

## RESTORATIVE JUSTICE: THE NEW PARADIGM IN THE PROVINCE OF JUSTICE IN INDIA?

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The ‘thoughts’ about justice are so divergent and equivocal that any attempt to design the panacea within the rubric of justice would be a perfect disharmony. The scholastic experiments so far being continued to achieve the utilitarianism in the province of justice are being concluded to the adage, ‘every justice brings an injustice’. Hence, the intellectual bickering on diverse perspectives with the changing needs of the society make the evolutionary process to achieve justice dynamic.

The present paper delves into the provinces or doctrines or ideas or concepts of ‘restorative justice’ not to figure out the flaws in the same rather to make a journey over the assumptions of restorative justice in criminal justice administration, particularly in India. The attempt of restorative justice, precisely, apart from the perpetrators and victims, is to accommodate within the fold of the legal frameworks to redress the harm or injury caused to the communities and with the view of reforming and reintegrating contributory role from the ends of communities in upholding social justice as well. Telling incidents about restorative justice inspires more liberalization of civil liberties in the framework of administration of justice while variegated growing concern about public-order and safety irritates the comparison for effective administration between such liberalized approach and pragmatic approach. Again, the attempt to establish peaceful relations among the members of the communities, social control, to ensure equality and cultural expectations or even to reduce recidivism have been mobilizing the disproportionate socio-economic or socio-cultural or even socio-political factors, like communal politics, casteism, etc., and perpetuate conflicts among different communities in any multicultural country like India.

### **Part – I** **Introduction**

In the long history of the study of administration of criminal justice the question of attainability has typically been a central part of the inquiry. Indeed, the question of whether particular goals are achievable by specified means or by any means is an elementary and

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unavoidable question about any concept or idea or theory of justice. Human being, a composite of impulsion and reason reflects upon his conduct and observe disharmonies, correlates means and ends. Acceptance or adaptation of a particular principle of conduct in directing one's activities may be called as following of 'norm': an abstract pattern to set limits for behaviour in the society. The operative norm is one that is not merely entertained in the mind but is considered worthy of following in actual behaviour, thus, one feels that one ought to conform to it. Hence, every society within the fold of its system permits its members some freedom to pursue self-interested goals within the permissible limits. Many transactions, while quite legitimate, involve more or less latent conflicts of interests, and there must be mechanisms for counteracting such elements of conflict with some emphasis on solidarity or on interests that transcend the conflict.

Society is an aggregation of individual selves and basic social commitments of the members are to stay away of others' way. Any members being a free-willing agent of one's self while engages oneself to trespass on the preserves of other(s) the question of 'justice' comes to the fore. And again, cry for 'justice' does not arise until the collective expectations of 'demand-supply' is severely imbalanced. Inherently some members of the human society are not inclined towards the maintenance of social norms or orders and coercive force of punishment to maintain social norms and institutionalized order is but the effective alternative. The formulation of the doctrine of 'justice' and subsuming the total philosophy of life and ideals of socio-political or socio-economic existence under 'justice' is a peculiar characteristic and aspect of the purpose of law.

The debate about 'what is justice' started in Greek thought, is still burning issue without any precise definition. Thought about 'justice' invokes diverse elements, like, social, political, economic, logical, psychological, and consequently any method or ideas or concepts emphasize one or some of them by ignoring other or others accomplished with the honest mischief of being insufficient or incomplete in its approach. The composite appearance of 'justice' has made it to be beyond any prefix. More than that it may be one's own ideological construction, or intellectual preference or critical reflection or emotional reaction but its appeal to human beings is so great that no legal theory can ignore it without the risk of being incomplete and inadequate. Though 'justice' is not amenable to logical and scientific approach as there is no unanimity about its settled content and meaning, yet it is a sort of 'demand notice' which the members of civil society direct against the established legal frameworks, social orders and political institutions and agencies. And again, the homogeneity

as well as heterogeneity of the bundle of demands of the members of the society necessitates streamlining of most predominant and efficacious legal framework. In brief, it is theory of expectation, the net result of human desires and demands—the ends or values of law which are assessed by objective determination in the light of the practical working of law.

By ‘restorative justice’ meant one comprehensive mechanism within the fold of regular legal framework to accelerate the speedy disposal of the legal issues aiming at to achieve social peace and order as well as least grievances in processual justice. Hence, it is one ancillary mechanism to dispel the social belief of ‘injustice’ to the victim, offender as well as the community. The provinces enfolded within the processes of restorative justice are:

- i.** the ‘want’ of the survivors/victims from the existing system of justice;
- ii.** responsiveness of the prevalent system of justice to the identified needs;
- iii.** possibility of removal of the aberrations caused in the interpersonal relationship between the survivor/victim and offender through such restorative process;
- iv.** experience perceived by the community at large in such reparation process; and
- v.** impact on reformatory process of justice as well.

In short, providing the scope of restorative justice means introduction another subsidiary procedural mechanism in the legal framework of the country for, in order to make the restorative process of justice functional besides the fold of existing legal framework in India would require a different set of operating agents who are to play dual role like, to act as community service and social counseling also as being the members of ‘reparation body’ of the society to provide ‘justice’. The chief purpose of restorative justice is to restore peace and harmonious co-existence of conflicting interests in the society. In addition to it, it also promotes the concerned community to take effective observatory role in rehabilitation of the offender to the mainstream of the society. In such process what is deemed to have been changing is the pro-functional importance of the community/communities and to an extent the majority and minority role of the divided groups within the fold of that local community or between different communities. Any society is composed of heterogeneous communities and in any community various categories of members like adult-children, men-women, literate-illiterate, rich-poor, powerful-improvised, etc., and again cultural diversity in India also makes the differences in the choices, habits, values, social

stigma, cultures, etc, from one local community to other. Hence, to characterize a uniform social design applicable uniformly irrespective of cultural diversity would accentuate the intricacies in devising such reparation process. The efficiency and effectiveness of the traditional and customary systems of administration of justice was based on the cultures, religion, practices, consensus, aspirations, of the diverse communities of the society. In a dispute situation, familiarity with other members of one's society helps to smoothen the edges for more cooperative and acceptable resolution of the dispute.<sup>1</sup> Ultimately close kinship, friendly, good neighbourly relationships would enable to promote peace, unity, harmony and progress of the society and by restorative process these social control techniques are tend to achieve with systemic perfection. Intrusion of difference of opinions would evolve in that, that whatever rules and standard-norms are being set by the state in choosing the operative agents for constituting the local community group to ensure restorative process, an in-depth analysis in a case where victim-offender both lead hand-to-mouth standard of living or whatsoever social parameters as stated above would hardly involve any safe resolution of the social relationships in such reintegration conference of the harms so caused due to one or more of such factors.

Again, some other significant aspects, to be taken into account while devising such restorative process are: the presence of the key participants in such negotiation process to restore—because regard to be had about the privacies of the parties to such restorative process leading to determine about the presence of member(s) of the concerned localities or presence of the social activists or say from the ends of the state administration police or judges etc., are also significant.

## **Part – II**

### **Indigenous and Pre-British Legal System in India**

“In a world of responsive law, ..... law's power does not stem from tradition or its formal pedigree alone, but also from its persuasiveness as good public policy. In a world of responsive law, legal institutions—courts, regulatory agencies, alternative dispute resolution bodies, police departments—are periodically studied and redesigned to improve their ability to fulfill public expectations.”<sup>2</sup>

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<sup>1</sup> NANSO OKAFO, *INTERDISCIPLINARY RESEARCH SERIES IN ETHNIC, GENDER AND CLASS RELATIONS: RECONSTRUCTING JUSTICE IN A POST COLONY* 9-10 (Ashgate Publishing Ltd. 2009).

<sup>2</sup> Robert A. Kagan, *Introduction* to PHILIPPE NONET'S & PHILIP SELZNICK, *TOWARD RESPONSIVE LAW: LAW AND SOCIETY IN TRANSITION* xxiv-xxv (Transaction Publishers 2001).

By restorative justice what is being promoted is the responsive law. Traditions, customs, indigenous principles of laws are sensibly and unpretentiously inculcate the indigenous essence of law and legal system and if any legal framework is made on such responses would undeniably accentuate the laws more efficacious and effective due to its inherent acquired aspirations in the process of law. In any country the utility and relevancy of law is tested and perceived through social internalization and cultural evolution of the populace in the societies. The choices of the communities to follow or continue to follow some habits would interpret the values in such practices of such communities and such components of social lives would form the compatibility and tradition in setting social norms, and adherence to such practices would set the legal tradition of the society to regulate the individual relations within on different facets of livelihood of members of these communities as well.

The chequered history of evolution of the present legal system in India would clearly purport that the except in few areas of family laws the traditional components and system of dispute resolution has almost been amputated rather gradually customized with the rules of common law principles by precedents and analogy. Thus in a country of multicultural complex societies like ours the living sources of governing rules of human relationships in the communities, the traditional consensual conciliatory character of dispute resolution have been swept from today's adversarial character of official rules. The disintegrated political approaches of the rulers, however, encouraged several invaders to invade this country and to introduce their preferred dispute resolution systems for better administration and governance of the relations of their subjects resulting in loss of authoritative uniform social norms to evolve. The colonial economy tempted the colonial administrators to articulate and regulate the characters and practices of indigenous dispute resolution process by passing regulations to that effect.<sup>3</sup> Extension of judicial control in the better governance the colonial administration thus, limited legal administration and concept of limited jurisdiction and with the passage of time the traditional legal practices and sources of law became the flexible legal process.<sup>4</sup> Mostly the political features of a country influences in shaping the socio-economic, cultural and legal dimensions and developments of the country.<sup>5</sup>

Thus, local practices in different local communities those having stronghold on its members and desired effect in governing the

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<sup>3</sup> LAUREN A. BENTON, *LAW AND COLONIAL CULTURES* (Cambridge University Press 2001).

<sup>4</sup> *Id.*

<sup>5</sup> MC LEOD, JOHN, *HISTORY OF INDIA* (Greenwood Press, Westport, CT, USA 2002).

individual relationship within those communities in the country at times boil down the established legal-norms and systems, e.g., different traditional tribunals, say, kangaroo courts or say *Khap Panchayats* and inspires the debate of popular legality of official rules. For instance, the incident of January 2014<sup>6</sup> in West Bengal about the decision of rape in *Salishi Sabha* [say Kangaroo Court] where participation in community framework was self-styled for restorative process but the decision has undermined the public confidence in such restorative process of justice.

Again, the incident of April 3, 2014<sup>7</sup> the decision of such community led victim housewife to commit suicide setting herself ablaze as the victim was prevented from a filing a police complaint about the rape wherein the reason substantiated by such *sabha* was that the rapist has apologized to victim. Fact that, the survivor's family has been enjoying sufferance of deep psychological pressures of being ostracized as the decision of such *Salishi Sabha* has been defied by complaining to the police. On both counts the incidents are of tribal communities to who the kangaroo court is supreme. The points may be argued that they are not educated and don't understand the normal system of law but the reflection of influential members of such community bodies in deliberative democracy and people's choice on justice makes the difference about values of justice.

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<sup>6</sup> A tribal woman, aged around 20 years, was allegedly gang-raped at Subalpur village under Labhpur police station area on January 21 by the accused as punishment for having an affair with a man from another community [commonly known as *Labhpur incident*].

<sup>7</sup> TIMES OF INDIA, Apr. 3, 2014 (Malda): A mother of three committed suicide on Wednesday after a kangaroo court questioned her character and let off the rapist lightly. The woman could not accept the humiliation. "She did not sleep all night and set herself on fire at dawn," said her husband. She died in hospital late on Wednesday. Her children were at home on Monday when neighbour, Nabin Mandal, 21, allegedly barged in and raped her. The woman's husband was incensed and attacked Nabin but was held back by villagers who suggested they convene a village court to 'settle the issue'. A kangaroo court was held that evening. The woman and her tormenter were brought face to face, intensifying her trauma. The *sabha* 'decided' that Nabin would apologize to her by touching her feet and that in 'future such cases' the rapist would have to pay Rs 25,000 to the survivor. The woman and her husband were shocked. They refused to accept the verdict. "How can a rapist be absolved of such a crime by touching the victim's feet? We protested even in the meeting. It has only brought more humiliation to my wife. They used vulgar language and questioned my wife's character," said the husband. Social Welfare Minister Sabitri Mitra, who is also the local MLA, was quick to blame the Opposition. "We got to know that CPM and Congress men were present in the kangaroo court and connived to deny justice to the victim," she said. District CPM Secretary Ambar Mitra rubbished the allegation and said: "When will the government learn to see political colour and ensure justice for rape victims?" Malda SP said they hope to arrest the main accused soon.

The pro-functional approach of these local communities for settling disputes outside the existing legal systems highly influence the members of those communities and fewer cases are brought forth in official justice rendering system. In numerous cases, for example, where *fatwas* are issued by different boards established under the tutelage of All India Muslim Personal Law Board or similar agencies in different localities of Union of India for the purpose of resolving the disputes alternatively, within the members of the communities in conformity with the religious mandates issues have been raised in a recent Public Interest Litigation (PIL) like, issuing of such *fatwas* are illegal, illegitimate and unconstitutional; resolving of the disputes in such alternative fashion strives to establish a parallel judicial system etc. Union of India has pleaded on its appearance to such PIL that these kind of boards act like arbitrator, mediator, negotiator, or conciliator in the matter of family disputes or civil disputes and not in criminal matters and categorized these as alternative dispute resolution mechanism for expeditious, amicable and inexpensive settlement of disputes outside the court. Meanwhile All India Muslim Personal Law Board has stated it to be an informal justice delivery system.

The Supreme Court of India<sup>8</sup> viewed the status of *fatwas* from the perspective of objective requirements of a valid law and efficacy thereof and declared those *fatwas* as not legally binding as they are not made by competent authority like legislature. The court further observed that: “They are not part of the *corpus juris* of the state” but “an opinion, only an expert is expected to give.”<sup>9</sup> The oddity in the observation is that the court has opined again that: “However, as the *fatwa* gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that.”<sup>10</sup> Thus, the Supreme Court has felt the pulse of the psychological impact and the ordeal thereof likely to be enjoyed by the parties to such disputes in the event of such *fatwas* by such types of local boards or agencies in the respective local communities but the Supreme Court has not taken venture to recommend some mandatory guidelines which are to be complied with by such responsible local bodies or agencies for advancing the restorative justice in such alternative dispute resolution mechanism. Predominantly, these types of *fatwas* are closely linked to the traditional practices evolved in due course of

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<sup>8</sup> Decision in Writ Petition (Civil) No. 386 of 2005; *Vishwa Lochan Madan v. Union of India & Ors.*, passed on July 7, 2014 in the Bench of Hon'ble Justice Mr. Chandramauli Kr. Prasad and Hon'ble Justice Pinaki Chandra Ghose, available at [judis.nic.in/supremecourt/imgs1.aspx?filename=41747](http://judis.nic.in/supremecourt/imgs1.aspx?filename=41747).

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.* at 13.

times are like, non-cooperation and social ostracize from the communities, etc.

In a restorative process of justice system such an alternative body or agency is required to be constituted for the reparation process but how far such bodies or agencies would satisfy the perceived goal in effectuating the restorative justice system is subject to repeated inquiries and evaluations as well. The underlying possessive character of such operating agents in capturing such power-steering in the guise of rendering restorative process within such local community would be to take a control on it and again may adversely affect the noble pursuits of justice and harmonious order in such restorative process. Alternative Dispute Resolution (ADR) system for rendering justice in India has been set up on the bedrock of subsidizing the operational extent of prescribed official rules for downsizing the delay in disposal of disputes. For example, for the realization of debts due of the banks the process of negotiation and mediation what are being encouraged in *Lok Adalat* is to pay the lesser amount and thus the disputes are being disposed of earmarking 'realised on full satisfaction', thus creating the loss of social wealth by those who are abusing the process of law of the land. The progressive move towards liberalism of the human civilization expands the ambit of basic needs and thus placing pressure upon the administrative machineries of the State to address varied unlimited demands for allocating the resources in a consistent manner. Increasing population causes increased-demands within the limited pool of resources.

Thus, on the one hand the dilution of social wealth and on the other increasing pressure of demands developing the consistent pressure to find out the balancing legal mechanism and legal framework as well to harmonize and facilitate the balance of conflicting interests or say the competing interests in the society. Similar opportunities of concessions are being enlarged in criminal proceedings of the country as well by introducing Plea Bargaining. The existence of Section 320 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has earmarked the petty offences by furnishing a list of those offences what are compoundable and the introduction of Plea Bargaining in 2005 has created another segment by the strength what concession may be pleaded [or bargained?] before the court to absolve the rigour of the penalty. This mutual pre-trial negotiations or say deal between the victim and offenders through their agents [read Advocates] requires judicial endorsement. Restorative process is an additional procedural edition of legal system by enlarging the opportunities to the members of local community members in whose communities such offence/offences have been committed to



effectuate such mutual pre-trial deal. Democratization of norms should be the be-all and end-all in the framework of such community participatory model of administration of justice and certainly to achieve the desired objects of speedy disposal of disputes as well as utilitarian approach in the administration of justice.

But in reality it works out differently due to imperfect accountability of the cultural dimensions of such members of the localities or communities. By abusing the process of such legal provisions there is the erosion of social faith in adjudication of criminal proceedings. For example, the terrorists' activities at Mumbai in 9/11, 2008 evaporated the confidence of the foreigners concerning the 'Public Peace' and 'Law and Order' in India—the primary tasks of the official machinery to maintain and loss of what affected the tourism industry of the country. Therefore, the loss of public confidence in the official rules of a country affects the country in developing the social wealth as well as the values in the official norms. Restoration process could not provide the restorative touch in case of certain offences like, the ordeal passed by a rape victim [children and women both inclusive], the child-labour, terrorism [both waged by militia and state sponsored], political vendetta, scam those erode the public and social wealth substantially etc., rather to follow the compensatory mechanism in affording the remedial appendages.

What is well settled is that the relevancy of psychology on making the differences in socio-cultural dimensions of different communities of the societies has been well established in the context of i) their naïve metaphysical systems at a deep level; ii) their tacit epistemologies; and iii) even the nature of their cognitive processes—the ways by which they know the world.<sup>11</sup> Alike other attempts for crystallizing a universal psychology<sup>12</sup> Restorative process is one of such attempt, directed to promote the social relationship and people's choices that are in consonance and consistence of the fundamental principles of justice of the country. Problems underlies in the growing understanding of diverse opinions and values in shaping and giving effect to such fundamental principles in a country inhabited by multicultural diverse communities, say for example, the futility in

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<sup>11</sup> R.E. Nisbett, K. Peng, I. Choi, & A. Noenzayan, *Culture and Systems of Thought: Holistic Versus Analytic Cognition*, 108 (2) PSYCHOLOGICAL REVIEW 291–310 (2001).

<sup>12</sup> INDIGENOUS PSYCHOLOGIES: RESEARCH AND EXPERIENCE IN CULTURAL CONTEXT (U. Kim & J.W. Berry eds., Sage Publication, New Delhi 1993); U. Kim & Y.S. Park, *Integrated Analysis of Indigenous Psychologies: Comments and Extensions of Ideas Presented by Shams, Jackson, Hewang & Kashima*, ASIAN JOURNAL OF SOCIAL PSYCHOLOGY 8, 75–95 (2005); *Psychology in India Revisited—Developments in the Discipline*, 3 APPLIED SOCIAL AND ORGANIZATIONAL PSYCHOLOGY (J. Pandey ed., Sage, New Delhi 2004).

giving the concrete shape of Uniform Civil Code even after achieving independence after long 66 years. The official rules and norms are not the organic growth of the society, it has not fully evolved out of spontaneous urge of the societies rather emphasis is given to officiate the rules introduced by British and the inhabitants are grown acclimatized with those official norms.

Basically, the systemic structural frameworks so far characterized in any community around the globe to develop human-behaviours' regulatory mechanism have perceived the demands of the members of the community on the grounds of commonalities and greater values. Scrutinizing the values of greater interests through rationalized self-interest of human being in the society the regulatory agencies and its frameworks coordinated the limitations and consequences in case of breach of those. Hedonism in human behavioural patterns in society is no exception but increasing frequency of such behaviours in almost every walk of life stultify the values, both social and moral, and affects the legal system to confine the human behaviours and conducts in more efficient ways. The efficiency of law cannot only be achieved on its mere compliance rather the more it would uphold the values the more it becomes responsive to the society and secures the efficacy in the society. Every member of the society is the stakeholder of the legal system of the society and preservation of such values, be it in law, legal systems or in human behaviours, would enhance the maximum in paying allegiance to such responsive law and legal system of the country. Consultation with local stakeholders to instill confidence in public mindset about the social values of the public services tendered by the Public Bodies United Kingdom has come up with the Public Services (Social Value) Act, 2012. This attempt has enveloped the aspirations of the exponential stakeholders of the society by dint of appreciating people's perception for efficient performance of the public bodies in the long run in furtherance of administration of justice in democratic state. In our country in the guise of reformation and to curb down the ill-practices several committees like bodies are given a shape to preserve social values of the official rules and norms to make those more responsive to the citizens and ultimately ends in promoting more corruptions and mismanagement of social wealth.

The transition shift of justice system, in particular in criminal administration of justice, from pragmatic rigorous legal system, e.g., infliction of injuries to the wrongdoer or to develop the fear-psychosis for achieving deterrence effect to more responsive legal system, i.e., to enquire into the detailed particulars of the social facts and causes, directing or tend to direct the behaviours of the wrongdoers to the pattern of wrongdoing and to comprehend the purpose of ends of law

‘restorative justice’ is one of such dimensions in the chapter of administration of justice. But this is one additional procedural framework introduced and conscious effort of speedy disposal of disputes how far would be successful is significant and important.

For example, at one point of time breathable ‘air’ had been considered to be available at a zero price and it was known as to be a free good. With the advancement of civilization good, quality, breathable air is not free and recent trends of the judiciary from ‘Polluters Pay’ principle to the prevention of eco-sensitive environment and ecology—denotes the economic value of ‘free air’.<sup>13</sup> Recently, the National Green Tribunal (Principal Bench)<sup>14</sup> has observed:

“.....[R]ight to life includes the right to a decent environment. The right to a clean environment is a guaranteed fundamental right. The courts could even impose exemplary damages against the polluter. Proper and healthy environment enables people to enjoy a quality of life which is the essence of the right guaranteed under Article 21. The right to have congenial environment for human existence is the right to life. The state has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment.”

Deprivation of the elementary needs of a human being viz., food, water, health, education, job-opportunities, etc., in a welfare democratic state having welfare economy equates the unequal

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<sup>13</sup> WILLIAM BOYES & MICHAEL MELVIN, TEXTBOOK OF ECONOMICS 7 (Biztantra, An Imprint of Dreamtech Press 6th ed. 2005). In fact, breathable air is becoming a luxury in many places. Consider the Opus Hotel in Vancouver, British Columbia. It is the first North American hotel to offer hand-held oxygen dispensers in every room. These oxygen canisters are small enough to fit into a purse or briefcase and hold enough air for twelve minutes of breathing time. Breathing oxygen is said to increase energy, improve cognitive performance, and reduce the effects of handovers. Opus charges \$9.40 for the use of the canisters.

<sup>14</sup> Judgment dated Feb. 6, 2014, (Swatanter Kumar, J.) *in Court of its Own Motion v. State of H.P. & Ors.*, Application No. 237 (THC)/2013, CWPL No. 15 of 2010, ¶ 15; *Court of its Own Motion v. Union of India*, JT 2012 Vol. 12 S.C. 503: The right to life is a right to live with dignity, safety and in a clean environment. Again in *M/s Sterlite Industries Ltd. v. Tamil Nadu Pollution Control Board*, 2013, Vol. I All India NGT Reporter, p. 368 it is held: “Article 21 of the Constitution of India which provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Right to decent environment, as envisaged under Article 21 of the Constitution of India also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry. Right to clean environment is a guaranteed fundamental right”.

treatment to the common citizenry has been well established. So, the scission between the demands for the basic needs and the supply through the interstices of government agencies encourages the miscarriage of justice and enervate the human resources of the country as well. Fact that human life is composed of innumerable independent variables and dependent variable however, conglomeration of such homogeneous and heterogeneous demands musters towards the common choices in the society looking forward for the fulfillment of those. The interval between social choice and to the choice of the peoples' representatives, steer the state machineries thus not only squandering the social wealth rather promoting scarcity of the resources and the appreciation of social costs of living thereof day by day. Good governance creates long-term values. Social and geo-political culture as well as the values play vital role in terms of sustainable development of a nation. The perceived consolidated democratic structure in India still hovers around the transition phase resulting in dwindling to collate the settled principles in macro-economic management of the natural resources, public administration and adequacy in institutionalized framework for better governance and its impact on the legal framework is no exception. Weal of the people is the social choice in a 'welfare state'. Hence, in the event of improper distribution or restraint to equitable access to the elementary conditions of human life to its citizens squarely points out the disharmonious arrangements in distributive approaches of apparatus of the public agencies, committed to promote and cater out 'justice-social, economic and political'. Distribution of both the benefits as well as burdens to the members for harmonizing the conflicting interests of the society peacefully entreats efficient performance of the legal mechanism of the country.

“By ‘equitable’ I do not necessarily mean ethical or moral, but that which a given society considers to be appropriate to the need, status, and contribution of its various members. Appropriateness is shaped in part by principle and in part by precedent. It expresses what is reasonable and customary in a given distributive situation. To deviate from a rule that is founded on both reason and precedent would violate the stakeholders’ legitimate expectations, and this would be inequitable.”<sup>15</sup>

The close proximate relation between the good governance and economic performance for sustaining growth of the society is well established and becomes the growing understanding. The fast changing sustaining policies of the country have the impetus upon

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<sup>15</sup> H. PEYTON YOUNG, EQUITY: IN THEORY AND PRACTICE 3 (Princeton University Press 1994).

the distribution of the chances of lives of its citizens and such changes for who and what degree of sustainability are befitting to the needs of the mass myriad become the play-grounds of those trustees of the society who are battling to upkeep their status on a regular intervals. The transactions of development confined in the papers and the focus of the same in reality are one perfect illusion to the mass myriad. Hence, the noble approach 'to encourage the peaceful expression of conflict, to promote tolerance and inclusiveness, build respect for diversity and promote responsible community practices.'<sup>16</sup>



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<sup>16</sup> HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 11 (Criminal Justice Handbook Series, United Nations, New York 2006, Sales No. E.06.V.15).