

JUSTICE AND RIGHTS

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ABSTRACT

This article offers a critical engagement of justice and rights. It begins by establishing justice as a core value that mediates liberty, equality and fraternity while rights function as concrete entitlements through which justice is realized. This article demonstrates how justice and rights are mutually constitutive- justice supplies the moral tangent along which rights can be practiced.

KEYWORDS: *Justice, Rights, Rawls, Liberty, Equality, Fraternity, Social Justice, Intersectionality, Philosophy.*

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INTRODUCTION

Justice is regarded to be as the most central idea in political theory and the most ancient as well. Justice as a notion is at the center of social and political movements. Farness, ethics and the treatment of people equally in society are important aspects of justice. Justices establishes harmony between the individuals. It entails seeking out a moral or legal justice but at the same time the principle of justice has different variants ranging from substantive justice, procedural justice to transitional justice, intersectional justice etc. There is no universal definition of justice, different legal systems and cultures around the world have connotations of what justice is, but justice in its entirety is understood as treatment of individuals fairly and in line with rules and values that have been created. Justice has been a subject of philosophical inquiries for years and many scholars have contributed their ideas and theories about justice. Different political scholars have defined justice according to their ideas, beliefs and circumstances. Justice in itself is a balancing principle. It creates and maintains a balance between liberty, equality and fraternity. It is the balancing and reconciling nature of justice that is represented in the form of personified justice. The figure is represented as depicting a balance in hands while being blindfolded at the same time. The blindfold represents the idea of formal quality of law i.e. everyone is accorded an equal place when it comes to treatment with subject to law. Rights on the other hand are the fundamental principles that an individual possesses simply by virtue of being human. Rights guarantee that people are treated fairly and with dignity. Defense of rights can be visible in legal frameworks, international agreements and societal standards. Rights violations give rise to legal action, social justice movements and advocacy campaigns to guarantee honor and protection of people's rights. The concrete rights that are acknowledged and upheld are likely to vary depending on the nation and the culture. Rights as an idea are subjected to change in response to shifting social and cultural conventions and public demand. Therefore, the conceptions of justice and rights are both susceptible to change.

THE CONCEPT OF JUSTICE

It is exceedingly difficult to define the principle of justice. Over a period of time, varieties of scholars and philosophers have offered various perspectives on justice. There are many different interpretations of what justice is. However, in a nutshell, justice is the same as treating different people fairly, regardless of their caste, class, gender or cultural backgrounds. The word justice is derived from Latin words 'jungere' and 'jus' which means to tie together or a bond or tie respectively. Justice is an important concept in political practice and theory. Justice can be regarded as an architectonic concept i.e. an extremely fundamental concept. The entire western political philosophy revolves around the concept of justice. Justice is assumed to be a fundamental concept in any society because justice can be regarded as the foundation on which any state is based. Arguments against or in support of laws and policies have made references to justice. From movements like satyagraha, civil rights movement, environmentalist movement to feminist movement and Dalit movement, have all revolved around the notion of justice. People will naturally adhere to political and social institutions if they are based on the very foundations of justice. Therefore, political philosopher Rawls puts it- "Justice in the first virtue of social institutions, just as truth is the virtue of any system of thought." Also, the current development in global wealth disparity as well as discrimination in the allocation of opportunities and social benefits highlights how crucial the idea of justice is and how relevant it has always been, even in antiquity (Baudot). With global inequality on the rise, the administration of justice becomes increasingly important. It refers to the broad range of standards, organizations and frameworks that a state uses to try to promote justice and fairness (weissbrodt, 2009).

RELATIONSHIP BETWEEN LIBERTY, EQUALITY AND JUSTICE

Liberty, equality and justice have a close relationship. These are the values that are inseparable. Liberty lacks significance when equality is lacking and equality remains on the loose end if it is not strongly held by the principles of justice. All the three values stand for different aspects of the same idea. Political theorist, Ernest barker in his well renowned work 'Principles of Social and Political Theory' represented a synthesis between three important values i.e. liberty, equality and fraternity. All these principles are held together by justice. It forces them to conform to universal, worldwide governance norms. Justice exists, which is why values like liberty, equality and fraternity exist. These are the mechanisms through which justice expresses itself philosophically (gauba, 1981). The human relations in society are governed by the principles of liberty, equality and justice which are further qualified by each other (gauba 1981). As so is the relationship between liberty, equality and justice close, it is also a complex relationship at the same time. Liberty is seen as a necessary condition of justice because it is impossible to practice justice in a vacuum. Conditions like freedom are necessary for people to pursue their interest freely and make relevant choices that are crucial for fair results to occur in a community and arrive at just outcomes. In the context of justice, equality can be related to both equality of outcome and equality of opportunity. It entails making certain that everyone has fair and equal access to opportunities, resources and advantages. Some contend that since equality lessens the possibility of unfair benefits and disadvantages, it is an indispensable requirement of justice. Utilitarianism emphasizes maximization of well being for all, giving equal rights and it gives more weight to individual liberties, based on what is best for the largest number of people. In order to attain greater equality, egalitarianism on the other hand, promotes equating opportunities and resources which may allow limiting individual autonomy. Individual liberty and minimal government are valued by libertarianism, often at the price of material equality. Therefore, the relationship between liberty, equality and justice remains complex and varied depending upon different political and social contexts but also equally important. A common theme in political and philosophical discourse is

striking a balance between liberty, equality and justice in a range of policy arenas, like healthcare, education, taxation etc. in preamble of the Indian constitution, republic of India commits to secure justice to its citizens. Justice is listed before other values like liberty, equality and fraternity reflecting how important the ideal of justice is.

RAWLS THEORY OF JUSTICE

John Rawls is considered to be as the greatest philosopher of 20th century. He is a modern political philosopher whose most significant contribution has been his coherent and thorough theory of justice (gauba 1981). Rawls has been given the credit for revival of political theory. After the introduction of Bentham's utilitarianism theory in the 19th century, all theoretical advancement got stalled. Rawls was credited for revitalizing the Anglo American political philosophy in the middle of the 19th century (arneson). His philosophical thesis a theory of justice was a compilation of pieces published in 1958 that led to his extensive work on justice, rather than a single book. (arneson). B.N Ray in his work 'John Rawls and agenda of Social Justice' stated that Rawls contribution triggered not just scholarly interest in the principle of justice but also a widespread interest. In order to highlight the significance of Rawls theory, Tom Campbell stated that justice has always been a key and dominant idea in normative political philosophy. His theory is considered to have provided the egalitarian vision of justice that was reflective in two crucial components- the first principle and the second principle (arneson). There was a time when scholars had declared the death of political theory. This is so because under the influence of behaviouralism, a movement to convert political science into pure science, there was a decline of political philosophy. Political science as a discipline started looking relevance. To make political science as science, scholars around the world neglected normative issues like justice, liberty, equality. On the other hand, demand rose to provide new credible theories for the policy makers. it is in this context, Rawls theory was developed (gauba 1981). The publication of his most phenomenal work a theory of justice in 1971 marked the revival of normative political philosophy. Just like classical political philosophy is attributed to Plato and Aristotle, similarly contemporary political philosophy is reflective of footnotes of Rawls. Rawls acts as a reference point to modern scholars like Robert Nozick, Amartya Sen, Isaiah Berlin, Dworkin, Will Kymlicka.

REVIVAL OF SOCIAL CONTRACT TRADITION

By resurrecting the social contract traditions of Hobbes, Locke and Rousseau, Rawls revolutionized the discipline (arneson). Convincing others of the universality of his ideals of fairness is the primary question that Rawls tries to deal with. As a result, Rawls is explicit about the steps or the procedures that need to be taken in order to create these principles. Therefore, Rawls theory of justice is also referred to as pure procedural theory of justice. The thought experiment is the term used to describe the process (davies 2019). It consists of three major principles- concept of primary goods, original position and the veil of ignorance. Rawls has revived the tradition of social contract by stating that justice should always be voluntary and based on reason. Rawls have created an original position where people have come together to devise certain principles of justice. The people in Rawls original position lack any kind of moral judgments, reasoning and any pre conceived notion of ideals like liberty, equality etc. these individuals are mutually disinterested but agree that certain fundamental principles must be established in order for the society to function. They come together to determine the distribution of the primary goods. Rawls theory of justice is based on primary goods concept. These are also referred to as the multipurpose goods (arneson). According to him, justice is the equitable distribution of basic goods in society. Commodities like income, self-respect, liberty, rights and also Kantian dignity are essential for pursuing certain rational goals and hence are unbiased. Therefore, Rawls people are kept behind a veil of ignorance where they are devoid of the knowledge of their own needs and aspirations. People in the original position will consider different options while deciding

the allocation of the primary goods and will always chooses options whose worst outcome is better than the worst outcome of any other option. According to Rawls, any rational person will give priority to advantages over disadvantages. This is what Rawls refers to as the maximin principle.

THREE PRINCIPLES OF JUSTICE

The three well defined principles of Rawls theory of justice are the equal liberty principle, the difference principle and the equality of opportunity principle. The equal liberty principle entails that everyone is entitled to the same set of fundamental liberties. These rights include the freedom to possess private property, the right to free speech and assembly, the freedom of conscience, the freedom of the person and application of rule of law. Each person is entitled to basic liberties and everyone according to Rawls must be entitled to equal opportunities to explore their talents. Rawls through his theory seeks to promote fair equality of opportunity as opposed to formal equality of opportunity. Institutions must be set up to ensure that people with similar goals and aspirations have comparable opportunities to succeed in the marketplace. This is necessary for fair equality of opportunity. According to Rawls, a society where there is fair equality of opportunity is ideal for meritocracy (arneson). However, the fundamental idea of Rawls theory of justice is the difference principle. Difference principle subjects that our policies should be designed in such a manner that it is least beneficial to the least advantaged sections of the society. Social and economic disparities must be set up in a way that everyone benefits from them and they are linked to opportunities and positions that are available to all. (arneson). Rawls arranges the respective principles of justice in a lexical order.

ROLE OF INTUITION IN RAWLS JUSTICE

Rawls bases his principles of justice on intuition. Intuition can be described as the ability to understand something in the absence of explicit reasoning and evidence. Intuition and justice are interrelated. Since, intuition may influence our moral judgments and sense of what is fair, intuition frequently plays a role in how we perceive justice. When making decisions relating to justice, people depend on their innate vision of what is right and what is wrong. It is crucial to note however that everyone has a different intuitive sense of justice and seeking justice frequently entails more thoughtful and logical factors like ethical frameworks and legal norms. According to Rawls if there is a contradiction between justice and moral judgments then the application o principles of justice will result in failure of justice as a conceptual framework altogether. Hence, Rawls proposed a method of reflexive equilibrium which in the logical reasoning by which an individual stands in the capacity to deliver better reliable judgments.

CRITIQUE OF RAWLS CONCEPTION OF JUSTICE

Communitarian Critique

Communitarians reject the idea of universalism which holds that there is only one concept that is universally acceptable as well as applicable. Communitarian critique stands as one of the most vocal critiques of Rawlsian justice. Communitarians like Michel Walzer and Sandel maintain that since every individual is inextricably linked to the community to which they belong, the concept of abstracted individuals thus stand null and void, unlike Rawls who basis his idea on hypothetical individuals. Michael Walzer in his book the 'Sphere of Justice' mentions that there cannot be a single principle of justice that is acceptable by all. Michael Sandel in the book ' Liberalism and limits of Justice' critiques Rawls conception of original position. He quotes- "self is not prior to end rather constituted by ends" since an individual cannot be his abstract self making abstract choices. According to these scholars, Rawls theory ignores moral and ethical considerations. Scholars like Hannah Arendt also warned against rise of totalitarianism in the absence of people's participation in civic affairs.

Feminist Critique

Feminists like Susan Moler Okin and Carole Pateman and Martha Nusbamm criticized Rawls for separating personal and political. Carole Pateman in her book 'The Sexual Contract' criticized the conception of the social contract theory. Rawls was pointed out by Pateman on his original position stand where the latter criticized the former for not revealing the sexual identities of the parties to the contract envisaged by Rawlsian theory. Martha Nusbamm provided a reasonable critique to Rawls in her work women and human development- a capability approach. According to her, Rawls theory of justice could only succeed if it took into account the capabilities of women and children. Carole Gilligan in a different voice formulated the notion of ethics of care. For her, there are two ways to practice morality- justice and care. Men are the focus of justice while women are the focus of care. Any community cannot be deemed just if care is neglected and not given the attention it deserves.

Libertarian Critique

Robert Nozick presents his entitlement theory as a critique of Rawlsian justice in his book 'Anarchy, State and Utopia'. Large portion of his work is dedicated to refuting Rawls theory of justice. According to Nozick, people have the freedom to purchase and trade property through voluntary transactions as long as the initial purchase is reasonable and not the result of theft or fraud. He presents an idea of historical entitlement which holds that an individual has a right to property that they have lawfully acquired, even if it leads to unfair distribution of wealth. According to him, Rawls theory compromises liberty for the sake of equality. Nozick who favors the minimal state believes that the so called social justice programs lead to corruption. Nozick like John Locke is attempting to bring the idea of night watchman state back to life. Essentially, Nozick's theory opposes government involvement in economic matters beyond the safeguarding of individual rights as well as the notion of redistributive justice. (arneson)

Social Liberal Critique

Amartya Sen's 2009 book 'The Idea of Justice' presents a critique of John Rawls seminal theory of justice. Sen believes that Rawls hyper focused on the procedural aspect of justice. To contrast it, Rawls focuses upon Indian concepts of justice- Niti and Nyaya. While the former is procedure oriented, the latter is a realization focused approach. Nyaya is more important than Niti. The distribution of primary goods as a gauge of justice is at the fore front of Rawlsian theory; Sen contends that this over emphasis undervalues people's respective potentials. He contends that the actual ability of an individual to lead a good life depends on his efficiency to act as maximum beneficiaries of the primary social goods. The social goods measurement does not record individual discrepancies when the conditions of two persons are not equal, Sen ultimately argues for a more global perspective of justice.

Other scholar like Philippe Parjis offers an intriguing synthesis of ideas in his 'real libertarian' interpretation of Rawls, seeking to balance Rawlsian ideals with a basic income guarantee. Richard Rorty chastised Rawls for depending too much on 'overlapping consensus', to establish justice, contending that this method might not be sufficient to resolve basic philosophical differences. (arneson)

EMERGING VARIANTS OF JUSTICE

Transitional Justice

The process of addressing and resolving injustices and violations of human rights around the world that take place during the time of political transition such as change from autocracy to democracy or from violence to peace is referred to as transitional justice. Typically, it entails institutional reforms, truth, reparations, and trials in order to foster accountability, peacemaking and rule of law. In order to foster peace and stop further abuses, transitional justice acknowledges the rights of the victims; it helps increase the public confidence in the government and the law enforcement agencies. It helps uphold human rights and rule of law. (welsh, 2004)

Social Justice

Social justice is relatively a modern concept. It was not discussed at length by ancient political philosophers like Plato, Aristotle, Kant etc. the concept first emerged in western thought and by mid of twentieth century it became crucial to the ideologies of different political parties around the world. The idea of social justice revolves around the just and fair relationship within different communities in which each person has equal access to resources, opportunities as well as rights. The idea of social justice focuses upon correction of the systematic and structural injustices, discrimination and inequalities around the world. The reference to the notion of social justice has been made in many international legal and quasi legal texts like Copenhagen declaration, programme of action of the world summit on social development of 1995 and also, John Rawls most phenomenal text a theory of justice also refers to the two principles of justice as the principles of social justice. The idea of social justice has changed over time, drawing inspiration from diverse political, philosophical as well as religious ideologies. Though Aristotle and Plato studied the concepts of justice and common good, an explicit theory of social justice remained an idea yet to be discussed at great length in the ancient period. Teachings of Buddhist philosophy also emphasized on equality, compassion and empathy for others, thereby laying the foundation of the notion of social justice. During the medieval and renaissance era, theologian like Thomas Aquinas brought the idea of justice in his time to develop it further. Thinkers like Machiavelli and great minds of the enlightenment era questioned hierarchy and the inequalities that stemmed out of it. John Locke and Rousseau emphasized on the individual rights and social contract theories to lay the foundation of democratic rule and open and free governance. Thinkers like Karl Marx questioned the social upheavals led by the industrial growth in the society that widened the distinction between the have and have nots. He advocated for economic and social justice through socialist principles. In the aftermath of the world wars, the international organizations that were established emphasized on values like international peace and security, justice and equality. In the post cold war era, talks around the concept of justice arose in the post totalitarian regimes. Concerns about economic justice on the marginalized groups gained prominence in the backdrop of growth of globalization. In the modern era, social justice has come to widely encompass the issues of sections like women, LGBTQ+, Dalit women, rights of sex workers etc. it addresses issues like systematic racism, environmental justice, intersectional justice.

Intersectional Justice

By addressing the interconnectedness of different social identities and forms of discrimination, intersectional justice has been at the forefront of expanding and improving the idea of justice by incorporating the needs, concerns of the extremely marginalized sections of the society facing triple oppression of class, race and gender i.e. the black women. The same conception has been wisely employed in the Indian society in order to place Dalit women's voices at the centre of the

debates surrounding women's issues highlighting the triple oppression of caste, class and gender. Intersectionality, a term coined by Kimberle Crenshaw, highlights the possibility of overlapping various oppressive systems for the people based on variety of factors like sexual orientation, gender, race and class. (pan, 2020). This method acknowledges that examining a person's identity in isolation hides the complete understanding of this complex experiences. Rather, the intersectionality approach takes into account the intricate interactions between various identities as well as the ways in which power and privilege structures interact with one another to produce uniquely exploitative discriminations in the society. Reproductive justice activists have dynamically used the concept of intersectionality as a source of empowerment to propel one of the most important shifts in reproductive politics. (ross, 2017)

CONCEPT OF RIGHTS

Rights can be defined as those conditions of social life without which no man can seek to be himself at its best (Laski). Rights performs two integral roles- a protective role and a promoting role. In its protective role, a right is an individual's claim against the state. It protects an individual from arbitrary actions of the state. Legally put, a right is a legal claim that constitution or any other statute grants a citizen or any other individual. In its promoting role, right guarantees those condition of life that helps an individual develop his or her personality to the fullest. Rights are the essence of democracy as they empower an individual and allow them to develop fully. Rights are associated with equality in the present times and establish a level playing field among the rich and poor, men and women, and various others social groups. Rights can simply be defined as the freedom to act in a chosen manner without any restrictions put by others like individual, state and society. Rights are simply claims of an individual on the state and society to lead a good life. Rights have dual functions- to protect an individual from arbitrary actions of the state and secondly promote the interests of individuals. The legal and moral percepts known as rights protect people from the acts that can jeopardize their safety or restrict their liberties. These can include human rights, civil rights and other legal rights. People's precise rights differ by nation and legal system but they frequently serve as the cornerstone of an equitable and just society. The social justice system that the state and its laws are founded upon produces rights (Barker). A legal right is an interest that is widely acknowledged and safeguarded by the law, it is a duty to respect the rights and any breach of it may result in legal wrong (Almond). A right is also seen as assertion that the state and society agree upon and uphold (Bosanquet). Dworkin in his book 'Taking Rights Seriously' calls rights as trumps. It means that rights of an individual should be given preference over to rights over any other considerations. Hohfeld gives four interpretations of rights as the claim or entitlement that enforces duties on others, rights as liberty to pursue what one wants to pursue, rights as power of individuals that has the capacity to put limits on the power of the state and the interpretation of right as immunity against state and society.

THEORIES OF RIGHTS

Theory of Natural Rights

According to the theory of natural rights, people are naturally born with inherent rights because of the virtue of being human. These rights are regarded as basic and inherent that remains unaffected by social and governmental recognition. The theory was developed by political philosophers like John Locke and Rousseau who emphasized on the ideas like right to life, liberty, and property. This theory became popular in 17th and 18th centuries. It developed on the basis of two understandings- the teleological understanding and the contractual understanding. The former was developed by the social contract theories like John Locke, Hobbes and Rousseau while the latter was formulated by Tom Paine's phenomenal work 'Rights of Man' where he rejected the doctrine of social contract as 'clog on the wheel of progress.' This view focuses on the relationship between the rights of man and purpose of human life. (gauba, 1981)

Theory of Moral Rights

A philosophical idea known as the theory of moral rights holds that people have certain rights because of moral, ethical principles. The theory of moral rights stems from the idea of human reason. This understanding relies on a person's own sense of right and wrong. Morris Ginsberg in book 'Justice in Society' puts it—"there is a moral element in all law." Immanuel Kant was the first political philosopher to establish a link between moral real and political-legal realm. He envisaged a kingdom of ends wherein all persons would be headed towards the collective good by respecting all kinds of ends. Kantian's individual behaves with reason and treats himself and the other people as end in themselves rather than means to an end. T.H Green also maintains that the rights of man does not stem from any specified law but emerges from the moral character of the man himself. (gauba, 1981)

Theory of Legal Right

The rights that are guaranteed by the state or legal systems in a particular jurisdiction are regarded to be as the subject of legal rights. According to this perception of rights, a human being is not capable of developing as well as possessing rights in isolation. Rights are always guaranteed by the state. According to this theory, rights are not absolute meaning that the state is always in a position to withdraw these rights. These rights specify the interaction between people and governments and are codified in laws, statutes and constitutions. A vast array of rights like the civil rights, property rights and contractual rights form a part of it. However, the legal rights are not a fixated concept. It is always subjected to change according to the changes in the legislative process and the political structure of any kind. Jeremy Bentham is the greatest proponent of this right. He rejected the conception of natural rights as unreal and ill-founded in his work 'Principles of legislation'. He quotes- "Real law gives birth to real rights." The theory of legal rights was also criticized by Harold J Laski in his 'Grammar of politics.' (gauba, 1981)

Historical Theory of Rights

This theory regards rights to be as the result of long historical process (gauba 1981.) This theory studies how the conception of rights changes over different historical periods. It takes into the account the evolution of the rights, the possible changes and the contestations surrounding it. This theory was developed in 18th century. Edmund Burke remains the greatest champion of this theory. The 1215 signing of the Magna Carta is frequently cited to be a the major turning point in the discourse of human rights aided by the signing of the bill of rights in 1628. The theory holds that idea o rights has been shaped y numerous historical movements, philosophical breakthroughs and societal shifts. (gauba, 1981)

Social Welfare Theory of Rights

According to the social welfare theory of rights, rights are extremely crucial for advancing the general welfare of the society. This theory sets clearly defined standards on which the conception of rights must be formulated. According to this viewpoint, rights are the instruments to further the common good rather than just personal privileges. A society is more inclusive, equitable when it upholds and protects certain rights. It entails striking a balance between the right of the individual on one hand and interest of the community as a whole on another hand. The interaction between rights and larger social context is emphasized by this theory. The contemporary advocates of the theory is Roscoe Pound who stated that the interpretation of law should be based on the defined social goals and Zechariah Chafee who stated that social customs and laws should always be subjected to the idea of the collective social good. (gauba, 1981)

CONCLUSION

Justice and rights are very closely related because rights are frequently viewed as the cornerstone of the concept of justice. Justice always entails the just and fair distribution of resources in the society whereas rights provide the means by which this just distribution can be realized. The notion of justice always acts as the guiding light for the application of rights and thus seeks to strike a balance between the interests of the individuals on one hand and welfare of the community on the other hand thereby creating sync between the whole and the part.

REFERENCES

1. Arneson, R.(2009). 'Justice After Rawls', in John S. Dryzek, Bonnie Honig, and Anne Phillips (eds), *The Oxford Handbook of Political Theory* (2008; online edn, Oxford Academic, 2 Sept. 2009), <https://doi.org/10.1093/oxfordhb/9780199548439.003.0002>
2. Gauba, OP. (1981). *An introduction to Political Theory*.
3. Pan A. (2020) *Mapping Dalit feminism: Towards an intersectional viewpoint*.
4. Petersmann E. *Theories of Justice, Human Rights, and the Constitution of International Markets. Symposium on transnational constitution, volume 37, no. 2*
5. Rivera H. *Transitional justice, human rights and restoration and restoration of credibility: Reconstructing Mexico's social fabric. Mexican law review. Volume VII. No. 1*
6. Ross L. (2017). *Reproductive justice as intersectional justice activism. Souls, 19:3, 286-314, DOI: 10.1080/10999949.2017.1389634*
7. *Social Justice in an Open World. (2006). The international forum of social development. Department of social and economic welfare. United nations.*
8. Welsh N. (2004). *Remembering the role of Justice in resolution: Insights from procedural and social justice theories. 54 J. Legal Educ. 49.*

