

**INTERNATIONAL JOURNAL OF LEGAL  
SCIENCE AND INNOVATION**  
**[ISSN 2581-9453]**

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**Volume 3 | Issue 4**

**2021**

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# Values as an Aspect of Justice: The Indian Perspective

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## ABSTRACT

*The Values are the ideas formed in the mind of a Judge who is going to decide a case. It may be considered to be the end result of the cognition during the decision making process of a Judge. It is treated as one of the aspects of justice. Values are the beliefs about what is right and wrong and what is important to arrive at a decision. It is associated with judicial reasoning. Values are somewhat different from the codified legal rules which help in doing justice according to law. That is why, while administering justice, the Judges should bind themselves not only with the valid rules but also with values so that rational judgment can be delivered. Values concerned the function of law in society. Therefore they need to be studied with reference to those cases which introduce some new rules or cause some variations on an existing one. In this backdrop, the author in this article has analysed the concept of values, value- judgment and the texture of law. The different yardsticks which the Judges employ in order to determine the conflicting interests and finally deliver the judgments for the benefit of the masses are also categorically discussed. The author has evaluated some of the relevant judgments pronounced by the Indian Judiciary which have significantly contributed towards the development of individual rights as well as the growth of the Nation.*

**Keywords:** Values, Justice, Value Judgments, Equality.

## I. INTRODUCTION

The Values can be defined as weightage, insights or preferences given to any piece of law. Laws are valued by the interpreter who analyse the values before pronouncing judgments on the basis of certain yardsticks (standard of comparison). Values are the life-blood of law, the motive-power of a machine which would otherwise be inert<sup>1</sup>. Just as the blood in the living beings make the body mobile, values makes the law dynamic.

Law, in Hall's view is a 'distinctive coalescence of form, value and fact'. The value component of law, he points out, is not only an expression of subjective desires and personal interest but also a form of rational analysis<sup>2</sup>. Again, as there are elements of discretion that is

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primarily involved in the interpretation and application of precedents, statutes and customs, and this is why it can be said that valid rules do not decide disputes. In this regard Holmes J observed that general propositions do not decide concrete cases<sup>3</sup>. He aptly remarked that the life of law has not been logic, it has been experience; which meant that while determining the law and legal rules by which men should be governed, the Judges must take into consideration the needs of the time, prevalent moral and political precepts, public policy and public opinion which may altogether be termed as values.

The judicial oath does not enjoin a judge<sup>4</sup>:

- Simply to do justice
- Nor simply to apply law
- Requires him to do justice according to law

Allen observed that one of the most important interpretative factors is a trained sense of discretionary justice<sup>5</sup>. Trained sense, referred to knowing the rational way of applying the law to the facts and here ‘justice according to law’ is provided by values, which Holmes J viewed as the ‘inarticulate major premise of judicial reasoning’. It is termed as ‘inarticulate’ because there is seldom open declaration of their influence in the decision-making process.

### **Methodology**

The methodology adopted by the author while writing this article is analytical and descriptive in nature. The author primarily relied upon the secondary sources of information to write this article.

## **II. NEXUS BETWEEN JUSTICE, LAW AND VALUES**

Justice literally signifies ‘justness’ or ‘fairness’. Courts frequently disclaimed to dispute justice pure and simple<sup>6</sup>.

But in *Re Scowby*, *Scowby v Scowby*<sup>7</sup>, Lord Justice Lindley observed that if one thinks that injustice has been made to someone, then in that case the former should have found some methods, and should not have doubt only to get rid of technical objections. Justice may also help to select the best option out of several alternative rules or interpretations. The meaning of legal concepts may vary in different contexts according to the demands of justice<sup>8</sup>. In *Dodworth v. Dale*<sup>9</sup>, A married B in 1927 and was allowed a deduction in income tax. The marriage was later declared null and void. When the Inland Revenue authorities claimed to re-assess the tax payable by him, it was held that he had been ‘married’ during that period and their claim therefore failed. On the other hand, in *Re Dewhirst*, *Flower v. Dewhirst*<sup>10</sup>, A

left money to his widow for as long as she did not re-marry. She did re-marry, but the marriage was declared void. It was held that this was not 'marriage' and she accordingly kept the money.

### **Importance of Values and Value Judgment**

Denning LJ once remarked that if the rules of equity have become so rigid that they cannot remedy such an injustice, it is time that Judges have a new equity to make good the omissions of the old<sup>11</sup>. Again, the only reason why the courts prefer not to stress the influence of justice is that, popular confidence rests upon the belief that 'law is law' and Judges simply apply laws. The very nature of the process imports choice and directions which are guided by values. This respect for law may impair if it was felt that cases were decided on personal whims of the judges. Though a personal element is there, it is far from prone to sudden changes of behaviour. All the time Judges have to administer laws as they find themselves guided by the sense of discretionary justice. This discretion however is controlled by a sense of values, which constitutes a consensual domain that keeps prejudice at check<sup>12</sup>. Moreover, discretion should have to be made between the existences of a particular value, an individual's knowledge of its existence, and his approval or disapproval for it<sup>13</sup>. Thus, the inspiration for 'doing justice according to law' derives from the consensual domain of shared values<sup>14</sup>. The Judiciary maintains the standard and thereby acts like a brake so that social fragmentation does not take place.

Every decision reflects a value-judgment on conflicting interests. It is evident that if interests did not collide with each other, there would not be any disputes. Values consist of those considerations, which are viewed as objectives of the legal order. By value-judgment is signified the choice of a particular yardstick of valuation as well as the result of measuring interests with reference to the chosen value<sup>15</sup>. A case is important when it introduces something new. The very

word 'new' implies that there is nothing in the existing law to cover the precise situation, so the inspiration for such new element has to come from outside. The Constitution of India under Article 21 provides for right to life and personal liberty to every individual. The Indian Judiciary since the days of Maneka Gandhi<sup>16</sup> has been judicially construed the expression 'procedure established by law' under Article 21 as a procedure which is reasonable, fair and just. While taking the inspiration from the Judiciary outside India, the Indian Judiciary has widened the scope of locus standi and has enumerated several rights under Part III of the Constitution which were originally directives under Part IV of the Constitution. The Public

Interest Litigation is a well articulated weapon whereby the rights of the masses are safeguarded in India. The High Courts under Article 226 and 227 and the Apex Court under Article 32 always protect and safeguard the rights of the individual.

The concept of value-judgment may well be understood with the help of liability. In *M.C. Mehta v. Union of India*<sup>17</sup>, the Supreme Court was dealing with claims arising from the leakage of oleum gas on 4<sup>th</sup> and 6<sup>th</sup> December, 1985 from one of the units of Sriram Foods and Fertilisers Industries in a city of Delhi, belonging to Delhi Cloth Mills Ltd. As a consequence of which, it was alleged that one advocate practicing in the Tis Hazari Court had died and several others were affected by the same. If the rule of Strict Liability laid down in *Rylands v. Fletcher* was applied to such situations then those who had established 'hazardous and inherently dangerous' industries in and around thickly populated areas could escape the liability for the havoc caused thereby pleading some exception to the rule. For instance, when the escape of the substance causing damage is due to the act of a stranger, say due to sabotage, there is no liability under the rule. The Supreme Court took a bold decision holding that it was not bound to follow the 19<sup>th</sup> century rule of English law. It could evolve a rule sustainable to the social and economic conditions prevailing in India at the present day. It evolved the rule of 'Absolute Liability' as part of Indian Law in reference to the rule of Strict Liability laid down in *Rylands v. Fletcher*.

The freedom of trade and commerce as specified in Article 301 of the Constitution of India and the laws of taxation enacted by both the legislatures present an incongruous relation in the legal history. In *Atiabari Tea Co. v. The State of Assam and Ors*<sup>18</sup> the validity of Assam Taxation (on goods carried by roads or inland waterways) Act was challenged on the ground that it levied a tax on the net weight of tea carried from the tea gardens of Assam to Kolkata. The Supreme Court held that the impugned tax affected the free flow of trade and commerce and held the said Act as void. Under the Rajasthan Motor Vehicles Taxation Act, 1961, The Government of Rajasthan levied a tax on vehicles plying through the State. The Rajasthan Automobile Transport Ltd. Challenged this Act. The Supreme Court in *Rajasthan Automobile Transport Ltd. v. State of Rajasthan*<sup>19</sup> held that the taxes under the Act were not of the Atiabari type. The Court held that the taxes were compensatory in nature and were designed to reimburse the State for the proper maintenance of the roads, bridges and the other infrastructures. Therefore, the Act was held as valid. Since the decision in *Automobile Transport Ltd. case*, the concept of regulatory and compensatory taxes has become established and the courts have liberalized the concept and allowed in subsequent cases such taxation at a higher rate.

### Extent of Value Judgment

The value-judgments may be given effect with the help of following texture of law<sup>20</sup>:

1. It is always possible to make different statements of facts in the case before the court; OR
2. Different statement of law , as where the *ratio decidendi* is open to diverse formulations, or a statutory rule is capable of more than one construction;
3. Some rules are stated in terms of ill-defined content, e.g. ‘negligence’, ‘possession’, the meaning of which in different contexts are governed by values;
4. There may be alternative or conflicting rules, e.g. where there are conflicting authorities; OR
5. There may be no rule at all; and here judicial latitude is at its widest;
6. There may be no rule at all; and here judicial latitude is at its widest;
7. An authoritative case might be reversed on appeal, overruled, or simply put to one side;
8. Some rules deliberately confer discretion on the court.

According to Dias, ‘doing justice according to law’ is thus a continuous operation and the process reveals the whole system of norms that holds society together.

### The Nine Principal Yardsticks

The conflicting interests are evaluated with the help of following tentative yardsticks<sup>21</sup>

1. National and Social safety
2. Sanctity of the person
3. Sanctity of the property
4. Social Welfare
5. Equality
6. Consistency and Fidelity to rules, principle, doctrine and tradition
7. Morality
8. Administrative convenience
9. International comity

In some cases, one yardstick may be involved and not the other, and sometimes more than one may be involved. Moreover, in certain cases, a Judge may not take a possible consideration into account. When yardsticks compete, the Judge has to choose between them.

What is the basis? By collating them to find out whether there is hierarchy of values. The list actually represents some criteria to which usually appeal can be made. Every social twist alters the balance and settles the values in a new pattern according to the changing scenario of the society. The position today is different from what it was five years ago, and so on.

### **III. NATIONAL AND SOCIAL SAFETY**

Both, sanctity of person and of property can be set aside, if there is question of safety of the Nation or society. Even in the time of peace, the sanctity of the individual can be suppressed before the security of the Nation. The emergency provisions under the Constitution of India specifically mentions about the derogation of all fundamental rights except the right to life and

personal liberty<sup>22</sup>. Again during peace time also, Article 19(1)(a) which provides freedom of speech and expression which is fundamental right of citizens, can be curtailed in the interest of Nation. Under Article 19(2), State can impose reasonable restrictions on the free exercise of this freedom of expression if it amounts to threat to the security of the Country.

#### **Sanctity of the Person**

Sanctity of person is superior to the sanctity of the property. Reference can be made to Article 21<sup>23</sup> of the Constitution of India, which basically guarantees right to life and personal liberty to every individual. The Judiciary has widened the scope and enumerated several rights, such as free legal aid<sup>24</sup>, right to environment<sup>25</sup>, right to fair trial<sup>26</sup>, right to livelihood<sup>27</sup>, right to natural justice<sup>28</sup>, right to live with dignity<sup>29</sup> which can be read with right to life and personal liberty.

#### **Sanctity of Property**

Respect for property has given rise to the rule that there should be no deprivation without compensation. It means that all the property we have is the property of the Government. Government has the right to take away the property from our possession subject to the condition that compensation for the same must be paid. Prior to the 44<sup>th</sup> Constitutional Amendment Act, 1978, right to property was a fundamental right under Article 19(1)(f). This was supported by the case, *Golak Nath v state of Punjab*<sup>30</sup>, where it was decided that Parliament cannot amend Part III of the Constitution. But this was overruled in *Keshavananda Bharati*<sup>31</sup> Judgment. Thus in 1978, Article 19(1)(f) was deleted, and a new Article 300A has been inserted which make property a constitutional or legal right.

#### **Social Welfare**

It means benevolent principles for the upliftment of the people in a society, and it also means the well being of society. India is a welfare state. Article 38 of the Constitution of India states that State shall strive to provide the welfare of the people by securing and protecting as efficiently as it may, a social order in which justice – social, economic and political shall inform all the institution of National life. The concept of social welfare is very much ingrained in the philosophy of the Preamble to the Constitution of India.

### **Equality**

Equality is one of the aspects to attain justice. The popular notion of justice is based on the sense of equality, either distributive or corrective as espoused by Aristotle. The concept of equality can be understood with the following situations:

- a. Remedy for wrongdoing, whether is in the form of punishment or payment of compensation has to be proportionate or at par with the injury.
- b. In the exercise of judicial or quasi-judicial powers, the adhere to rules of Natural Justice should be given reasonable notice of the nature of the case to be met;
- c. Distributive Justice requires equal distribution of benefits among equals;
- d. Distributive Justice also requires equal distribution of benefits as well as burdens
- e. The need to ensure equality of treatment for all persons is a justification for the doctrine of precedent, though not necessarily of *stare decisis*;
- f. The removal of special advantages and disadvantages of certain individuals and bodies- leaning towards distributive equality
- g. In order to achieve as well as preserve equality the Courts lean towards the downtrodden.

Articles 14-18 of the Constitution of India guarantees Right to Equality

## **IV. CONSISTENCY AND FIDELITY TO RULES, PRINCIPLE, DOCTRINE AND TRADITION**

It is believed that judicial reasoning proceeds exclusively by means of the case-by-case method and the influence of value are negligible. Judicial discretion should be exercised within limits. Apart from rules, there are principles and Doctrines. Fidelity to principles and doctrines is no less important than the fidelity to rules. Tradition is distinct from rules, principles and doctrines. Public confidence is retained by adhering to tradition. The traditions of the judicial office impose a sense of responsibility and conformity with its standards and



values. The task of the Judge is not only to see that justice is done, but also it must be seen to be done according to law. This can be materialised only by adhering to rules, principles, doctrine and tradition.

### **Morality**

There can be little doubt that moral considerations *do* influence rules of law. It represents the principle of good behaviour. It helps to understand the difference between right or wrong. Morality is equal to righteousness and honesty. Morality is largely bound up with religion but there is a distinction. Moral ideas of right and wrong dictate behaviour but religion is a matter of belief and only influence behaviour through the moral attitude. As the state is concerned with the behaviour of its citizen, it may impose restriction if someone's action is against the very notion of morality. Under Article 19(2) State can impose restriction on the ground of morality when the citizens exercise the right to freedom of speech and expression and cross the limit. Moral ideas are part of the fabric of a given society. Question is – to what extent laws should give effect to moral attitudes. Judges role is to keep their fingers delicately yet firmly to stop social fragmentation on the ground of morality.

### **Administrative Convenience**

Administrative Law is not a new law, but actually a branch of Constitutional law. Hence we see several overlapping areas in both these branches of law. This has emerged due to overburden of the workload in Constitutional law. No orders will be made unless their working can be effectively supervised, i.e. proper co-ordination of different organs of the Government is needed for smooth execution of Judgments pronounced by the Judiciary. While administering justice, the different organs of the State should always adhere to three basic norms, rule of law, separation of powers and natural justice.

### **International Comity**

It means the desire to conform to the practice of other nations and to maintain friendly relations with them has shaped a number of rules. In default of any statutory or common law rule, a court may adopt a rule of customary international law. Article 19(2) and Article 51 of the Constitution specially gives importance to the international peace and security. The following points will show why international law is included among the persuasive factors that guide judicial discretion<sup>32</sup>.

- a. Statutes will be construed so as to avoid conflict with international law.
- b. Acts giving offence to friendly powers will receive no assistance from the courts.

- c. The law of extradition shows an elaborate pattern of rules that are the outcome of accommodating the need to co-operate with other countries in suppressing crime and to uphold the liberty of the individual.
- d. Where courts have discretion, the manner of its exercise will be influenced by consideration of comity.
- e. When a diplomat has committed a tort or breach of contract, international comity demands, on the one hand, that he be accorded immunity from suit, but corrective justice demands, on the other hand, that the victim be given a remedy.

Article 253 of the Constitution of India empowers the Parliament to make law when India signs and ratifies international treaty. The Indian Judiciary has pronounced the famous Visakha Judgment<sup>33</sup> in the light of the Convention on Elimination of All Forms of Discrimination Against Women, 1979. India was a party to this Convention; however there was no specific law to deal with the sexual harassment of women at workplace at that time.

### **Judicial Impersonality**

Some exercise of jurisdiction, be it large or small, is unavoidable in the very nature of judicial process. Judges duty is not to act merely on personal views. The customary prevailing moral habits and assumptions of the good citizen are the criteria to promote justice. While administering justice, the Judges maintain fidelity to rules, principles and doctrines.

## **V. CONCLUSION**

The part played by values shows the essential relation between law and its social setting in the widest sense. Inquiry into the formation of values can provide insights into the phenomenon of social control through power structures. Values are the life-blood of law, the motive power of a machine which would otherwise inert. The process of dissemination of justice imports choice and discretion which are guided by values. The quality of justice depends even more on the quality of the judges than on the quality of the legislators. The study of 'values' reveals a difference between 'totalitarian' and 'free' societies. A study of values raises the question of judicial impersonality.

Judicial task is a highly responsible one since the discretion could be utilized in a socially cohesive or divisive way. The Judges have to be really careful while applying the rules as the Judgment must have a positive impact in a society. In 'totalitarian' society the task of the Judge is to reflect an official set of values, and in 'free society' a Judge has to be independent enough to promote the ideals apart from reflection of the governmental values. Whatever may

be the structure of society, confidence has to be reposed in judges if they are to keep the administration of the law very much rooted in a cohesive manner throughout the years.

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