



JOHN RAWL'S THEORY OF JUSTICE: AFFIRMATIVE ACTION AND CONTEMPORARY RELEVANCE IN INDIA

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Abstract: The term justice covers an extremely broad scope. It may be social, economic, and political. Justice is sometimes understood as the just distribution of available resources in society to all the sections of people residing in it. John Rawls in his theory of Justice stated that justice consists of the just distribution of primary goods. He talked about 'justice as fairness' with equal liberty and opportunity to all sections, and the contribution of the possible benefits to the less advantaged sections of society. He believed in the greatest benefit of the least advantaged group. Affirmative actions taken by the governments of various independent States in the world are somewhere close to the vision of John Rawl's Just State. These affirmative actions are based on providing special assistance, representation, and benefits to weaker sections of society, whose members are socially and economically backward. The members of these backward sections may belong to different groups of people associated with specific caste, race, creed, sexuality and nationalism. In this paper, I will try to cover the positive evolutions in the social status of various sections of society through affirmative actions taken by the States. Different steps taken by the governments, with special emphasis on Indian lawmakers, to bridge the gap between the higher sections and the weaker sections of society will be studied. But equal distribution of resources and Affirmative action cannot go side by side without conflict. Hence, the paper will also highlight the conflicts among different sections of society with special emphasis on Indian society. Emphasis will be on the past and present social developments based on these actions by the governments. Examples will be included to shed light on the actions of the Indian government taken so far to promote equality and justice among all its citizens. Conflicting claims by various sections that are not included in these beneficial schemes will also be included in this research paper.

Index Terms - Affirmative, Distribution, Justice, Discrimination

I. INTRODUCTION

Justice as a term has extensively evolved since historical times. Justice covers almost every aspect of an individual's life. In historical times it was understood as a just means of livelihood. Greek Scholars Plato and Aristotle were the early thinkers who gave the most elaborate theory of justice. Several scholars have given their perspectives on the nature of justice. In the contemporary era, justice is being preserved and promoted by the administrative heads of the countries. Justice may be political, social, economic, cultural and legal. Justice if not served properly may result in the backwardness of a few sections of society on one hand and unequal prosperity of the remaining sections on the other. It may result in the rise of illiteracy, unemployment, poor health conditions and the social downfall of the deprived section. Justice also deals with the punishing of the wrong actions which might hinder the very existence of social order. Almost every country in the world has added justice as the backbone of their administrative actions. In India, the government preserves justice by

following the laws of the constitution, Acts, court orders, and so on. John Rawls in his book 'The Theory of Justice' has given the most acceptable and modern theory of justice. His theory of equality, distributive justice and affirmative action is present in the constitutional, legislative, executive, and policies of the government of India. Indian society has been characterized by inequalities due to the presence of a discriminatory caste system since ancient times. Hence, the idea of affirmative action is rightly followed by Indian governments to end the problem of discrimination prevalent for centuries.

II. JUSTICE

The term justice is derived from the Latin word *jus* which means the 'idea of joining or fitting' or 'to bind together'. Justice as a conception is multi-dimensional and dynamic. The term has a vast scope. It has diverse meaning which has been upgraded and modified from time to time historically. Justice in the true sense may be understood as just conduct, impartial, fair, proper, and equal treatment of individuals. Justice exists there where all are treated equally, liberty is bestowed, law exists and criminals are punished. Justice may be categorized into legal justice, social justice, political justice, and economic justice. The governments of Independent States have been working for the implementation of law to establish justice. Number of political thinkers have given their perspectives on the nature and content of justice. They have defined the term justice as per their philosophy and the nature of the society they lived in. Greek political thinker Plato in his work "The Republic", a treatise concerning Justice illustrated justice as an order of state where every person fulfils the role assigned to him in society. He argued that justice is the balance between three virtues: temperance (for the trader class), courage (for the warrior class) and wisdom (for the philosopher's class). The balance between these three will lead to virtue befitting the state, that is harmony between the three classes, and thus justice will be attained in society. Thus, it can be well understood that Plato's theory of justice is based on three principles of Non-interference, occupational specialization and harmony. For Aristotle, justice is the regulation of human nature. He said that "just is the lawful and the fair and unjust the unlawful and the unfair". With fairness, he meant equitable distribution of wealth, honor and resources and correcting the unequal distribution. In his work 'Nicomachean Ethics' he defined justice as a "perfect virtue that is displayed toward others". Aristotle divided justice into two parts that are Universal justice and particular justice. Universal justice means conduct by the law and acting with virtue. Whereas particular justice is taking a particular decision in the context of life that might be just or unjust regardless of laws. He further divided particular justice into two parts:

- a) Distributive justice: with this, he meant the distribution of wealth, property, burden and honour. It relies on the principle of "treating equals equally and unequal unequally".
- b) Commutative justice: It is the form of corrective justice. It is the remedial or rectification justice, which means punishing the criminals and payment of damages. It's based on the notion of giving people what they deserve.

Augustine believed in restorative justice. He said that justice is "assigning each his due". 'Love is the main component of his justice, which is the love of self, neighbour, God and the world that God has created. He believed that where there is no Justice, there is no peace. Whereas Hobbes argued that justice is an artificial virtue. He believed that justice is important for the creation of a society where everyone with their consent has the right to safety in a sovereign.

St. Thomas Aquinas defined justice as "the fixed and perpetual will to give to everyone his own rights". As defined by him, justice is acting by the law and the principle of justice. He believed that equality is the basis of justice and further divided it into natural and social justice. John Locke, a late seventeenth-century philosopher justified the acquisition of property. He regarded ownership of property as a natural right. Immanuel Kant believed that justice is the virtue of respecting other's freedom, liberty, and dignity and not interfering with other's actions.

The most contemporary and challenging theory of justice was given by John Rawls. He is regarded as the greatest political thinker and the most-read theorist of justice after Plato and Aristotle. His theory of justice is the revival of the meaning and scope of the term justice.

III. JOHN RAWLS THEORY OF JUSTICE

John Rawls was the 20th American political philosopher. He belonged to the liberal political tradition. In his most famous work "The Theory of Justice" (1971), he regarded justice as the first virtue of social institutions. He said that 'being first virtues of human activities, truth and justice are uncompromising. He gave the theory of 'justice as fairness', which means just and equal distribution of the 'primary goods'. That is the equal distribution of rights, liberties, opportunities, income and wealth. He criticized the utilitarian theory

which supports the 'greatest happiness of the greatest number', because it ignored the moral worth of individuals and the negligence of minorities. Establishing his theory on the social contract, he said 'The principles of justice are chosen behind a veil of ignorance'. Where each individual is similar by nature. They are regarded as the 'rational negotiators' placed in a particular situation, standing in an 'original position'. He argued that all resources, rights, and liberties are to be distributed equally among individuals. Allowing inequality to be treated by allowing the 'greatest benefit for the least advantaged group'.

He condemned any sort of inequality in society. To quote him, he said 'Justice denies that the loss of freedom for some is made greater good shared by others. It does not allow that sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. On the other hand, he allowed only to benefit the least advantaged group. He said that 'an injustice is tolerable only when it is necessary to avoid an even greater injustice'. Rawls proposed three principles of justice that will be acceptable to all. First is the 'principle of equality', the second is the 'principle of fair equality of opportunity' and the third is the 'difference principle'.

Rawls's theory of justice is the most acceptable and highly appreciated one. Various scholars and researchers have developed their political thought on or around the theories of Rawls. But Rawls's theory has also faced criticism from several scholars and political and legal thinkers. Robert Nozick criticizes Rawls for the free distribution of all goods and services. He believed that only natural resources are free and the rest are acquired by mixing one's labour into it. He condemned the welfare state and argued for a 'laissez-faire' state. Marxists, on the other hand, criticized Rawls for his theory of people standing behind a 'veil of ignorance'.

IV. CONTEMPORARY RELEVANCE OF RAWLS'S THEORY OF JUSTICE

Rawls's theory is being elaborated as distributive justice and justice as affirmative action. Distributive justice means the just allocation of resources and opportunities in society. It refers to fairly distributing resources among all the sections of society irrespective of caste, creed, sex, colour and religion. Affirmative action on the other hand refers to the actions taken to give equal opportunities to the least advantaged group. In simple words, it refers to fair access to opportunities irrespective of caste, colour, race, gender and religion. On several occasions, it can be seen that the governing agencies are making use of these instruments of justice to promote the welfare of the economically, socially, educationally and politically backward sections of society. These acts are justified because they result in the establishment of the 'welfare state', where every citizen has equal rights, liberty and opportunity.

V. JUSTICE AND AFFIRMATIVE ACTION

Affirmative action may be understood as the steps taken to eliminate the existing social, economic, political and educational inequalities in society. It has high moral values and works for the removal of discrimination. It is the policies and laws formulated to place the historically backward section into the equal front by giving them special opportunities. The main purpose of affirmative action is to select and define the deprived section of society and provide them with adequate means of development. Several countries and their political institutions have taken affirmative actions on various occasions to promote the welfare of the most deprived sections in order to give them justice. The traces of affirmative action can be seen in the early years 1880s of the Reconstruction Era, when the 'Forty acres and a mule' policy was facilitated to provide goods and lands to the blacks. In the United States, the term affirmative action was first used in the 'National Labor Relations Act' or the 'Wagner Act' of 1935 which was brought for the promotion of economic security to workers and other low-income groups. President John F. Kennedy issued an executive order in 1961 asking the government contractors to take affirmative action for the appointment of employees without any discrimination of caste, colour and creed. Various other policies were implemented to enforce the Civil Rights Act of 1964. Endless government policies have been formed since then to support the poor and backward section of society.

VI. AFFIRMATIVE ACTION IN INDIA

In India, affirmative action is the most important part of government policies. In India, it is termed as 'reservation' or 'quota'. These reservations are framed to promote the adequate representation of minorities in Government jobs, educational institutions, central and state legislatures, social services and others. Government agencies and private institutions are been directed to act by such policies and Acts. The background of these articles can be traced back to 1882 when William Hunter and Jyotirao Phule gave the idea of caste-based reservation Morley-Minto Reforms of 1909, which provided for communal representation by providing separate electorates to depressed class, women and Muslims. Further 'Communal Award' was introduced by British Prime Minister Ramsay Macdonald in the year 1933. The idea of

providing reservation for the backward section of society in India may be credited to Dr BR Ambedkar. He criticized the system of untouchability and condemned the backwardness of Scheduled Castes and Scheduled Tribes in India. The Constitution of India has several Articles and sub-articles for the development of minorities. At present affirmative action policies are aimed to provide justice to the marginalized sections. Article 15 deals with equality before the law. Article 16 deals with the equality of opportunity in matters of public employment in the State. Article 16(4), on the other hand, deals with the reservation of appointments and posts for the backward class. Article 335 further promotes the taking into consideration the appointments and promotion to any class or classes of services. The Directive Principles of State Policy enshrined in part IV of the Indian Constitution also has provisions for the educational and economic development of backward classes (Article 46). As per Article 334 seats are reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in the House of People and the Legislative Assemblies of States. Various committees are formed from time to time to look into the development of backward classes. The Panchayati Raj Institutions in India give reservation of one-third of seats for women.

The reservation for Schedule Castes (CS) in jobs and higher educational institutions is 15% of the total seats available, whereas for Scheduled Tribes (ST) it is 7.5%. On the recommendations of the Mandal Commission (1990), reservation for Other Backward Class (OBC) was introduced and 27% reservation was given. However, the 'creamy layer' concept was introduced in 1993 to protect the provisions from misuse. Only those who are under the creamy layer (earning not more than 8 lakhs per annum) are given reservations. The 103rd Amendment Act of the Indian Constitution in 2019 introduced the 10% quota for Economically Weaker Sections (EWS). These reservations have proved to be beneficial for the development of the historically weaker and backward sections of society. Their representation in government jobs and educational institutions has increased tremendously. The social and economic conditions of women and backward sections have improved to a remarkable extent. The participation of ST and SC government workers has increased positively from 12% in 1956 to 16% in 2003. However, these policies of government have always been the backdrop of communal and social conflict. The provisions of reservations and quotas have been challenged by those sections of society that are not represented in these reservations.

VII. CONTEMPORARY CHALLENGES AND CONFLICT

The policies of the government of India for affirmative action have a number of drawbacks. The reservations are outdated and inadequate. The caste-based reservation can never be regarded as accurate or promising. India is a huge country with 3000 castes and 25000 sub-castes. It is impossible to provide reservation to all of them. The other drawback is that only government or government-backed institutions are working for the promotion of affirmative action and justice. The unreserved categories have always challenged the reservation of SCs and STs. It has resulted in the system of casteism. The Majority of them feel discriminated against and excluded. Sometimes the most deserving families are excluded from the opportunity of reservation. Some uncountable backward people who are not adequately represented and also do not belong to these reserved categories. The system of meritocracy is very important for the healthy working of educational institutions but the idea of reservation has somehow harmed it. The unreserved sections have from time to time raised their voices against this discrimination. In the year 1992, the Supreme Court of India gave its ruling in Indra Sawhney vs Union of India. The Supreme Court capped the caste-based reservation to only 50% by saying that 'no provision of reservation or preference can be so vigorously pursued as to destroy the very concept of equality'.

A number of clashes have been witnessed in the past, especially after the landmark judgment of the Supreme Court in the Indra Sawhney vs. Union of India case, between communities demanding reservations or inclusion in the SC, ST, or OBC category. Jats in Haryana have demanded caste-based reservations and inclusion in the OBC category with the tools of violent protests and agitations. Patidars or Patel's from Gujarat and Marathas in Maharashtra also demanded reservations in Delhi. For nearly three decades a community in Andhra Pradesh has been demanding OBC status. The deadly clash between the Kuki and the Meitei tribal groups of Myanmar, over the sharing of quotas and benefits given to the tribes, has taken us back to where we started.

VIII. WAY FORWARD

The government of India is required to build a new and more promising roadmap to suit the contemporary demands of all the sections while keeping in mind the notion of justice. Although the present policies helped the deprived sections up to some extent but it has not eradicated the root cause behind their deprivation. The reservations just based on castes have grown outdated in the changing world order. The demand is for up-to-date policies and programs framed keeping in mind the requirements of every section of society. The question

arises of the relevance of the reservation and quota system in India at the moment. On many occasions, it has been noticed that the implementation and continuation of reservations and quotas are largely governed by the politics of the vote-bank. Affirmative action need not be only based on the backward castes but it should be promoted keeping in mind the backwardness of all irrespective of caste or religion. Reservations can be made for the educationally, economically, socially and politically backward groups. Allocation of resources, jobs and seats in higher educational institutions should be such that it does not benefit only one section while harming the growth of others. Justice will be served only with equal ownership of wealth and equal access to available opportunities.

IX. CONCLUSIONS

Justice and Affirmative actions if rightly served may result in the prosperity and development of society. The relevance of affirmative action has increased in the changing world order. John Rawls's theory of justice if positively implemented may result in the establishment of a better world to live in. His theory of sacrifice for the greatest benefit to the least advantaged section, if followed might result in the establishment of a society where the concentration of wealth isn't in few hands. Although the Government of India has worked hard to bring the backward sections like women, Scheduled Castes (SC) and Scheduled Tribes (ST) out from the darkness, a more holistic approach needs to be adopted. Recent developments like bringing the 'Women Reservation Bill' also known as 'Nari Shakti Vandan Adhiniyam', providing the reservation of 33% seats for women in Lok Sabha and State Assemblies is appreciable. Various other schemes and being implemented for the upliftment of the backward class. The government should look forward to increasing the number of vacancies and seats in higher educational institutions so that no deserving candidate is left behind, even after providing reservations. The growing conflicts and agitations among the reserved and unreserved sections of society are threatening the very existence of peace and harmony among citizens. It might harm the foundation of democracy. Hence, the Government of India must build an action plan where peace is restored, everyone is given equal rights and liberties and all are given equal opportunity for development.

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