law Publishers** Lagos S Frened & Lav, Publishers SS5P 3

It is pertinent to state that in all these, the ruling class had law on their side but the ruled wanted something higher than law. They wanted justice. Commenting on this anomaly. Justice Oputa was all but blunt, in his words:

There are utter sense of helplessness amongst the people that instead of confidence in the law and the legal system, what we have was suspicion that the law is not for their benefit but rather \_ burden imposed on them by the powers that be. People have known by hard and sad experiences that the much varied equality of all before the law is at best a joke and at worst a farce. They have seen the rich and the wealthy bulldoze their way through our courts. They have witnessed a complete and total failure of social justice from the executive branch of government. They are asked to pay rates and taxes -and these they do. But most of their various village communities have no road, no clean drinking water, n. electricity, no hospital e.t.c.

Deprivations of these essential needs amounts totally to denial or social justice.

The final question we may ask in this paper is **Does Law Protect Justice?** Over the years.

*this question has become a reoccurring decimal amongst all those that have to attain justice through the law. They are mostly lawyers, academics, social reformers, human rights activists etc. It has been observed that what Judges generally attempt to do in Court is to administer law to issues in dispute between parties lo resolve matters in a fair, just and equitable manner when this is done, it is said that justice is administered.*

But for law to administer justice, there must be in existence certain essential prerogatives. They are:

- (1) That there must be just law.
- (2) That there must be just, judicious and impartial Judges.
- (3) The executive arm of the government must be willing to observe rules of law.
- (4) Access to court and justice must be easily and readily available. The following cases lay credence to this fact.

1. In *Edun v Odan Community*<sup>11</sup>

The Supreme Court stated inter-alia:

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<sup>11</sup> (1980) 1 S C. P.103

That the Court of last resort will indeed do justice by procedure laid down by law and the constitution. The moment a court ceases to do justice according to law and the procedure laid down for it. it ceases to be a regular court and becomes a Kangaroo Court. *1.*

2. In *Nishazawa Ltd. v. Jethwani*<sup>12</sup>

The Supreme Court held as follows:-

The purpose for which this court exists is to do justice to the parties by hearing their cases and deciding their rights on merits..... Consequently, in cases where strict adherence to rules will clash with this fundamental objective, the court will adopt a liberal interpretation of that rule 3. In *U.B.A. Plc v. Dike Nwora*<sup>13</sup>

The Supreme Court admitted a statement of defence which was irregularly filed holding that:

If a defence has been put 1 through irregularity, the Court would do right in attending to what it contains.

4. In *University of Lagos v. Aigoro*<sup>14</sup>

The Court held that;

It is the right of any aggrieved person coming before the court:: have his grievances properly argued on merit.

## 5. Conclusion:

Social justice in generic terms can only thrive where articulated instrument of distributive justice is accessible to all and sundry. In this regards, law has a great deal of role to play in society. It must be able to function as dynamic instrument to bring about the needed social change. *I* must also find ways of countering and moderating the helplessness individuals in society in an increasingly dependent world that is fraught with injustice.

Today the consciousness of justice is on the increase. People are demanding for freedom from want and dependency. Freedom from ignorance and illiteracy. These are essential inputs of social justice if this achieved, the entire citizenry will be fulfilled irrespective of age, gender or colour. Men and women everywhere and anywhere in the world u: never accept willingly, the conditions of slavery and oppression. In this respect Law becomes the verifiable tool to articulate and achieve this objective and when this is done, all the relevant

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<sup>12</sup> (1954) 12 SC. 234

<sup>13</sup> (1978) 11 &12SC (Pt 1)

<sup>14</sup> (1985) 1 NWLR (Pt 1) 143, (1985) 1 S.C. 265

theories in jurisprudence will make universal appeal to the helpless, the aged and the socially deprived in the society.

### **Recommendations**

1. That there should be need for legal education to create awareness for enforcement of rights.
2. A well-articulated program of social welfare and youth employment should be embarked upon by Government,
3. Traditional values that discriminate against sex and religion." should be discouraged.
4. Judges should have the responsibility to adapt the law to change circumstances and ensure that the end of justice is served.
5. Legal aid should be given all necessary financial assistance make it useful to indigent litigants.
6. Supremacy of Law and respect of fundamental human right should be made sacrosanct among others.

Where all these recommendations are put in place, it will go a long way in achieving the fundamental objectives and directive principles of state policy which enjoined the state to control the national economy in such a manner as to secure maximum welfare, freedom and happiness of every Citizen on the basis of social justice and equality of status to all and sundry in Society.