

Moulding a Just Society: Re-examining Rawlsian approach in Indian Context

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Abstract

In the last two decades, with the emergence of capitalism, income inequalities mount up exponentially in India. The rich are getting richer and the poor are struggling to get the basic minimum. A growing income divide, discrimination, foster animosity and resentment among people. It is in this backdrop, my paper discusses Rawls Theory of Justice as a solution to the deepening inequalities that pervades in our society. The theory also discusses the ways in which a just and fair society could be constructed. In order to actualize this ideal Rawls proposes two principles of justice. These principles remind us about our moral and social responsibility towards our fellow citizens. In Indian context Rawlsian insights stands in conformity with Ambedkarian ideal of social justice that stood for liberty, equality and fraternity. The focal concept of both Rawls and Ambedkar is to uphold the dignity of each individual as human being.

1. Introduction

At the heart of social change is the pursuit of justice. It is an everlasting search to eradicate the desperate misery of poverty, discrimination, disease and inequality. Income inequalities mount up exponentially in the last two decades with the emergence of capitalism. The rich getting richer at a faster pace and the poor are struggling for their lot. This is one of the major challenges India is facing now. A growing income divide may foster animosity and resentment among fellow beings and may tend to impede the ideal of Democracy. Is inequality unjust? If there exist inequalities in a society how we can legitimize it. Is it possible for us to construct a just society, if so what principles should we choose to realize the aspirations of people, and how the goods and resources should be allocated equally among citizens? All these are fundamental concerns of justice.

According to Rawls, the basic structure plays a vital role in the construction of a just society. By basic structure, he means social, political, legal and economic institutions with which individual interact with one another. These inter connected system of rules and practices deeply influence people's character, desires and future prospects. The basic structure forms the primary theme of justice because of this profound influence.

Hence, in order to arrive at this ideal, Rawls puts forth a hypothetical situation, where group free, equal and rational individuals agreed on a set of principles that govern the basic structure of society. This initial position of Equality he called it as "Original position". In this initial situation, we are behind the "Veil of Ignorance". It temporarily prevent us from knowing who we are, our position in the society, caste, gender, whether we are poor

John Rawls offers an illuminating answer to these questions in his influential work, A Theory of justice. In the opening section, Rawls asserts, "Justice is first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient or well-arranged must be reformed or abolished if they are unjust" (Rawls, Justice3). This is his first assertion. His second assertion "Every person possesses an inviolability founded on justice that even the welfare of a society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others" (3). To illustrate, it is unjust to sacrifice the happiness of a few for the greater wellbeing of others. "Being first virtue truth and justice are uncompromising" (4)

or rich, our religious convictions. If no one knew any of these facts and since no one is having a superior bargaining position, the principles they would agree to would be just. This renders the contract fair and impartial.

1. Rawls observed that reasonable people in the original position would prefer two principles of justice.
2. "The first principle holds that each person is entitled to the most extensive system of basic liberties (freedom of thought, freedom of conscience, freedom of association, rights and liberties that defines the integrity of person) that is compatible with a similar system for everyone else."(Rawls 60)

3. Social and economic disparities only exist if:
 1. They worked to the detriment of the least beneficial individuals in society (Difference principle)
 2. Under terms of fair equality and opportunity, they are attached to offices and positions that are available to everyone. These values are ordered in a particular order and are regulated by a priority law.
4. The first principle takes precedence over the second; the second principle can be implemented only when the first principle is absolutely fulfilled. Likewise, part (b) of the second principle takes precedence over part (a). In order for fairness to be accomplished, the ideal of equitable equality of opportunity must also be fulfilled before the difference principle. The first principle assures that the liberty of individual be maximized provided it does not violate others freedom. This implies that the rights of an individual cannot be compromised at any situation. An important point in the second principle is that Rawls gives room for social inequality on a condition that any such departure from liberty should be beneficial to the least deprived sections. The role of Difference principle is to define this idea of Reciprocity (Freeman, 6). This exhibits his fierce commitment to equality. Rawls, thus puts forth the basic structure of society on the background of the above two principles which he called it as 'Justice as Fairness'.

2. Constitutional Provisions

Rawlsian idea of justice stands in conformity with the Indian Constitution. The concern of the constitutional makers for the depressed and weaker sections is reflected in the Preamble. The manner in which the Supreme Court of India has interpreted the various Fundamental Rights seems to represent Rawls' ideas. Elucidation of Article 14, 15, 16, 4 (equal opportunity in employment) and 21 illustrates the influence of Rawlsian approach. The Constitution endeavors to achieve social justice through which a casteless, classless and egalitarian society may be able to translate in to action includes Liberty, Equality and Fraternity which are the fundamental pillars of Indian constitution. The Egalitarian ideology that Ambedkar propagated had well summarized in Chapter III and IV of the Indian constitution-The Fundamental Rights and

Directive principles. Dr. B R Ambedkar, the champion of Human rights thus visualized a classless society where nobody would be abhorred or discriminated by other sections of society and dedicated his entire life for its attainment.

Basic rights are defined as the fundamental human rights of all citizens. These rights exist regardless of race, place of birth, religion, caste, faith or gender, as defined in Part III of the Constitution. "It guarantees civil rights, prevents state from encroaching on individual liberty, and enforces democratic principles based on equality on all members of the society. It is well described as the Magnacarta of India". (Pandey 51)

Some of these rights are as follows: The overarching principle behind any kind of affirmative action is Equality. Equality is the concept under the law that every independent being must be treated fairly before the law and that all are subject to the same rules of justice. The phrase 'Equality before law' and 'equal protection of laws' is two phrases under A.14. 'Equality before law' means all are equal in the eyes of law. No one is above law. 'Equal protection of laws' means that citizens should be treated fairly under similar circumstances.

1. Article 15- The State shall not discriminate against any person solely based on religion, race, caste, sex or place of birth or based on any of them.
2. Article 16- Equal opportunity in public employment
3. Article 16 (4) - Reservation for backward class.
4. A.17- Abolition of Untouchability
Untouchability is abolished and its practice is prohibited in every manner and it shall be an offence punishable under law.
5. In our Constitution, the above provisions were articulated to crack the shackles of conventional social hierarchies and to herald a new age of Democracy, Equality and Justice. The communities who have long been deprived of their fundamental rights cannot be left merely on the mercy of the formal principle of equality of opportunity. In order to ensure their proper representation in the socio-economic and political life, they should be provided with special constitutional safeguards.

3. Judicial Responses in a Democratic Setup

The Indian judiciary holds a unique position in the Indian democratic establishment. The court has emerged as a

diverse organization that plays an active role in extending the reach and substance of citizens' individual and collective rights in the civil and political spheres.

In his dissenting judgment in the *Deva Dasan V Union of India*, Justice Subha Rao made the first attempt to examine the legal basis of protective discrimination. He analyzed the need to provide backward populations with favored care or 'adventitious aids' in the following words: "Centuries of calculated oppression and habitual submission reduced a considerable section of our community to a life of serfdom. They would not have any chance if they were made to enter the open field of competition without adventitious aids and till such time they would stand on their own legs." (AIR 1964 SC 179). This verdict makes it clear that A.16 (4) was incorporated as an attempt to harmonize the ever-conflicting ideals of human rights and social justice.

In *Indra Sawhney V Union of India* (AIR. 1993 SC 477) popularly known as Mandal case. The court rightly perceived the value of employment in shaping the individuals self-esteem and self-worthiness. Thus by determining the need for fair participation in state power by all sections of society, the court reached the correct destination. This represents the preservation of the ideals of individual worth and egalitarianism by the court. Despite the fact that a plethora of constitutional provisions and judicial responses the grim and hard reality is that these under privilege and depressed lots are still struggling for their safe survival. These people have been severely shattered by the wide spread atrocities, gross injustices, bonded labour, communal biases and not able to free themselves from the clutches of torture, humiliations, miseries, social and economic injustices practiced by caste Hindus.

The tradition of untouchability has made it impossible for a wide number of people to have the ability to be human. They were prohibited from social intercourse but Ambedkar was aware that law has its limitations. Equality is not just a legal term such as fair justice before the law or a political notion such as equal treatment. In order to live in peace and with great compassion, a value denotes the sort of concern we need to extend to another human. "The assurance must be the assurance proceeding from much deeper foundation, namely the mental attitude of compatriots towards one another in their spirit of personal equality and fraternity". (Ambedkar, *Annihilation of caste* 36)

The history of the past 73 years, considering the legacy of entrenched prejudice, indicates that affirmative action was successful, even if the achievement was modest. To the degree that the quotas were filled in the job market, the reservation targets were satisfied in the employment sector. In state legislatures and parliament, there is equal representation of scheduled castes and scheduled tribes. There can be no doubt that the case without such affirmative action would have been worse.

An affirmative action of the Rawlsian Justice in the Indian context can be chiefly explained by unleashing it at the backdrop of Ambedkar's theory of egalitarian justice. While considering Ambedkar is strong because for the least privileged (caste) group, he argues for fair equal opportunity for the advantage of them especially in educational access. He also favors the difference principle as far as it is for the socio economic development of the underprivileged. Thus, Ambedkar through his constitutional laws has given way for the affirmative action for the Rawlsian principle in the Indian context.

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