



Research Paper

Justice For All: John Rawl's Theory Of Justice And Its Relevance In Indian Judicial System

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ABSTRACT- John Rawl's theory of Justice is one of the most important theories in the field of Jurisprudence and Political Science. His work has left a landmark, introducing a legal theory that aims for a society with liberty, equality and justice for all. Rawl's influence in the field is evident, as he attempted to provide a moral theory which is an alternative to utilitarianism and addresses the problem of distributive justice. The theory has its own set of merits and as well as some loop holes due to which its complete application in present day Indian legal system becomes difficult. This paper will try to understand the substance of Rawl's theory of justice and will deal with the conceptual as well as the practical perspectives of the concept of justice by examining the provisions of Rawl's theory and will try to analyze its application and relevance in present day Indian scenario.

KEYWORDS- Constitution, Equality, Justice, John Rawl's, Liberty, Social

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I. INTRODUCTION

Man is a social animal and thus cannot live in isolation. This very nature of man has given rise to the creation of the state. While the state was created as a political entity, one of the several objectives was to create a political society where justice for all could be achieved. However, as the concept of justice is not static but is dynamic and ever changing it has undergone several transformations. With the changing times the needs of the society have also changed to a great extent. With the changes in the society, the concept of justice also changes from time to time. Justice is an evolutionary and constantly changing phenomena. Its notion has undergone various changes during the different phases in history throughout the globe.

To speak in the context of present day scenario, justice means the fulfilment of the legitimate expectations of the individuals under laws and to assure them the benefit promised therein by the laws and other rights. Justice tries to reconcile the individual rights with the social good. It stresses on the concept of equality. It requires that no discrimination should be made among the various members of the society. For achieving the true aim of justice, equality must be done and not just said to be done. Inequality in the society gives rise to friction in society and this friction leads to injustice and rise of crime. The values of liberty, equality and fraternity are important in any system of law and justice. These values exist in different proportions and there are conflicts between them too. In order to actually do justice, the main cause of problem in society shall be eliminated.

To understand justice, it is important to refer to the root idea of the word "Jus" meaning joining or fitting.¹ Thus, justice carries the meaning of bringing together and joining up human beings with one another without discriminating amongst them on the grounds of religion, race, caste, sex, color, place of birth or nationality. However, the concept of justice differs from one person to another, as that what is just for one may not be just for another. Therefore, for justice to be actually done it should be done in such a way that it caters the true needs of the society. Therefore, it can be said that there is need for a constant process of adjustment between the conflicting claims of these values in a society.

There are different kinds of justice, such as natural justice, economic justice, political justice, social justice and legal justice. In order to be able to do justice for all, it is important to achieve ends of all the different kinds of justice. John Rawls an American political philosopher has given us a theory of justice to cater the needs of the present day diverse society. His theory provides a moral theory as an alternative to utilitarianism and addresses the problem of distributive justice which aims for liberty and equality for all. Different judicial

systems throughout the world have made an attempt to adopt Rawl's theory of justice. Indian judicial system is one of them. Though Indian constitution came in force on 26th January 1950 almost 21 years prior to John Rawl's theory of justice however the essence of his theory can be seen in Indian judicial system to some extent. Hence, this paper will examine the provisions of Rawl's theory and will try to analyze its application and relevance in present day Indian scenario in order to understand the correlation between justice, law and social transition to be able to do justice for all.

II. JOHN RAWLS THEORY OF JUSTICE

John Rawls an American political philosopher gave us his theory of justice as fairness in which he describes a society of free citizens holding equal basic rights and cooperating with each other within an egalitarian economic system. He was inspired by Kantian philosophy of justice. He attempted to establish a moral political theory by updating and altering Immanuel Kant's theory of justice and incorporating some principles of the social contract theory to address the problem of distributive justice with an aim of having socially just distribution of goods in society. He has elaborately explained his theory of distributive justice in his book "A Theory of justice" in 1971 and an essay titled "Justice as fairness" in 1985 by giving us two central principles of justice.ⁱⁱ

John Rawl's theory is believed to be an alternative to utilitarianism because it aims at three principles which have the utilitarian touch to them. Such as firstly he aims to structure the society in such a way that the greatest possible amount of liberty is given to its members while taking care that the liberty of any one member shall not infringe upon that of any other member. Secondly he allows social and economic inequalities in comparison to an equal distribution, provided that this arrangement should help the worst off to become the better off in the society. Lastly he believes that the aim behind such beneficial inequality should be to make it easy for those without resources to occupy the position of power in the public domain.ⁱⁱⁱ

For the purpose of explaining his theory of justice, Rawl's takes resort to the social contract theory to some extent. He elaborately explains his principles of justice by making use of an imaginary original position, which is to some extent similar to the state of nature as is mentioned in the social contract theory. John Rawls places all the people in the society in this original position. When people in the society are placed in the original position they are according to Rawls standing behind a veil of ignorance. This 'veil' blindfolds all the people to such an extent that they become ignorant about all the facts about themselves, their social status including their place, class and position in the society. People when are behind this veil do not even know their fortune in the process of distribution of natural assets and abilities. This helps in avoiding the tailoring of benefits to one's own advantage. Which in turn leads to the distribution of benefits that are fair to all because if an individual does not know how he will end up in his own conceived society, he is likely not going to favor or grant privilege to any one class of people but on the other hand develop a scheme of justice that treats all fairly.^{iv} This according to Rawls would maximize the benefits for the least well off in the society.

Further John Rawls explained his theory of justice by giving us two important principles of justice.

Firstly "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" he called this principle as the greatest equal liberty principle. Secondly "Social and economic inequalities are to be arranged so that they are both:

- (1) to the greatest benefit of the least advantaged, consistent with the just savings principle, Rawls called this principle as the difference principle and
- (2) attached to offices and positions open to all under conditions of fair equality of opportunity." This principle is called as the equal opportunity principle.^v

According to Rawls the principles of justice have an order in sequence of their importance and applicability such as the greatest equal liberty principle takes priority, followed by the equal opportunity principle and finally the difference principle. The first principle must be satisfied before the equal opportunity principle, and the equal opportunity principle must be satisfied before the difference principle. As Rawls states: "A principle does not come into play until those previous to it are either fully met or do not apply."^{vi} Therefore, the equal basic liberties protected in the first principle cannot be traded or sacrificed for greater social advantages or greater economic advantages.

Further Rawls elaborately explains each principle of justice in detail, according to him the main focus of the greatest equal liberty principle is with the distribution of rights and liberties. Under this principle he also identifies political liberty and liberty of conscience by including certain rights and freedoms such as the right to vote and hold public office, freedom of speech and assembly, liberty of conscience and freedom of thoughts, freedom of the person including freedom from psychological oppression and physical and freedom from arbitrary arrest respectively. While explaining the difference principle Rawls has adopted a more egalitarian approach. He aims for a society where the least advantaged members of the society are benefited more than those belonging to the more advantaged category. For achieving this, he even supports inequalities favoring the benefit of the least advantaged because he believes that morally arbitrary factors such as the family one is born

in or ones' caste, creed, race and such other factors shall not determine one's chances in life to get something better than what he originally has. However, at the same time Rawls has been enough thoughtful to even think about the future generations by including the just savings principle which requires that some sort of material respect is left for future generations and their wellbeing. Further while explaining the equal opportunity principle he again puts emphasis on the arrangement of Social and economic inequalities in order to create conditions of fair equality of opportunity attached to offices and positions open to all.

III. UNDER INDIAN JUDICIAL SYSTEM

While looking at the present day world, it can be said that there are 195 countries and all of them are recognized as political states. Most of these states have common objectives of securing justice, equality and liberty for all of its citizens. India being one of these political entities has similar objectives of ensuring justice for all. The makers of the constitution of India while envisaging the need of the future society have aptly incorporated the principles of justice, liberty, equality and fraternity in the provisions of the Constitution of India right from the preamble, fundamental rights, directive principles of state policy and some other provisions too. Now we shall analyze these provisions of the Constitution of India and try to find out whether the theory of justice as propounded by John Rawls is applicable in Indian Scenario or not.

1) The Preamble which is in the form of a preface to the Indian Constitution, present to us the important principles of the Constitution briefly. Amongst the other principles it states that India seeks social, economic and political justice to ensure equality to its citizens. The justice as mentioned here stands for absence of arbitrariness, importance of rule of law and a system of equal rights, freedom and opportunities for all in the Indian society.^{vii} These principles of justice as enshrined in the preamble form the very core of John Rawls theory of justice.

2) Article 14 of the Constitution of India provides for equality before the law or equal protection of the laws within the territory of India. It guarantees equality to all persons, including citizens, corporations, and foreigners. Equal protection of the Laws is one of the positive concepts of equality. It puts the positive obligation on the state to prevent the violation of rights. This can be done by bringing socio-economic changes. Equality before the law is considered as the negative concept of equality, it means everyone has access to justice. No one can be barred from access to justice. Here all should be treated equally in front of the judicial system. Further The right to equality prevents the arbitrary action of the state. This article speaks about the equal protection of the laws and it is against the doctrine of arbitrariness. For protection against arbitrariness, there are several restrictions put on every organ of the state. It is an important step to prevent the organs of the state from making any arbitrary decision. Thus by the term equality we mean social and economic equality. The state should ensure this social and economic justice at any cost. Article 14 permits classification, so long as it is 'reasonable', but forbids class legislation because in order to do justice for all it is very important to give equal treatment to those who belong to a similar class but at the same time it is also very important to avoid giving equal treatment to those who belong to different classes in altogether different circumstances.^{viii} In order to achieve equality, special treatment needs to be given to the least advantaged people of the society to bring them at par with the advantaged people. This is exactly what John Rawls tries to achieve through his difference principle.

3) Article 15 states that the state shall not discriminate against any citizen on grounds only of race, religion, caste, sex, and place of birth. The word "discrimination" refers to making adverse distinctions with regard to or to distinguish un-favorably from others while the term 'only' means that discrimination can be done on the basis of other grounds such as special provisions to women and children and for socially and economically backward peoples or for Schedule Castes and Schedule Tribes. Article 16 of the Indian Constitution guarantees equal opportunity to all citizens in matters related to employment in the public sector and prohibits discrimination on the grounds of religion, race, caste, sex, descent, birthplace, residence, or any of them. At the same time, it provides for the reservation of services under the State in favor of the backward class of citizens. Thus it can be said that article 15 and 16 goes hand in hand with John Rawls theory of justice because he believes that arbitrary factors such as the family one is born in or one's caste, creed, race and such other factors shall not determine one's chances in life to get something better than what he originally has. However, in order to maximize the benefits for the least well off in the society he emphasizes on giving preferential treatment to those who are below average to bring them to the level of the average, to achieve equality in true sense and calls it as beneficial inequality. Further he mentions that the aim behind such beneficial inequality should be to make it easy for those without resources to occupy the position of power in the public domain and calls this as the equal opportunity principle.

4) Article 21 of the Constitution of India, provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in this Article is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a

much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.^{ix} These rights are available to every person only on the ground of being born as a human being without any discrimination against anybody or any favor for anyone. This Article enshrines the core essence of equality, where basic human rights are granted to all simply on one common ground that all are born as human beings. John Rawls also envisages a society where there is equality and justice for all.

5) Further under the directive principles of state policy, Article 38 of the Indian Constitution directs the State to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political is established and to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities for all. Article 39 through its various provisions also aims at achieving justice for all by making the fair allocation of resources, and also by equal distribution of rights and duties.

Though the Indian Constitution was framed before Rawls wrote his book "A Theory of Justice. Our Constitution is on an equal footing with the theory of justice as propounded by Rawls and has provided different provisions for various under-privileged sects of society such as women, Scheduled Tribes, Scheduled Class and many others to draw a balance for 'Empowerment of Justice for all'.

IV. CONCLUSION

Thus it can be concluded by saying that, in the past, justice had been conceptualized in a way that did not take into account the lives of the unprivileged people and thus the least advantaged people of the society routinely faced violence, discrimination and oppression. Consequently, such people faced several difficulties but their problems were until recently not adequately addressed by the legislation. However, the changing needs in the society and the changes in the social fabric brought up by the process of social transition compelled the legislature to enact laws which are suitable for tackling the problems of the underprivileged in achieving social justice for all.

Social justice refers to justice in terms of distribution of resources, opportunities and privileges within the society. John Rawl's concept of social justice means to take decision through the veil of ignorance. Veil of ignorance means to imagine ourselves in a condition where we don't know our position in terms of caste, religion, gender etc. and then take the decision. The concept here is that when we don't know our position then it is more likely that we take a rational decision for collective benefit of the society. This provides us an opportunity to solve issues impartially and rationally.

When a person is asked to frame rules for his society, he will in general circumstances choose only the rules that suit his own interests more often than choosing rules which would sever the society at large. However, if the person who is asked to frame the rules is unaware of his position in the society (while he is behind the veil of ignorance), he will frame the rules in such a way that even the worse off as well as privileged sections of the society will get justice, because he himself might belong to any section of the society. John Rawls felt that in this way, social justice will be ensured by rational thinking rather than by ambiguous notions of morality.

These principles of John Rawls have been applied in the Indian context in the form of reservations in public jobs for backward class people, differently abled people etc. because of them being in the worse-off position in the society, they need to be provided with reservations to ensure justice in opportunities. However, the amount of reservation must not be too high so that the privileged sections are excluded from opportunities. Hence, it can be said that John Rawls concept of social justice has helped in ensuring social justice to some extent in Indian society.

The Indian constitution imbibes Rawls' principles of Justice in the Preamble by including the principles of equality, liberty and justice to all citizens and that can also be seen in Fundamental Rights and Directive Principles of State Policy. However, the law and reality are quite different because the disparities between the rich and poor will prevail even if the principles of fair equality of opportunity are applied. Further Rawls has stated that economic inequalities are acceptable if they are for everyone's advantage and if the institutions are open for all. These two phrases everyone's advantages and open to all are ambiguous and cannot be applied in a straight jacket formula in Indian society due to the extremes present here. For example, it is nearly impossible for an ordinary person deprived of all amenities and economic strength to contest for elections. The cost of election requires millions of rupees which an ordinary man cannot afford. This proves that even though the office is open for all, it does not prove to be for everyone's advantage.

Hence it can be said that protecting rights of the under privileged people of the society must be embedded in the laws of every country very firmly and must be based on international human rights standards. Equally important is that laws are implemented properly, such as through ready access to courts and an expectation of a fair hearing. The under privileged people need to know their rights and have the power to claim such rights. Social attitudes and stereotypes must be challenged and changed with the changing time. It is prima facie duty of all nation-states to work together for all round development of the under privileged people as millions of them are exposed to various threats on a day to day basis. The Indian legislature has strived hard to

ensure justice for all however with the ever changing social needs and constant social transition it can be said that there is still scope for the legislation to cope with the contemporary crises and do justice in reality for all.

ⁱ <https://dictionary.cambridge.org/dictionary/english/justice>, last visited 22/02/2021

ⁱⁱ Dr Vijay Ghormade, jurisprudence and legal theory, Hind Law Publication, Pune, 2016, P. 203

ⁱⁱⁱ O.P.Gauba, western political thought, Shivani art press, Delhi, 2018, P.161

^{iv} T.R.Sharma, Rawlsian Justice: Disjunction between choice and observation, 50 IJPS 28, 1989, p 33-34

^v Supra Note 4, P. 36

^{vi} Dr. N.V. Paranjpe, Studies in Jurisprudence and legal theory, Central law agency, 6th Edition, 2011, P 207

^{vii} K.K. Ghai, Indian Government and Polity, Kalyani publishers, Noida, 12th Edition, 2018, P.99-101

^{viii} Dr. Awasthi, The Constitution of India, Dwivedi Law Agency, Allahabad, 2012, P 18-25

^{ix} Supra Note 7 P. 101-108