WORKING PAPER ON THE WELFARE JURISPRUDENCE IN ECONOMIC ANALYSIS OF LAW

By

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ABSTRACT***

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ABSTRACT

Thinking in law and Justice is largely dominated by philosophy of law i.e. "Jurisprudence" but economic analysis of law movement laid by Coase, Posner and other influential scholar changed the gamut of jural discourse. I argue Law is no more a threat, command or only sovereign wish but a tool to attain well being in well orderness to attain maximization of justice. It is a kind of continuum to attain perfect society as we say in economics perfect market.

This working paper argues that Justice is subject of primary discourse in legal theories and jurisprudence but they failed to offer any consensual theory of justice. Therefore theory of law and theory of justice is appears to be pole apart. The concept of justice waxed in mathematics, philosophy and economics. The scholarship of economic analysis of law made creditable attempt to fill the vacuum by applying microeconomics tools to legal concept and created space for application game theory, choice theories and mathematical modeling so legal theory and Justice theory may be unify. This tactically developed new jurisprudence in nature of welfare Jurisprudence. Therefore the Chicago school in its discourse of economic analysis of law has successfully provided the tools to Jurisprudence to travel beyond the philosophical terrine to answer the concern of legal policy, legal execution and legal adjudication as jurisprudential guide for lawyers and judges.

This working paper at end will say welfare jurisprudence is unified enterprise which foundationally includes prudence of mathematical, economic, jural thinking that consequentially ensure continuum of wellorderness-wellbeingness in order to achieve maximization of Justice(as Posner says) or Reduction of injustice(as Amartya Sen says) to protect existence of men in his pursuance with expounding information or exchanges. 1

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INTRODUCTION
The knowledge other than jurisprudential text has changed the axis of jural text which was predominantly guided by doctrinal approach. The economic analysis of law earlier supplementing the jurisprudential text but later it tacit efforts have shown validity of and its prime object i.e. Justice has to be understood in revised revised knowledge to give completeness to legal order as prime and only object is Welfare of their subject. I discuss the doctrinal approach is in way consequential to many social outcome as legal analysis may not ignore its consequences. Justice is another concern for jurisprudential thought which poorly argued in its discourse. However it is rationally attempted to comprehend the phenomenon of Justice in economics by applying social choice theory, other choice theories, game theory, cost benefit analysis. Therefore a jurisprudence which may properly answer the quest for law and justice shall take note of this developing work .This paper attempted to define law and justice in jurisprudential discourse in such direction under the umbrella of Welfare jurisprudence.

I
Doctrinal and consequentialism approach
The agreed postulates or axioms are the basic structure of legal order. The first order norm is later gives genesis to second order norm and then the third order norm are prepared on bottom level as multiple sub norms. The desired validity of well orderliness of legal order is in consistency of well order theorem of legal order which flows from its given postulates or axioms of cohesion. The initial question which arise here is whether the initial selection of axiom of ordered legal system is doctrinal or consequential ?

II
Plato and Coase
The my argument is that the selection of basic structure or postulates of well ordered legal system is not institutive or doctrinal by any philosophical or scientific method but it is it is consequential to agreement of cohesion. Let us read the impotant results of Plato in Republic and Ronald Coase in The problem of social cost. The position for demand of legal arrangement and justice between Plato and Coase is same only with a difference that plato speaking for society and coase speaking for market. The Plato in “Republic” book II observed that men agreed to not suffer harm (injustice) and inflict harm (injustice), hence there arise laws, mutual covenant, this they affirm to be origin and nature of justice. Similarly coase demanded intervention of legal arrangements when transaction costs are rising above than ZTC and maximization of gain is uncertain as externalities
may not be taken in account and property rights are are not well define. Later Aristotle called it distributive justice. The concern of Plato in "Republic" is to save human from collapse of society where as the concern of coase is to save the market exchanges from collapse. But commonalty among them that both resolute for efficient legal arrangements for intervention. Plato call it origin of justice and coase called it maximization of gain in exchanges. But jurisprudential and ontological value is identical to create a well order for well being by efficient super order. The order has mathematics where numbers are ordered. Beings are not number, but order is their nature.

III

The quest

Therefore the next question of great importance naturally comes to us that whether the individual suffering of A and B is causing of validation for natural empire i.e. state or the individual gain and losses above than natural condition has to answered in well ordered super structure as first order theorem till third ordered form. This is a resemblance with a kind of incoherence between Newtonian physics and quantum physics. This gives a genesis to a serious problem of authority of individual, state and institution in defining nature of law. Let us proceed with my enquiry in that direction.

IV

Constitutional Crises

The object of A and B is well defined that both desire to reduce the losses and enhance the gain. This is opportune time for AU (Authority) to rule their verdict upon them as they may reconcile to reduce the opportunity cost. Therefore each of them i.e. A,B an Au has their self-referred motive and rational to proceed with their authority ,power, command and wish in name well-ordered legal system. The authority and wish of authority is necessary evil or added transactional cost. But what is its limits and origin in well-ordered legal system? This serious legal question troubling Indian constitutional jurisprudence for more than six decades. This problem was well considered in series of constitutional amendment cases and judges appointment cases by supreme court of india. The jurisprudential controversy is largely centered around in question of authority and nature of efficient laws. Before we deal with these cases I attempt to understand the nature of law and its reflexivity.
The caution here which I attempt to make that in judicial doctrinal jurisprudence that there is obvious problem of self-reflexivity in comprehending the nature of law and jurisprudential methodology. The well-ordered system suffered with self-referential paradoxes leads to inconsistencies is due to fundamental understanding is crucially flawed. This is the case with Jurisprudence which economic analysis of law report to us. The parliament has power to amend the constitution, this power they do it by legislative power they receive from constitution. They may even amend the fundamental rights as the article 13 was interpreted by court that amended law does not include constitutional law. There is question regarding validity of authority Au which parliament receives from art.368 of constitution itself. The interesting paper of Alf Ross “A puzzle in constitutional law” is deserved mention here considering the authority of art.88 in Danish constitution of Denmark. The art. 88 gives the same authority to amend the constitution as art. 368 of the Indian constitution give it to parliament. Ross(1960) examined this amendment power on ground of self-reflexivity principle. He gave logic that let us consider authority Au is constituted by competence of C and subsequentaly Au-1,Au-2,Au-3 and C-1 C-2 C-3. Than

Au-1 is constituted by C-1 : and C-1 is enacted by Au-2
Au-2 is constituted by C-2 : and C-2 is enacted by Au-3
Au-3 is constituted by C-3 : and C-3 is enacted by not any Other authority

Than Au-3 is highest authority and C-3 is basic norm. The conclusion of Ross that basic norms can not be changed as it create the paradox of self-reflexivity and art.88 is basic norm so it can be amended by its own procedure. This amendment is not permissible by virtue of procedure prescribe by it but by the fact that it is a basic norm. Therefore the unammendebity of basic norm in give order promote consistency and avoidance of paradox of self reflexivity.

Now consider the Indian constitutional problem. The article 13 says that any law which takes away the fundamental right is void. The case of Sankari Prasad (1951) and case of Sajjan singh (1965) hold that constitutional ammendment is not law within the meaning of art.13. however this view was unsettled by Golakhanath case(1973) holding that Art.13 word law include constitutional amendment also and it may not take away fundamental right by majority of 6:5. Being annoyed with this judgment parliament brought 24th amendment to constitution stipulating that law does not include constitutional amendment. This amendment was challenged in Keshvanad bharti case(1973) and it was hold by 13 judges bench that amendment is valid by any amendment may not alter the basic structure of constitution. The further in
many cases including this case hold the many postulates as Basic structure of constitution.
In appointment of judges cases the controversy also continued for many decades. The independence of judiciary and separation of power is also included in basic structure so the opinion of Chief Justice of India hold the primacy in the appointment of judges. This was also attempted by parliament to increase his say by constitutional amendment. This change was declared unconstitutional as it violates basic structure. However it was agreed to prepare Memorandum of procedure by joint effort of judiciary and executive. Therefore by interpretation and description consequentially court are exploring various basic structures. As the any stipulated character is brought in category of basic structure it immune from paradoxes and self reflection. Man has freedom to choose axioms in mathematics and legal science. We choose them logically institutively but disorder caused by paradoxes, self-reflection create crises of faith.
To avoid the self-reflexivity, paradoxes, inconsistency consequentially we induce the postulates, axioms, basic structure by interpretation, discursion as if we in search of something beyond the basic structure, axiom, postulates. The other way we are more defining authority validity than true character of axiom, postulates or basic structure of our social cohesion. It appears our understanding is seriously flawed

VI
JURISPRUDENTIAL TERRAIN

The Jurisprudence, Philosophy of law or legal theory is interchangeably centered around the discourse the what is law, what is justice without leaving the mark of identified methodology. The linguistic question what is law or what law is self-referential question for desired information on the subject which may gathered by the author by his self-speculative or linguistic philosophy indulging in interpretation or discursion making it communicative to mass for obedient subjugation. Therefore the issue is jurisprudential search is propelled by questions that such discourse is a science or art? And so on. The moment we annoyed ourselves with such question and answer without finding desired results, we ponder upon pureness with idea to remove the impurities of thoughts. This methods claim to be inquiry rather scientific inquiry. The pure domain of Jurispudence or legal theory as in pure mathematics is itself subject of independent enquiry at its length and scope. However this effort is largely go in vein because it more directed towards establishing a foundation for authority validity, sovereignty, state as ideas or foundation of jurisprudence legal theory. Resultantly the conclusions came as fear, threat, will, force, authority and as command from presuppose postulates and preposition thereto.
The knowledge of man, his behavior appears and conduct in society appears to be domain of jurisprudence. The domain than is ever changing and carried away with information from other discipline. The Jurisprudential domine is designed by philosophical methodology. Therefore the question an enquiry of jurisprudence legal theory is largely dependent on the inquiries and questions of those philosophical methods and applications. The structure, foundation and content of Jurisprudence, Legal Theory, and Philosophy of law in bewilderment stand on the shoulder of other discipline for glimpses of lager horizon. Therefore I call this phenomenon of jural discourse/quest cumulatively “Being Justice” which I explain later. The question and inquiry in this domine is of so called jurisprudence and law, I call the question and inquiry regarding foundation, structure and content of order and its desired results. The schools of jurisprudence are predominantly schools of philosophy i.e. Analytical, positivism, Realist, Historical, sociological, Idealism, Utilitirism, Pragmatism, Postmordanism and some other schools of thoughts including religious schools. They are common in search of order i.e. foundation and structure and search for justice i.e. content. They differ in their methods and nomenclature of their thought expression. The gradual addition in knowledge and information added prospective addition and retrospective correction, this effect society and jurisprudence. So the retrospectively correction is Historical and addition is in sociological effect, this perspective associated with jural thinkig and postulating, in a way Euclid and Non Euclid way of thinking. The order are primarily natural or artificial, Natural are those orders which are placed in primary balance position for peace and security, whereas artificial order where men develops science and art information as per his non static nature and need for further order and peace.

Therefore it is tautological to say in natural state there is no jurisprudence and in artificial stage there is no pure jurisprudence, as a matter of case there is no independent, pure branch of legal theory or jurisprudence. The philosophical and scientific claims are always competitive. Both suffer wild blames. It is said that discipline of philosophy is dead and stagnated. It is apprehended that core science is facing foundational crises. If it is the case than and if it is not the case than, what is the case of jurisprudence which is not a pure (which is multidisciplinary, interdependent phenomenon). Surely we leave a margin for posterity in Jurisprudence if it can resolve the core issues in science and philosophy. The doctrine we build attached as precedents with preparedness in posterity that organic nature may alter them consequentially.

The unaccounted fallibility licensed and deposed in organic nature of perpetually gathered information without paying cost for suffered disorder. The prudence of our jural order and behavior is not unidirectional
which may accept only one set of package of knowledge. The correctional continuum in prudence is organic process. But if it so than it is a continuum threat that we may prove erroneous in our selection of choices. The collective choice of Jural prudence is consequence of such threat. Therefore the case jurisprudence is case of threat within the threat (as they say state a)

Than who will measure the measure\(^25\). Which prudence will measure the prudence of Juris? Is it mathematics, science, economics, philosophy or some meta-knowledge? Else let it go self-referential correction with admission that they are fallible and their threat, command is imperative as counter threat and command. It is tautological whirlpool and expensive interpretation and discursion. The premise of what is law or what law is primitive tautological discourse. Law is command, threat, imperative is defining exercise for validity of authority, claim of obedience, logic for subjugation of inferior subjects, positing the power sets (As it is in set theory of mathematics)\(^26\). It is for sure the Jurisprudential phenomenon deserves revision. It is firmly agreed that men needs order and his nature is non-static. The order govern by law is basic mathematical understanding. The order being mathematical faculty of human understanding depicted in is comprehensibility in societal order. This I will deal further in preceding thoughts. The underline difference of Jurisprudence better capsulated in posner explanation “By legal theory I mean to exclude both philosophy of law or jurisprudence—which is concern with the analysis… Legal theory is concern with practical problem of law, but it approaches them from the outside, using the tool of other disciplines.\(^27\)” This initial distinction is attractive initially but later it exposes a fact that import of thought and idea from other discipline is imperative for both i.e. legal theory and Jurisprudence. Therefore search for perfect prudence is always takes legal knowledge to other terrain than his own terrain. However Jurisprudence and legal theory could never concussively identify its own terrain. It is the reason it has become so insignificant or say relatively insignificant for lawyer or judges leaving large canvas for speculation and creativity.

VII

Coase Jurisprudential And Just Axioms

The Ronald coase paper “the problem of social cost” has conclusion that in a zero transactional cost factor of allocations will not be affected by legal arrangements. The criticism of this conclusion that it is tautology: under conditions in which the legal arrangements have no effect upon factor allocation, then the factor allocation will not be affected by the legal arrangements. Coase.s own defense to this objection is very instructive: “I showed, as I thought, that if transaction costs were not introduced into the analysis, for the range of problems considered, the law has no
purpose.” (Coase 1998). The criticism and reply has a mathematical and ontology beauty which express a proposition that the legal arrangements has to fold objects, one that legal arrangements should allow the exchanges to happen in market and nonmarket conditions and another object is such legal arrangements has direct nexus with efficiency. The valuable contribution of Amartya Sen in his book title “The idea of justice” has explored significant jurisprudential value where he propounded a theory of justice that can serve as the basis of practical reasoning must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies-an exercise that is such a dominant feature of many theories of justice in political philosophy today.

The discourse in jurisprudence as a prime faculty of a societal system is predominantly doctrinal. The quest for all exercise in jurisprudence to identify the correct answer of what is just, what is right, and what is justice. The search for such answers though still proceeds. The order of thoughts can be disordered by excessive interpretation, where the vital message lost its identity. Therefore my endeavor to proceed in ordered thoughts to preserve the prime message. IT is an inquiry into the case of unification of law and justice for welfare of men. IT require rational of equilibrium, coordination, order, and method. IT appears in its pattern. The pattern of it design of men. The design is occurred as the nature of men is not static so not the patterns are. The motion of men's nature keeps him in exchanges. The exchanges unfolded by acquisition of knowledge and informant. This revealed information compels man to be in order. Therefore it is the nature of men to desire for information and place it order. The order is innate in nature of man. Man who is never alone, either in being or with other being or nature.

The acquisition of information and its ordering by men gives him certainty. The act of sharing information is an act of fertenity. Order is pluaratic phenomenon. Concept of order is in its deterministic frame which includes certainty, continuity, and consistency. This determinate frame of order gives utility of security to men. The genesis of order is from disorder. Disorder gives harm and insecurity to men. This determinate frame of order gives utility of security to men. The genesis of order is from disorder. Disorder gives harm and insecurity to men. Men nature in their pursuit causes mutual harm to each other. Independent pursuit of man A causes harm to independent pursuit of man B and reciprocally B harm to A. The state of nature leaves free to A and B for their pursuance. But their desire to maximize their production, profit of their pursuance; they inflict harm on each other. Avoidance harm on A inflicts harm on B and avoidance harm on B inflicts harm on A. The higher the gain of A will give incentive to A for taking care
harm the B or vice versa. Coase R “The Problem Of Social Cost” This Zero transaction cost is restoring mutual gain and peace. 14 The order in progression and comparison is govern by gain and incentive to take care of mutual. Therefore gain and incentive to take care the mutual harm has taken in account optimal cost for value production and peace between pursuits of A and B. 15 This is the case of friendly bargain, optimum gain for both actors A and B in their pursuit. The friendly bargain in state of nature make well of A and B without making worse of either. 16 Therefore no question of comparison pursuit between A and B in terms of equality or well off ness is require in this friendly state.17 The coase analysis here has great significance for jurisprudential theory and method when he observes that at ZCT stage any legal arrangement is no effect... In perfect market transaction cost is zero, information is symmetrical and efficiency is optimal as praeator efficiency. This is market of fertanity with normal profit. There is no incentive either to leave or to enter in market. This is equilibrium .with limited minimal information. This perfectly explains the nonmarket and market original position in state of nature where legal arrangement neither requires nor affects the exchanges. The idea of perfect market is identically utopian as the idea of utopian state or society where the state intervention is minimal or negligible for efficient society. This position is differ in social contract theories as in John Rawl Theory of justice and David Gauthier in “morals by agreements” 1986. However I say coase argument is correct to social contract theory for welfare jurisprudence When they all are friendly and in their bounds without causing eventual harm than there is no issue of equality, so all are equal, unique and efficient. The state of nature all sets of A and B are in friendly equilibrium in their pursuit with order and well-off ness with limited perfect symmetric information. As the nature of man is not static so the information.s in multiple sets of As and Bs are not static. The all sets of A and B.s are with limited best perfect information of gain and losses in friendly nature. The all sets of A and B.s in their exchanges of their pursuit either in low or Zero transactional costs. The all sets of A and B.s are efficiently happy and contended in their mutual exchanges and independent pursuit, therefore they do not engage in A.s or B.s in their various sets.18

Alas! Man nature is not static. He acquires more information and knowledge. This acquisition of knowledge and information is asymmetric. so after As and B.s gain of more information and knowledge either A.s and B.s are ignorant and suffer from lack of information. The asymmetric information in A.s or B.s of divergent sets thrust for more gain with less transaction cost. Such thrust and efforts causes more harm to less informed A.s and B.s in various sets. The gain for few and losses for many create inconsistency and
asymmetries in exchanges. Poorly, Friendship in exchanges broken, order turns in to disorder.19 Multiple exchanges with this the sets of A and B are collapsed and various A.s and B.s are causing more harm to each other.20 Acquisition of more information causing more harm and high transaction cost. The maximization of information of knowledge and gain is nature of men, so the order is nature of him. But this time men needs super order, order above than all sets of A.s and B.s. The harm and information is asymmetrically maximized within the sets and between the sets. They need arrangements and order.21 Society need order for maximization of well being and they call it and marked need order for low transaction cost and maximization of gain. But above all both society and market seeks to save their existence from collapse.

They need mathematics of order which optimtimise wellness. A need of mathematics to:

i. Uphold, save the existence of men and their exchanges.

ii. Uplift their being and exchanges in order to optimal level.

iii. Being in state of optimal well order with optimal well being.

This mathematical package they dream as “Justice, A ultimate consequence. The foundational justified in social contract of men to secure justice in being order, saying justice mean:

i. Uphold, save the existence of men and their exchanges.

ii. Uplift their being and exchanges in order to optimal level.

iii. Being in state of optimal well order with optimal wellbeing.

They resolute not to inflict harm and to have super order. This power set is empty set if all sets resolve to stand collectively. By their reason and experience it is that justified uncontroversial belief among all sets of A.s and B.s that which is desire of all sets of A.s and B.s. as:

i. All sets of A.s and B.s are fighting within sets and inter se the sets, so they desire FERTENITY.

ii. All sets are fighting and causing harm to each other so they desire SECURITY AND LIBERY.
iii All sets of A.s and B.s are harmed by inequality and insufficient information therefore they desire EQUALITY.

Therefore they resolved uncontroversial postulates/axioms among all sets for well order ness are

(i) Fertanity

(ii) Equality

(iii) Liberty and security.

The concern of Plato in “Republic” is to save human from collapse of society where as the concern of coase is to save the market exchanges from collapse. But commonality among them that both resolute for efficient legal arrangements for intervention. Plato calls it origin of justice and coase called it maximization of gain in exchanges. But jurisprudential and ontological value is identical to create a well order for well being by efficient super order. The object of creation of power set is to create an order where existence of all sets are protected and they proceed in progression. The postulates of power set are mega norms of constitution or we may call axioms constitutional set. The object of power set is to maximize the equality, liberty, security and fertenity among the sets and among the members of the sets. This maximization and preservation of existence of men is call justice. Therefore all A.s and B.s are in sets and sets are in power set for the purposes of this maximization of gain, therefore purpose of justice is to maximize gain (justice) keep them in bond. Rationally of men teaches them that such as his nature is, so they have no choice to live in either in sets or in power set. Men is never free, he is in choicelessness. Within the bounds of such choice less ness condition various rational arrangement of choices are available.

Gains are economic and non- economic. The gain proceeds in order of wellness of being. For maximization delimitation of pursuits of A.s or B.s is imperative. The order of delimitation by power set/constitutional set is called laws. The order of delimitation takes in account such fact and behavior in account which are significant to order but not internal or being externalities to it but affect the welfare and efficiency of order. The law (order of delimitation)maximize the gain with reduced transaction cost and enhances the efficiency. “what is law” or “what law is” is a serious quest in jurisprudence. Austin, Kant, bentham, Kelson, Hart, Dworkin and many other
important philosopher have define it as per their theories. The schools of economic analysis have define it in the framework of efficiency. It is not disputed here that law should not be efficicent but the choice of coase as word “delimitation” appears to be correct. As the act of making law is a act of delimitation for keeping an order, it is in way curtailing and enabling in away for arranging mathematics of order.

This is the foundation of welfare31 jurisprudence where the:

A. The jural relation, correlation, coordination has to be in symmetrical progression where eventually each one will get minimum well being as a result of such jural ordering.

B. The standards and rules has only one purpose it has eventually the causality of well order for attainment of well being.

C. The powers set is not which keeps the all set in subjugation but it is a mega efficiency engine which orderly arrange all sub sets in such pattern that it may eventually give the most efficient result therefore the notion of power in politics or social science is in pure and does not suffer by the vices and lust of man .No one is subjugated to anyone they are just placed in well order .

The idea of welfare in welfare economics suffered lethal, forceful attack from its inception. But it was strengthen by every attack. The concept of welfare jurisprudence and social sciences is attached with idea state(as a force) to give it presentable look, as narrated in T.H.Marshall in his essay “Citizenship and social class”. But this concept is better explained in economic thinking. Therefore jural thinking has to revise itself from power centric jurisprudence to welfare centric jurisprudence. The theoratisation of such Welfare Jurisprudence shall have mathematical foundation.

X
Paradigm shift in thinking of Justice

It appears justice is a concept of jurisprudential paradox as it is neither true nor false. It is also the objection of anti foundationalism. It appears that justice is an axiom which can be proved in power set but it can never be proved that what it is. This paradox an incompletenes of justice is deserves to be investigated and require urgent comprehension.

We have two ways

A. Either define the justice in terms of provability in the sets
as to prove objectivity of this propositional set.

B. Or we may start the journey to prove the justice out of the set changing other postulate.s of the sets.

The objection of antifoundationalist against foundationalist for conception of justice is well founded as the foudationlist define justice only within the system, derrida J. as in his article “Force of law: The mystical foundation of authority” has objection with word enforcement of law which has foundation of authority that is violent expression devoid of concept of law. Other anti foundationalist in one way or other shown their disjuctive nature of law-Justice. Kelson to be in saffer side declared justice as emotive idea. The economic analysis of law schools described justice as maximization of allocation scare ressources whereas law they relate with concept of efficiency. But this conception or justified belief of justice is erroneous and mistaken.

The correct conception of justice is “justice mean to uphold, save the existence of men and their exchange, uplift their being and exchanges in order to optimal level and being in state of optimal wellorder with optimal wellbeing. This we call welfare jural prudence.

We look justness as it is exactness. whereas justness is probable, A kind of fuzziness about justice. So Amartya Sen is took a paradigm shift that not to think about theory of justice but to devise module for how to reduce the injustice. This replicates paradigm shift in thinking about idea of justice.

The world gamut has changed from local to global, modern to post - modern but epistemological, ontological foundation of mathematics and science is moving towards micro module to ultra-micro observations. The mathematical modelling of economics in selection of choices and its sets fails to agree on that we have finite sets in infitute to make choices on the globe. Therefore this paper will argue the model of Sen regarding theory of justice deserves re-appreciations in changed paradigm. The growing economy of global gamute require united theory of justice for its Axiomatization and quantification of Principle of Justice.

The mathematics as its logical, formalistic and intitutive foundation and physical sciences as between Newton's and Einstein module and thereof revising itself for better foundation. Therefore the jurisprudence also require to revisit its foundation in order to formulate unified theory of justice and law in this paradigm change of modern knowledge.
"What is Justice" is a quest which troubled humanity from day one when they thought of it. The theory of justice is formulated by Amartya Sen in his book titled “The Idea of justice" which has caused paradigm shift in conceptual thinking about the idea of justice(1). Before we proceed further it is vital to understand that the Idea of justice by Sen is largely developed on foundation of economics, socials choice theory and bounded rationality. But has influential value in all interdisciplinary thoughts of justice. Let us first see the chart concerning paradigm shift in the idea of justice by Sen in thinking of justice. The identification of just social arrangement is imperative for theoricician idea of justice(2). Sen arguments for Theory of Justice are “The behavioural transgression of people is important rather than shortcoming of just arrangement and shortcoming of just institution. The comparative questions are of vital importance and some of them may be fully resolved by examining available different social choices and rational agreed selection of them. The comparative route of identifying injustice does not require much emphasis on identification of transcendental rout of identifying just institutions. The important question in theory of justice is that "How we may reduce injustice. Sen argue that this conclusion is wrong. As social choice theory may sufficiently draw the foundation of theory of justice. The room for resentment, further scrutiny and probable justice comparisons is relevant for foundation for theory of justice. These expression have pleural competitive value among which choices are to made Any theory of justice or module of reducing injustice must have inclusion of global justice. Sen feels that all conflicts will not resolve by one theoritisation but cooperative assessment imperative condition which may be resolve to have better world.”

This clearly stipulates that world is amply filled with injustice yet we claim to have profound knowledge of idea of justice.

This chaos ordinarily caused due to unidirectional and limited horizen of social scientist in applying science and mathematics in social sciences. This mistaken problem lies also in describing justice. Let us state examples that in any linear transitions justice is there or it is not there so;

J       -J

Truth False
But in all societies justice may not be found in absolutistic form. It is either in increasing from or in decreasing forms. So presuppose:

\[ O \rightarrow J \]

\[ O \leftarrow J \]

Since the absolutes value of justice and injustice is not ascertainable, therefore whatever is available is only probable’s, a kind of fuzziness, a kind of justness, certainly which is not exactness. A justness as we see in right-angle-triangle in a triangle:

This right-angle-triangle justness is not exactness in given space-time continuum. The ABC point may have different spatial denomination in right-angle-triangle as:


The ABC Point expresses right- angle-triangle a kind of justness but ignored the spatial extension geometrical pattern of this right angle triangle, the justness. Therefore so called linear or singular justness in justice may not be understood in totality without comprehensibility of minimum finite pattern of virtue, goodness’s, moral, Ethics in geometrical spectacle extension in space-
time continuum. This mathematics is preliminarily discussed by A.W. Whitehead in his some writing\(^9\). He had in essay on “Immorality” described two world i.e. world of valued and world of action\(^1\). Same as world of virtue and world of empirical application. The mathematician G.W. Leibniz (1646-1716) who was contemporary to Isaac Newton share the same view having central idea of universal jurisprudence on geometrical verities for rationalisation the jurisprudential texts, so expound justice as universal charity\(^1\). The application of mathematical and geometrical form of justice to make the concept of justice universally, globally explicit and acceptable. The Spinoza “ Ethics” has another attempt in the same direction. Benedict de Spinoza applied Euclid geometry in ethical philosophy\(^1\). The common shared grounds of jurisprudential work of Leibniz, Spinoza and whitehead deserves the critical appreciation and further expansions in order to comprehended the phenomena of justice in global gamete.

Sen has also shown the concern with such obvious connection. However sen concern was in relation to prove that social choice theory may offer foundation for theory of justice. Therefore he chooses the realization to path of comparisons than transcendental institutionalism. I have objection with such nomenclature\(^1\) if we take the concept of sen regarding transcendental institutional that it is identification of some just institution to have just society. This identification is in mainstream philosophy of justice encounter with two emergent problem:

(a) Problem of balancing forces (as influence by physical law and law of human order).

(b) Behaviouriual, ethical, moral partiers of society which confronted with actual realisation of justice or are may say problem in quantification of justice.

Therefore Sens departure and this paradigm shift is obvious for two reason.

(a) In quantifying the well being of society justice is important entity which in abstract unquantifiable patterns.
(b) Injustice is so apparent and quantifiable that it adversely affecting the wellbeing and its quantified reduction may eventually leads to secure justice.

But Sen has some suspicions and possibilities in his mind (that is a area of my research and exploration) The paradigm shift in Sen work is require serious attention as it exposes failure of humanity which claims that he is rational animal having idea of justice. Nevertheless sen has come with another suspicion and possibility that

(A) A comparative theory of justice (or rather theory of injustice) which reduces injustice, and transcendental theory of justice (which identities the just society and its order) are distant apart. If there is some obvious connection, than such investigation must be undertaken.

(B) The transcendental theories are not sufficient enough to reduce injustice.

(C) The transcendental theoratisation of justice is not requirement to reduce injustice by comparative assessment.

(A) The central idea in comparative theory is making rational choices among alternative policies and methods. Therefore it is immaterial and insignificant for such theory that what does mean by “what is a just society”

These are significant departure between available theories of justice before sens idea of justice. This signified great failure and incompleteness of theories of justice for reduction of injustice in divergent society (even if these theories claims are vocal and high).

These paradigm shifts urgently call for investigation in Jurisprudential Discourse.

XI

LAW AND WELL BEING, WELL ORDER
The laws which ordered the fundamental cosmic force are revealed to us by mathematics and we reveal the laws which keeps the human being in the order. Our ordering the human being is only the manifestation of our knowability of laws of order in fundamental forces of cosmos and micro forces in nature. Some G (or not even any G but a force) has posited the law for ordering the fundamental cosmic forces in infitute. But we have posited the law’s for keeping our human forces in order. That G is not known to us but we are known to ourselves. The object of any societal order is peace and welfare of human race. The object of jurisprudence is not only to logical posit the law for human order or analytically or realistically study the same. But if all these affords failed to produce a welfare function than such jural texts are in vein. Therefore the objectivity of jurisprudence require reconsiderations.

The welfare jurisprudence was ambitious project of late Alexander H. Pekelis who died at young age. The G.H. Leibiniz also shared the identical jural voice in his universal jurisprudence is universal benevolence or justice as charity. But this school of thought could not well fructify. The Law and economics has interdisciplinary relation. The economics has flourish school of welfare economics. The law has also merged with economics in constitutional economics for which James M.Buchanan was awarded Nobel award. But its jural texts are still not developed which may revise jurisprudence. Let us explore its possibilities.

The fundamental forces in human order are tendencies to protect uplift and nourished their existence. These forces are in the nature of benevolence, charity and balance to devise their order and harmony. Therefore the very nature of the fundamental forces is in welfaristic exploration. So we have mistaken notion in jurisprudence that laws are made to rule or laws are made to possess and secure the power by command. The fundamental theorem in welfare economics suggesting the mode of attaining maximum welfare function. The Buchanan has stated constitution as a welfare function to maintain the economic equalities and liberties within the constitutional limitation. The Indian constitution suggested in various places, various articles its welfaristic nature. The modern states are not the power houses but welfare state, the extraordinary power given to High Court and Supreme court in article 32 and 226 is to protect the fundamental rights of people, equities
and to secure the end of justice. The article 142 of constitution of India stipulates that apex court may pass any writ order or direction to render complete justice\(^{(29)}\). Therefore the Indian courts possesses extraordinary judicial powers in order to protect and optimise the welfare function. The criminal law favour the retributive system of punishment where the existence of guilty person is not to be diminished to the zero level but by protecting his existence after his reformation by quantified punishment that human force orderly arrange in their system. Therefore in the criminal justice system in itself has a welferisic mode of punishment and reformation. The recent discourses which opposes the concept of capital punishment is realising us a fact that in the case of heinous to heinous crime. The welferistic approach may not be given with.

The Kelsen in his pure science of law had scientific approach in positing the law in the human order on logical bases but stammler has interesting objection that howsoever one may be scientific in cosiding law in the human order it will eventually be a normative science. He further adds that the law does not say that if x happens Y will happen. It says X happens Y shall happen \(^{(30)}\). This analogy without disputing the character of legal science has a relevance regarding the objectivity of legal science. The science is not objective but legal science has objectivity in the law and force in order. If science has objectivity then its progress will be strangulated whereas if in positing the law there is no objectivity then its very purpose is defeated hence in last resort the jurisprudence have objectivity lies in the welfare of their subjects in order. The jurisprudence objectivity is settled in its paradigms. The Thomas kuhan in its celebrated work argued that in scientific work ythe paradigms are settled but it has no deterministive objectivity as in legal science the paradigms for order is settled by social, legislative consensus with one larger objectivity that is welfare coupled with other objectivities therefore the object of natural sciences is to tidely associated welfare but associated with movability whereas in legal sciences the objectivity in paradigm and final ascertainable objective as both have welfare acertainity resultantly, it may be safely conclude that welfare function has paradigm and final ascertainable value in jurisprudential discourse. However less jural text in form of welfare jurisprudence banner is available as it is not being explore as a jurisprudential
discourse school. Economics jurisprudence and mathematics has their own three fundamental economics is concern with well-being, jurisprudence is concern with well order society and mathematics is concerned with well ordered formulas. The mathematics share the common ground of be economics and jurisprudence and wellbeing or well ordered society eventually landed in welfare may it be welfare economics or welfare jurisprudence. We should ask a question to ourself that can we have well being without well order society or vise versa. Therefore for well-being it is highly important that well order society must exist.

Therefore since conclusion and investigation is not properly placed that well being even if it has connectivity with well order is not necessary for consideration in devising theory of justice. I argue that the concept of justice is not unidirectional segmented classified or may be c comprehend on building block module, I further argue that the idea of justice is an unified idea in determinable form after taking in account the idea of well being and well order. The welfare function of justice is to optimise well being devised from well orderness of human interaction, interconnection, and well being attained by economic upliftment and welfare of human interaction.

This study called in question the segmented study of problem of justice in their specified domain but such domain may not claim to have complete or comprehensive idea of justice by comparative studies. On the contrary the unified picture of justice will offer a tool in comparative study of idea of justice, therefore their is remote possibility that welfare jurisprudence may be developed and expanded not on theory of law but on the foundation of unified theory of justice.

**CONCLUSION**

The authority or validity in law is not self-reflexive but it is set in consequence of desire i.e. desire to “welfare”. Therefore nature of law is not nature of command, threat or sovereign wish established by authority. Law is tool tool for maximisation of welfare applied by appropriate authority in accordance
with postulated of cohesion of people. This what economic analysis of law tells and Justice demands-A kind of “Welfare Jurisprudence”.

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