

TIRUVALLUVAR'S CONTRIBUTIONS TO JURIDICAL SCIENCE

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In an era, nearly more than two thousand year ago, when jurisconsults of other ancient civilizations were still groping to find precise jurisprudential norms in aid of substantive and processual justice, Tiruvalluvar enunciated certain basic juridical principles of universal value in his immortal work, **Tirukkural**.

CONCEPT OF JUSTICE AND EQUITY : The concept of justice and equity has been expounded by Tiruvalluvar through the medium of Sceptre, which is a symbol of sovereignty. According to him, "the right sceptre" denotes righteous laws, impartiality, justice and equity¹; whereas "the cruel sceptre" stands for unjust and oppressive laws, injustice and absence of equity². His concept of justice is based on the twin principles of "righteous laws" and "equity".

RIGHTEOUS LAWS :What is the determining factor of the "Righteous Laws"? He subtly indicates it⁸ in the negative aphorisms. When he spoke about the oppressive laws he said that "where subjects dread of cruel wrongs endure, Ruin to unjust King is swift and sure³ and "Ah! Cruel is our King', where subjects sadly say, His age shall dwindle, swift his joy of life decay"⁴. That is to say, an unjust law is one against the common reason of the people which manifests in the general disapproval. Conversely, righteous law is one which is in conformity with the common reason of the people and manifests in their general acceptance. In other words, righteous law according to Tiruvalluvar, is common reason of the people manifested in their collective approval. Common reason of the people being a product of the social, economic and political environments of one generation, it may acquire new meaning and dimension in the changed environments of another generation. But the law, including changes in the law, must conform to the common reason of the people of each period or generation. There is also common reason of the people of the universal value transcending the generational divide pertaining to human value, individual dignity, natural human aspirations and expectations, etc., All these ideas are comprehended in Tiruvalluvar's two phrases, namely, "righteous laws" which conform to the "common reason of the people" of the generational pedigree including the common reason of the people which is transcendental in character, and the "cruel sceptre", oppressive regime, that shocks the conscience of the people.

It is interesting to note that the stoic philosophy talked about "law of reason" and hinged it to "law of nature" which was supposed to emanate from the "divine reason". It is said that the Stoic school of philosophy was founded by Zeno (350-260 B.C.) and he and his followers "placed the concept of 'nature' in the centre of their philosophical system"⁵. Edgar Bodenheimer states that, according to the Stoics, "reason, as a universal force pervading the whole cosmos", was the basis of law and justice⁶, and "there is one common law of nature, based on reason, which is valid universally throughout the cosmos. Its postulates are binding upon all men in every part of the world"⁷. The great Roman Lawyer, Cicero (106-43 B.C.), was very much influenced by the Stoic philosophy. But he used the phrase "right reason" as the basis of law. He said : "True law is right reason in agreement with nature, it is of universal application, unchanging and everlasting ; it summons to duty by its commands, and

averts from wrongdoing by its prohibitions"⁸. Further, he stated that "the laws are the foundation of the liberty which we enjoy ; we all are the laws' slaves that we may be free"⁹. As far as- foundational- law is concerned, the earlier jurists identified it with the natural law. They viewed the natural law as part of the human nature. Cicero identified "right reason" with the qualities of human nature and said that the civil laws must be in harmony with the "universal attributes of human nature"¹⁰.

Stoic philosophy laid stress on the "law of reason", law of nature" and" "divine reason". All these three ideas are rolled into one whole concept of reason based common law of nature of universal validity which is binding upon men all over the world. The concept seems to project an Utopian scheme to bring under its domain the governance of the world. Besides, it is vague in that it fails to indicate the criteria to determine the causative force, "reason". If "law of reason" is equated with "divine reason", the law of nature will enter the divine region, in which case -both the ruler and the ruled have no role to play except that the former administers the natural law and the latter has to implicitly acquiesce with it. If any disputation arises in such dispensation, the only arbitrators would be theologians. It is a sure way to theological fundamentalism of different brands. Cicero did not make much advance from this Stoic school of thought except to introduce some refinement by his phrase "right reason", which, according to him, is in agreement with nature and everlasting and is of universal application. In this as well as in his thesis on "foundational law", Cicero did not move away from the mooring of natural law of the Stoic brand.

In this respect the Tamil sage, Tiruvalluvar, is realist and pragmatic philosopher unlike the Stoic Philosopher and Roman jurist. He did not hover in the ethereal domain to seek divine-ordained natural law to put in position an Utopian device for world governance. He laid stress on the "righteous law" based on common reason of the people manifested in their approval of the law. In short, his theory means coalescence of reasons of the common people, which renders a law as righteous when such coalescent reason is positive towards the law and condemns a law as cruel when such coalescent reason is negative towards the law. However, in condemning the unjust and oppressive law, Tiruvalluvar and Cicero are on the same wave-length, for the former states that "then one who piles the murderer's trade, more cruel is the King who all injustice works, his subjects harassing"¹¹ and the latter is reported to have said that "pestilential" statutes put into effect by nations no more deserved to be called law than the rules a band of robbers might pass in their assembly.¹² That apart, the view of Prof. Corwin that "there is, in short, discoverable in the permanent elements of human nature itself a durable justice which transcends expediency, and the positive law must embody that if it is to claim allegiance of the human conscience"¹³ seems to be akin to Tiruvalluvar theory of common reason of the people in consonance with the righteous laws.

RIGHTEOUS RULER: Tiruvalluvar was not content with mere expounding the concept of righteous laws and its nuances. He laid emphasis on righteous Government, upright ruler, and impartial ruler-Judge. In Kural 556, he advanced a view that Government gives permanence to (the fame of) Kings (rulers) ; without that their fame will have no endurance". Regarding "upright ruler" he states in Kural 553 that "who makes no daily search for wrongs, nor justly rules, that King doth day by day his realm to ruin bring". Again in Kural 554 he states : "Whose rod from right

deflects, who counsel doth refuse, at once his wealth and people utterly shall lose". Speaking about the impartial ruler-judge he says in Kural 541 that "Search out, to no one favour show, with heart that justice loves consult, then act; this is the rule that right approves."

Remarkable feature in Tiruvalluvar's jurisprudential thought is in his stress not only on the need for wise Rulers but also on the necessity of righteous laws. It is this combination of wise rulers and righteous laws that alone, as visualised by Tiruvalluvar, would ensure order and harmony in the society. Needless to say that order and harmony are not only grammar of good government but also the pre-requisites for continuing development in the society.

It is interesting to note how the two great Greek philosophers, Plato and Aristotle, tried to answer the question : Is it more advantageous to be subject to the best man or the best laws? Plato held the view that law is like an obstinate and ignorant tyrant who will not allow anything to be done contrary to his appointment or any question to be asked. So, inevitably he came to the conclusion that it was more advantageous to be subject to the best man. Such best man, according to him, was "Philosopher King", who should possess certain qualities and qualifications. Plato implicitly relied on the discretion of the "Philosopher King", whose pure wisdom, according to him, would render real justice by giving each man his due. But Aristotle repudiated all-wise ruler of Plato. He said : He who bids man to rule adds an element of beast, for desire is a wild beast, and passion perverts the minds of the rulers, even when they are the best of men. According to Aristotle, the law is reason unaffected by desire. It is intelligence without passion, the accumulated wisdom of the ages. He obviously held the view that it would be advantageous to be subject to the best laws. Thus, the views of Plato and Aristotle revealed two different approaches to the problem of establishing a good Government.

"The drawback in the thesis of Plato and Aristotle", as pointed out by this author, "lies in the fact that they treated the need for 'the best man' and the necessity of 'the best laws as separate subjects and in isolation as if one has no connection with the other. Lack of integrated approach rendered their Philosophies less acceptable. Fact of the matter is that it is not the good ruler (Philosopher King) alone, nor the best laws alone that could ensure a good government in a State"¹⁴. The axiomatic truth is that even a good law in the hands of an unjust ruler would turn out to be an instrument of oppression. This aspect has been brought out vividly by Chief Justice Taney of the Supreme Court of the U.S. in Luther V Borden¹⁵ when he said that unworthy hands". The 'all powers may be abused if Tamil sage, Tiruvalluvar, placed in comprehended the axiomatic truth and, unlike Plato and Aristotle, adopted an integrated approach and came to the conclusion that both the laws and the ruler must be good and just.

EQUITY: Tiruvalluvar was equally emphatic on equity as the second phalanx of justice. Equity has two streaks in it - one is mercy and the other is innovative element. Dealing with the distinction drawn by Aristotle between abstract justice and equity, Prof. W. Friedmann says: "The law is necessarily general and often harsh in application to the individual case."¹⁶ Regarding the innovative element, Prof. Bodenheimer states that "when the English Chancery for the time granted specific performance of a contract, it did so on grounds of equity or conscience, because the

Chancellor felt that the common law remedy of damages could not adequately compensate the plaintiff for the harm inflicted on him by the defendants breach of contract.¹⁷ The innovative principles enunciated in and applied in a number of English cases have grown into a formidable equity jurisprudence and Prof. Friedmann describes it as "the creative function of judicial equity, fairness, common sense or justice."¹⁸ Thus, the law must be tempered by mercy. That is to say that mercy must season justice. And in any hard individual case that may arise due to complex configuration of facts and the existing law appears to be inadequate to render Justice, "the creative function of judicial equity" must assert itself to meet the ends of justice.

Needless, to say that Tiruvalluvar projected the twin ideas in his Tirukkural. He says: "Not lance gives King the victor, But sceptre swayed with equity."¹⁹ Again he states, "Since true benignity, that grace exceeding great, resides in Kingly souls, world in happy state abides."²⁰ In this context he depicts an unedifying picture of a merciless disposition, particularly of a ruler judge, when he states : "Benignity is eyes adorning grace ; without it eyes are wounds disfiguring face." Then, regarding the second idea, he says : "Search out, to no one favour show, with heart that justice loves consult, then act; this is the rule that right approves."²² Two crucial phrases in this Kural are "search out" and "consult, then act", which indicate Tiruvalluvar's innate desire that the ruler-judge" with heart that justice loves" to enunciate new principle after due search (study) and consultation to render proper justice in any hard individual cases. In other-words, Tiruvalluvar not only gave due emphasis on mercy aspect of equity but also envisaged the development of equity jurisprudence through the creative equity functions of the then ruler-judge.

The tenor of Tiruvalluvar's thesis is that justice must be tempered by mercy. That is to say, mercy (benignity) must season justice. If that is not possible due to complexity of facts or due to the rigid posture of any one of the parties to the case, it is the duty of the ruler-judge to innovate a principle and apply to the hard case to render justice. It was almost at the end of the 16th century, Tiruvalluvar's concept of equity embassies with the twin ideas found its echo and application in Shakespeare's Merchant of Venice. Portia, a lawyer-judge, gave clear exposition of Tiruvalluvar's concept. Antonio, a merchant of Venice, owed a sum of money to Shylock, a rich jew. According to the Bond entered into between them, if Antonio fails to return the amount, it shall be lawful for the jew to claim "a pound of flesh, to be by him cut off nearest the merchant's heart". This is the penalty contemplated in the bond . When Antonio expressed his inability to pay the debt amount, imposition of penalty became inevitable. Antonio's friend, Bessario, offered to pay three times of the amount if Antonio could be released of the bond. Then Portio enquires Shylock whether he would be merciful, to which he replies : "On what compulsion must I ?. Tell me that". Then, Portia expatiates the virtue of mercy. She says :

"The quality of mercy is not strained ; It droppeth as the gentle rain from heaven, upon the place beneath. It is twice blest; It blesseth him that gives and him that takes". Comparing it with King's sceptre, which represents the force of temporal power, Portia says :

"But mercy is above this sceptered sway, It is enthroned in the hearts of Kings, It is an attribute to God himself, And earthly power doth then show likest God's when mercy seasons justice.

The phrase "mercy seasons justice" connotes what Tiruvalluvar long back said that while making due degree investigation²³, the ruler "should raise the rod with brow severe, but let it gently fall".²⁴ His idea that the rod (of justice) must fall gently, which is further reinforced by his stress on benignity, conveys his concept of justice based on mercy-oriented equity. In the context of the case, the phrase used by Portia means acceptance of monetary recompense offered without insisting upon infliction of harsh penalty. Shylock would not accept anything but penalty in the -bond. Then Portia, like an equity judge, innovated strict rule of interpretation to hold the scale even between Antonio and Shylock to render justice with equanimity. Interpreting the terms of the bond, Portia said:

"This bond doth give thee here no jot of blood; the Words expressly are a pound of flesh, Take then thy bond, take thou thy pound of flesh; But, in the cutting it, if thou does shed one drop of Christian blood, thy lands and goods Are, by the laws of Venice, confiscate unto the State of Venice".

Thus, in enforcing the bond, when mercy failed to season justice, Portia strictly stuck to the uncompromising literal interpretation to render justice with even mindedness. Needless to say that the twin ideas of equity envisaged by Tiruvalluvar found the application in this episode.

Individual-Centric Concept of Justice: Tiruvalluvar expounded individual-centric, not class-oriented, concept of justice. In Kural 547, he states, inter alia, that "justice, when administered without defect, defends the king". So, according to Tiruvalluvar, defectless administration of justice has two-fold benefits. The ruled gets what is due to him under the law and the ruler gets an high accolade. Then in Kural 548, he states : "Hard of access, nought searching out, with partial hand the king who rules, shall sink and perish from the land". His whole concern seemed to be towards individual human being. Tiruvalluvar appeared to have subscribed to the theory of "one man, one value" as basic norm of the social order of his conception. It recognised no graded values, and it gives no scope for hierarchical status in the society of his conception. He adopted the individual as its unit. So, justice must be rendered to him irrespective of what he is or what he is not. Since each individual has to live in the society, he has certain obligations towards his kith and kins and others to ensure harmonious commingling of all people in the society.

He says in Kural 523, that man's "joy of life who mingles not with kins gathered round, is lake where streams pour in, with no encircling bound". Then in Kural 536, he states that "there is nothing comparable with the possession of unfailing thoughtfulness at all times, and towards all persons". Reinforcing this idea further he states in Kural 537 that there is nothing too difficult to be accomplished, if a man set about it carefully, with unflinching endeavor". Thus, he advanced his socio-ethical theory regarding man's attitude towards all others in the society as an adjunct to his individual centric concept of justice.

Uniqueness of Tiruvallur's concept of justice may be realised when it is compared with the concepts of justice enunciated by Plato and Aristotle.

Plato tells us in his **Republic** that justice means that "a man should do his work in the station of life to which he was called by his capacities."^{24A} How to decide man's capacity-linked station of life?

Plato offered his answer in a dogmatic language. He said that God has created men of three kinds, the best made of gold, the second best of silver, and the common herd of brass and iron. Those made of gold are fit to be guardians (rulers); those made of silver should be soldiers; the others should do the manual work. Normally children, inherit traits of their parents. But, Plato permits transposition of children from one class to another depending upon the mixture of metals in their soul. He says that if, an offspring of a guardian (ruler) has an admixture of copper or iron, it, without any show of pity, must be set among the artisans or farmers; and if on the other hand in these classes children born with an admixture of gold and silver, the guardians shall do them honour and appoint the first to be guardians, the second to be auxiliaries (soldiers). For there is an oracle that the city shall perish when it is guarded by iron or copper.²⁵

Plato's categorisation of people into three classes, guardians (rulers), soldiers and artisans and farmers, is no better than the much despised caste system in India. Though he puts in position his idea of inter-class transposition to relax the rigidity of classes, it is not endowed with the potentiality of ending the class system. No doubt, he fully believed in the natural inequality of men, which prompted him to establish a class system in his commonwealth. It is therefore no wonder that Karl R. Popper depicts Plato as "the philosopher of racialist totalitarianism".²⁶ Referring to these aspects of Plato's philosophy, Bertrand Russell says that "When we ask what will Plato's Republic achieve? The answer is rather humdrum."²⁷ That apart, Plato's definition of justice is closely akin to Thrasymachus definition that "justice is nothing else than that which is advantageous to the stronger."²⁸ Difference between the two definitions is only cosmetic in nature, rather negligible. These two definitions of justice fall on the laps of the theory of Sophist Callicles, who argued that nature in animal as well as human life rests on the innate superiority of the strong over the weak; and human legal enactments are made by the weak and the many, because they are always in majority. The law's attempt to make men equal is futile if the strong man flouts the conventions of the herd and throws off the unnatural restrictions of the law.²⁹

The great philosopher Aristotle expounded the concept of *Justitia distributiva*, according to which equal treatment should be accorded to those equal before the law³⁰ and defined an ideal State as "a community of equals, aiming at the best possible life."³¹ But, this equality was confined to citizens, from which category (class) artisans and tillers of soil were excluded on the ground that virtue was impossible for men whose time was consumed in manual labour,³² and equality was denied to slaves because they were inferior by birth and to women because they were different in nature from men.³³ His theory of equality is, therefore, a limited and not an all-embracing concept in that it is applied only to a designated section of population. His division of the people into two classes, the preferred class of "citizens" and the excluded class consisting of artisans, tillers of the soil, slaves and women vitiated his theory of equality (**Justitia distributiva**). Thus the theory of Justice found in the writings of Plato and Aristotle is not a wholesome concept, but a limited one which could exist without being a misfit in any class ridden, hierarchical and pyramidal society.

Great merit of Tiruvalluvar's concept of justice lies in the fact that it is an individual centric ideology. His concept does not give any scope for hierarchical and pyramidal social structure. In this respect he is far ahead of other thinkers. His concept pertakes the characteristics of pragmatic humanism. Other thinkers failed to reach the lofty idealist positive philosophy of Tiruvalluvar.

Tirukkural is a casuistic literature allowing principles to be deduced from the mass of short and pithy statements and maxims embodied therein. Thiruvalluvar, the sage-jurist of Tamilnadu, besides being an authoritative teacher, is an intuitionist philosopher. It is said that "intuitionism holds that ethics is an autonomous discipline with its own peculiar subject matter" and, according to intuitionists, "the basic propositions of normative ethics are intuitive or self-evident insights of a unique kind, which cannot be inferred from any other discipline".³⁴ According to this author, "the manner of writing and presentation of normative ethics touching important aspects of justice, law and constitution in Tirukkural would show that Tiruvalluvar's work is didactic in nature and he is a great intuitionist Philosopher in the field of jurisprudence."³⁵

FOOTNOTES

1. **Tirukkural** (Tr. By Rev. Dr.G.K. Pope, Rev. W.H. Drew, Rev. John Lazarus and F.W. Ellis), Kural 545
2. Id., Kural 551.
3. Id, Kural 563.
4. Id. Kural 564.
5. See Edgar Bodenheimer, **Jurisprudence**, Harverd University Press, 1970,atp.13.
6. Ibid.
7. Ibid.
8. For this quotation see Edger Bodenheimer, supra, at p.13.
9. For this see Corwin Edward S., "The Higher Law Background of American Constitutional Law". **Harvard Laws Review**, Vol. XLIL, 1928-1929, p.149 at p.156.
10. Id.,p.157.
11. **Tirukkural**. op.eit, Kural 551. Also see Kural 552.
12. For this see Edger Bodenheimer, Op.eit, at p. 15
13. See Corwin E.S, supra, at p. 156.
14. Krishna Shetty, K.P. **Jurisprudential Thoughts of Tiruvalluvar. Dr.Ambedkar and Dr.Kalaignar**. 2000, Abhyudaya Publishers, Chennai, at p. 15.
15. Howl.
16. W. Friedmann, **Legal Theory**. Stevens and Sons, 1967, (5th Edn.), p.II.
17. E. Bodenheimer, op. cit. at p.216.
18. W.Fridmann, op. cit, at p. 490; Also sec.pp. 490 - 492 for English Cases.
19. **Tirukkural**. op.eit; Kural 546.
20. Id., Kural 571.
21. Id., Kural 575.
22. Id., Kural 541.
23. Id., Kural 561. 24.Id.,Kural562.
- 24A. See Bodenheimer, op. cit p.7.
25. See Bodenheimer, op.eit, pp.7-8.

26. Ibid, foot-note 8, in p.8.
27. Bertrand Russels, **A History of Western Philosophy**, London (Version paperbacks) 1979, p.129.
28. See Bodenheimer, op.eit, p.6.
29. Ibid.
30. W.Friedmann, **Legal Theory**. (Slevens & Sons), 5th Edn., 1967, p.416.
31. G.H.Sabine, **A History of Political Theory**. (George B. Harrop & Co., Ltd), p.94.
32. Id., p.98.,
33. Bertrand Russels, op.eit, pp.197 and 200.
34. W.Friedmann, op.eit, pp.27-28.
35. Krishna Shetty, K.P., op. cit, at p.17.