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Fairness: The Ground Reality of Plural Societies

Abstract: This paper investigates into the idea of justice as fairness and its relation to a diverse society. John Rawls' idea of the original position is critically examined, attempting to see if it stands in contradiction to a pluralist society. The paper discusses how an idea of consent and consensus can be an instrumental in fairness.

Index Terms- Justice, fairness, truth claims, consent, consensus.

I. INTRODUCTION

According to many theories and claims, men are fundamentally equal. This fundamental ground has made the discourse on justice important and difficult. If all men are equal, then what is the position of cultural and social differences of these people? A perspective to this problem shall be examined and discussed, focused on justice.

II. Justice as Fairness

According to Rawls, justice is fairness. For Rawls, the starting point of finding principles of justice which can be fair to all is a hypothetical situation which is called as the Original position, or behind the veil of ignorance. In the original position one is to imagine himself dependent on simple intuition, doing away with all that an individual is attributed of, such as the society they live in, their beliefs, the jobs they hold, and other such particular facts about themselves. Here an individual is behind the veil of ignorance. As Rawls himself states, "no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength and the like." (1971) This is the situation, where a person is bare, just a mere human. He reckoned that from such a position, one would lead to principles which would be fair to all. Since they are oblivious of their interests other than the bare facts about the society, the institutions and laws they build would be fair to all. This hypothetical situation is important according to Rawls because, it is assumed that one can be without prejudice only when one is devoid of self interests, thereby taking a step towards building laws and institutions which can be fair to all. To quote, "The original position is defined in such a way that it is a status quo in which any agreements reached are fair. It is a state of affairs in which the parties are equally represented as moral and the outcome is not conditioned by arbitrary contingencies or the relative balance of social forces. Thus justice as fairness is able to use the idea of pure procedural justice from the beginning." (1971) One important thing to note here is that he makes a position where the man behind the veil of ignorance is moral. It resonates Rousseau who also wrote extensively on how civilization has corrupted men, thereby men in the primitive state moral. Rawls too takes the position that men in this original position is moral. Behind the veil, a person is like any other man. No individual would dominate another, and therefore, there would be justice. The principles of justice formed from behind the veil of ignorance is not prejudices to one's reality, and therefore the principles thus made are the same for everyone, and argued to be fair. But this position has two problems and they are discussed below.

III. Biased original position

The central idea of Fairness is to be devoid of prejudices and self mitigated interests. In Rawls, the consentient agreement makes the people, despite their differences, agree on certain institutions and come up with the determination of a 'political conception of justice.' It is a demand for impartiality. Amartya Sen accepted the idea of justice as fairness, but he had a problem with the original position that Rawls had created. "They may differ, for example, in their religious beliefs and general views of what constitutes a good and worthwhile life, but they are led by the deliberations to agree, in Rawls' account, on how to take note of those diversities among the members and to arrive at one set of principles of justice fair to the entire group." (2009) This can be understood as a jibe towards the claim that the original position is unprejudiced.

The institutions which are the basic structure of the society are expected to be acceptable to all sections of people because of their unanimity in coming down in favor of the principles of justice. He points out that there may be no unanimous decision that can be reached. There can always be a case where the opinions may differ. Certain partialities cannot be done away with. Sen finds that there is a problem in coming up with institutions that are considered as mediums of justice when the very idea of being fair is vitiated. We can quote him saying, "He does not abandon, at least explicitly, his theory of justice as fairness, and yet he seems to accept that there are incurable problems in getting a unanimous agreement on one set of principles of justice in the original position, which cannot but have devastating implications for his theory of 'justice as fairness' (2009). Thus, we see that there is a problem in Rawls' theory itself. The problem is that the original position out of which the principles of justice are propounded are not totally unbiased. Being fair and not being fair are two contradictions. The product of an orientation which is unbiased cannot be called just. The position where one is behind the veil of ignorance to create the principles of justice is dismissive. In relation to this, there are also criticism where the principles he arrived at are conducive only for freedom seeking societies.

IV. Awareness of ground reality

Does fairness require consciousness of ground realities? In the above we have seen that the requirement of original position is ignorance. Is fairness actually relative to the ground reality and circumstances of people or should it be categorically same in every case? The principles of justice that Rawls arrives at are categorically the same for everyone under it. A small example would be a case where a hungry person and another person who has had food are given the same amount of food. Or a more serious example could be a case where every person is ordered to shave their heads, without taking into account gender or religious background of the person. This as such cannot be called fair to the persons involved. On the contrary, Sen's discourse on justice doesn't start from ignorance of reality, rather it starts from knowing not only one's own circumstance but the circumstance of the other too.

The problem that Sen tries to bring out is that there should be certain level of importance that should be given to the actual behavioural features of the people in the society. For a just society, institutions alone cannot be a medium of justice. To be just, it is important that the behavioural inclinations of the different sections of the society are noticed and treated accordingly. To be blind to this part of any society may lead to a state where the institutions set up for them may not comply to their lifestyles and thereby, be unfair to them. Rawls's paradigm of Justice is niti-centered according to Sen. We can agree with him on this because of the importance Rawls had placed on the institutions of justice. Sen suggests that for justice to be fair it should take into account the 'actual social realizations'. Rawls does not give space to the social standings of individuals in the original position. This rather implies an equal treatment to all sections of people: crippled, poor, educated etc. The end product of such a system would lead to inequality in equality, and to simply put, it would not be fair to all sections of people. It is rather imperative for justice that it should be inclusive of both the institutions and public behavioural patterns. "What really happens to people cannot but be a central concern of a theory of justice, in the alternative perspective of nyaya". (2009)

There is a possibility that the hypothetical state and the actual state may be in contrast to each other. The institutions that are arrived at through the hypothetical state, where one is veiled of all his social standings may in reality come into conflict with his actual social standing. The institutions arrived at through the original state may turn out to be too limiting to the actual social realization. Thus, there is a need that for bringing about a sense of fairness, the social realizations and the actual behaviour of individuals in a society ought not to be kept behind the veil. The institutions arrived at should be accommodating to the various other aspects of the social conditions in the pursuit of justice. Amartya Sen suggests that "the institutions have to be chosen not only in line with the nature of society in question, but also co-dependently on the actual behaviour patterns that can be expected even if- and even after - political conception of justice is accepted by all." (2011) Thus, to do this, awareness of ground reality is important.

V. An account of the moral ground

Where does morality origin from? This is a question that is often debated. Kant talks about the categorical imperative wherein the moral law is same for everyone, and he simplifies it into do to others what you'd want them to do to you. Applying this to the political and diverse plural communities becomes rather an unacceptable feat. Morality philosophically can be discussed and debated, and perhaps we can talk about one moral law. But reality shows us diversity of belief and faith, making one stand of morality rather difficult to reach. In the original state, all men are taken to be moral. But what is the definition of morality? The very idea of what is considered as right and wrong differs from one culture to another. In such a circumstance, there are two problems that can be noticed in the original state. First, there is a prejudiced idea of morality involved. Second, the morality as originating from religion is defeated. While in this paper, I do not make a stand on the position of the origin of morality; the purpose is to point out that the morality in the original position represents a certain selected section of people. For instance, the principles derived from the veil of ignorance can be acceptable to the liberal west. Second, the morality does not take into account truth claims of faith. Reality shows us that often times than not, our dispositions towards what is right and wrong emerges from a certain tailored thought, be it from religion or some life forms such as culture and tradition. So, the original position's denial of such life forms while making a claim that it is moral is denial of diverse religions which are massive forces of morality in real world.

Galston has talked about the importance of this aspect that is often ignored. And this is the place of non public. This is the private domain of an individual which also covers the parts of truth claims. To quote him "...in trying to avoid all deep differences of metaphysics and religion and to set question of truth to one side, he deprives social philosophy (including his own) of resources essential to its success." Rawls in the behind the veil thought experiment denies these truth claims of people, and therefore the principles that follow do not take into account these truth claims. It is only natural therefore that the original position could come into clash with the truth claims. Justice is supposed to be fair, but would such a position be fair? This remains to be enquired. Rawls' system takes into account the moral nature of people and therefore the veil of ignorance as something that could lead to justice. But without truth claims which basically gives men values, its denial in the original position is self defeating. Categorical moral rules cannot be accepted by all sections of people. The problem is that one can accept something as right only when the person is fashioned and tailored to think in that way. The measure for what stands as right and what stands as wrong differs from one community to another, from one faith to another. Pluralist societies need to tackle with such complexities. At least one way to handle this is by not ignoring the truth claims of all the groups. This perhaps could be one step towards being fair, and more importantly such a system will not make the definition as fairness a contradiction.

VI. Consent and consensus: In the above discourse, the importance of ground reality of people has been examined. The consent and consensus of the community therefore becomes crucial when it comes to making policies and laws, least there is an authoritarian rule of law emerged from a unitary pluralism. This idea of consent is important because it is argued to be foundational for man and his nature. Rousseau gives an argument on how consent is important by talking about the formation of civil societies through the consent of each member. Now, the basis for signing the contract was to preserve a sense of equality and freedom within the society. The General Will is the will of the people themselves, and therefore it cannot go against it. This makes sense for a system that goes against itself is a failure, and the General Will to succeed, the will of people must be the law. It will not be General Will if it goes against itself. If a society is to be built on the basis of fairness, consent and consensus becomes extremely crucial. While Rawls idea of the equality of all men without their social realities does argue well about how beyond worldly differences, we are all humans and therefore are equal, the laws which would be the same for everyone is rather unfair to many sections of people. Thus, if one is to accept that all equal as humans, laws ought to respect different social and cultural realities. Law makers and the system creators ought to know its people, and be very sensible about differences between people, cultures, and such life forms. Negligence or ignorance of such would makes law which would favour just one section of people, thereby making the system unfair for its plural life form.

VII. Conclusion

Fairness and equality are values that many societies have accepted as fundamental, and therefore are thriving to achieve it. Consent and consensus of human beings has been the starting point of many societies and even nations. As laws and systems are being, the idea of fairness based on equality needs to be revisited time and again. Ignoring the realities of human beings and their normative systems would be an undoing for the justice.

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