



## APPLICATION OF RAWLS THEORY OF JUSTICE IN THE 21<sup>ST</sup> CENTURY IN INDIA

By Shweta Sharma  
From Himachal Pradesh National Law University, Shimla

### Abstract

*This paper tries to analyse the application of John Rawls theory of justice in the 21<sup>st</sup> century in India. John Rawls thinks a just society will conform to rules that everyone would agree to in the original position. Since they are deliberating behind the veil of ignorance, people don't know their personal circumstances, or even their view of the good life. According to him deliberators won't choose a society with racist, sexist or other unfairly discriminatory practices, since beyond the veil they might end up on the wrong side of these policies. But this does happen in the true sense as the rules are not made by the deliberators behind the veil of ignorance. Each society seems to violate his basic principles of justice. Even in the 21<sup>st</sup> century the inequalities that Rawls wanted to erase still persists. He wanted the less disadvantaged people to live a life of dignity but even in today's time they are still struggling for a dignified life as the laws and policies implemented have not changed the mindset of the people till now.*

### INTRODUCTION

John Rawls theory of justice attempts to explain why clear social inequalities are unjust and what a just society really is. Rawls theory of justice is a work of both ethics and politics and we can glean from Rawls theory

of justice, some kind of an ethical theory. With this theory he has tried to address the problem of distributive justice. Distributive justice concerns the socially just allocation of goods. The basic principle of distributive justice is that equal work should produce equal outcomes and some people should not accumulate a disproportionate amount of goods. Rawls difference principle allows for the greatest benefit to the least advantaged as it will allow the least advantaged social group to prosper at a faster rate.

### SOME BASIC PRINCIPLES OF RAWL'S THEORY OF JUSTICE

A just society is one whose characteristics conform to normative rules that everyone would agree to. That is why his theory of justice starts with introducing the fundamental principle that every individual is inviolable. Rawls writes "Each person possesses an inviolability founded on justice that even the welfare of the state cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore, the rights secured by justice are not subject to political bargaining or to the calculus of social interest."<sup>1</sup>

From this fundamental principle we can draw the following implications:

- For Rawls life should not be sacrificed for the sake of majority for example suppressing the people's right to speech and expression for the sake of economic growth is morally wrong for him. As Rawls theory of justice directly attacks the consequential ethics

<sup>1</sup> John Rawls "A Theory of Justice" 3 (Harvard University Press, Massachusetts, 1999)



especially its most notable representative utilitarianism<sup>2</sup> which refers to the doctrine that actions are right if they are useful or for the benefit of a majority.

- According to Rawls an erroneous theory is tolerable in the absence of a good one<sup>3</sup>. Thus Rawls would have us believe that an unjust law is better than no law at all. In other words an act of justice is tolerable if and only if, it is necessary to avoid greater act of injustice. For example it might be morally right to incapacitate, if not kill a notorious serial killer if it is the only way to stop him from killing more innocent people.
- Individual liberties should be restricted in order to maintain equality of opportunity. For Rawls restrictions through law preserves freedom in democracy. An example for this is that it is probably morally right to restrict people from owning more than five hectares of agricultural lot so that other people have the chance to own a lot.

With this we can come up with two basic theories of justice which are introduced in his theory of justice. These two principles of justice are expressions of what Rawls calls “justice as fairness”<sup>4</sup>. The first puts emphasis on:

- Equal access to the basic human needs, rights and liberties. Rawls calls this the greatest equal liberty principle. This principle guarantees the right of each person to have the extensive basic liberty compatible with the liberty of others. Some examples of this right are the right to life, right to vote, right to speech and the right to peaceful assembly.
- The second emphasises the idea of fair equality of opportunity and the equal distribution of such socio economic

inequalities. Rawls call it as the difference principle. This principle implies that socio and economic position are to be to everyone’s advantage and open to all<sup>5</sup>.

### UNIVERSAL ADOPTION OF SUCH PRINCIPLES

It is here where the Rawls “veil of ignorance” and “original position” comes into play. Rawls introduced the theoretical “veil of ignorance” in which all the players in the social game would be placed in a hypothetical situation called the “original position”. Rawls suggest that in the original position each individual does not know his/her sex, race, natural abilities, social status, economic conditions and the like. In other words in original position the individuals hide their identity behind the “veil of ignorance”, just as in Edmund Husserl’s Epoche or phenomenal reduction the individual in the original position sets aside her biases towards and preconceptions about anything. According to Rawls out if this veil of ignorance, each individual makes a rational prudential choice concerning the kind of social institution they would enter contract with. Rawls recommends that individual in the veil of ignorance are ought to adopt a generalised point of view that bears strong resemblance to a moral point of view. According to Rawls if everybody in the original position promotes equality<sup>6</sup> then justice as fairness is attained and inequality is upheld then injustice prevails.

Justice as fairness can be achieved through the notions of the original position and the veil of ignorance. As in the original position<sup>7</sup> individuals agree on specific social rules and

<sup>2</sup> *Id.* at 14

<sup>3</sup> *Id.* at 4

<sup>4</sup> *Id.* at 15

<sup>5</sup> *Id.* at 53

<sup>6</sup> *Id.* at 86

<sup>7</sup> *Id.* at 104



institutions and under veil of ignorance<sup>8</sup> individuals choose the basic structure of society that they thought is just. This is possible because Rawls argues that selfish but rational people who are attached from their concrete identity and context will freely choose to create a society that is truly just. In fact Rawls believes that through veil of ignorance individuals can identify universal beliefs about how society should be organised. This is because under veil of ignorance a person takes the decision from the point of view of worst off and due to this in complete ignorance individual will not know who and what they will be therefore support a decision about the rules and organisation of that future society which would be fair for all the members.

The main advantage of creating this situation is that it would make sense for each person, acting in his or her own interest, to try to think of rules of organisation that will ensure reasonable opportunities to the weaker sections of the society. But it is difficult to erase all our identities and to imagine oneself under a veil of ignorance as it is difficult to be self sacrificing and to share their good fortune with strangers<sup>9</sup> but veil of ignorance expects people to just be their usual rational selves<sup>10</sup> and it is in their interest to think from the position of the worst off. This will not only make the rational persons see things from the perspective of the worst off but they will also try to ensure that the policies they frame benefit the society as a whole.

So fairness would be the outcome of rational action and not benevolence or generosity because in benevolence and generosity the person will see his interest first. Rational

thinking not morality could lead us to be fair and judge impartially without having a bias towards anyone.

### JOHN RAWLS THEORY IN THE 21<sup>ST</sup> CENTURY

According to John Rawls justice consists of the basic principles of government that free and rational individuals would agree to in a hypothetical situation of perfect equality. In order to ensure that the principles chosen are fair, Rawls imagine a group of people who have been made ignorant of the social, economic and historical circumstances from which they come, as well as their basic values and goals including their conception of what constitute a “good life”. He said that they are situated behind the “veil of ignorance” due to which they could not be influenced by self interested desires to benefit some social groups that is the groups they belong to at the expenses of others. Thus they would not know any facts about their race, sex, age, religion, social or economic class, wealth, income, intelligence, abilities, and talents and so on.

In the “original theory” as Rawls characterizes it, any group of individuals would be led by reason and self interest to agree to the following principles<sup>11</sup>:

- 1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
- 2) Social and economic inequalities are to be arranged so that they are both a) to the greatest benefit of the least advantaged and b) attached to offices and positions open to all under conditions of fair equality of opportunity.

<sup>8</sup> *Id.* at 118

<sup>9</sup> *Id.* at 119

<sup>10</sup> *Id.* at 123

<sup>11</sup> *Id.* at 53



The basic liberty which is mentioned in the first principle comprises of the rights and the liberties traditionally associated with liberalism and democracy: freedom of speech and assembly, political liberty to vote and run for office, liberty of conscience, freedom of personal property, freedom from arbitrary arrest and liberties necessary to secure rule of law. According to Rawls basic liberties cannot be infringed under any circumstances, even if doing so would increase the aggregate welfare, improve economic efficiency or augment the income of the poor.

According to Rawls, the principles of justice (including the principle of greatest equal liberty, the principle of fair equality of opportunity and the difference principle) may be fulfilled by a constitutional democracy. However, a frequently seen defect of constitutional democracy is that it allows a greater disparity in the distribution of wealth and property than is compatible with equality of economic, social and political opportunity for all individuals. Another defect of constitutional democracy is that it may allow political power to accumulate in the hands of a particular group or party who may use the institutions of government to gain greater advantage. In order to correct these defects, it is necessary for political equality of opportunity that is equality of opportunity in the political processes to be constitutionally guaranteed.

One example is women reservation bill. In this bill women are given preference over men because women in India have been considered to be lesser advantaged members of the society but then at the same time men are not ousted from the race. Globally women

remain vastly underrepresented in local and national politics. This Bill is a pending bill in the Parliament of India which proposes to amend the Constitution of India to reserve 33 per cent seats in the Lower house of the parliament and in all the state legislative assemblies for women.

Even in Article 17 of the Constitution of India we find the same principle running. As Article 17 abolishes untouchability<sup>12</sup> as it is a social evil and it has not been promoted because it is no way benefitting the least advantaged members of the society.

Similarly when there was declaration by the government regarding Right to Education where it allowed a reservation of 25 per cent to the poor children even in the private schools is another example where it promoted to benefit the least advantaged members of the society.

Equal opportunities of employment in offices<sup>13</sup> the scope of this article was examined by the Supreme Court in the historic case of *Indira Sawhney v. Union of India*<sup>14</sup> popularly known as the Mandal Case. The second principle of justice as recommended by John Rawls is clearly reflected in the Mandal case where social and economic inequalities are to be arranged in such a way that they are to be of the greatest benefit to the least advantaged members of the society and offices and positions must be open to everyone under conditions of fair equality of opportunity. Reservations in the jobs and educational institutions clearly show a reflection of Rawlsian approach. As it is a true fact that all persons do not have the same social and economic background. Some may

<sup>12</sup> Constitution of India, Art. 17

<sup>13</sup> Constitution of India, Art. 16(4)

<sup>14</sup> AIR 1992 (3) SCC 217



have been least advantaged members of the society. In the Mandal case the reservations tends to give benefit to the least advantaged members of the society. But the practical effect was not to bring a policy focus on caste in economic relations but instead to draw caste firmly into the realm of political competition.

Though instances are seen as to how advantages have been given to least advantaged members of society but still there are inequalities and unjust that can be witnessed in the 21<sup>st</sup> century also. Today absolutely and proportionately, the country's capital wealth that is land, buildings, finance etc. is largely in the hands of the "upper" castes and the "lowest" castes participate in the economy primarily as wage earners. Per capita income or access to high status occupations decrease as we pass down the hierarchy, as does the return on factors such as better education or capital assets, while the proportion of people in poverty increases, indicating what the Dalit political leader B.R Ambedkar referred to as a system of "graded inequality". The Caste Development Index shows that the degree of caste inequality is unimproved and sometimes worsened by the greater wealth or faster growth of different states. Statistically, in India the caste into which a person is born remains among the most important determinants of life opportunity. As a matter of religion and historical disadvantage, caste falls outside the purview of economic planning and is treated as an internal cultural matter excluded from international frameworks applied to other forms of discrimination such as gender or race.

Though the Indian state is restructuring in favour of industrial capital, it also has had to respond to democratic pressure from a voting constituency of lower caste poorer people by directing tax revenue from new wealth in industry to huge increases in state welfare programs, deploying a rhetoric of inclusive growth and enacting various social and economic rights (to education, food and rural employment) – a class abatement along caste abatement<sup>15</sup>.

Where Caste has become hyper visible we can see that lethal violence often directed at Dalits whose success, kinship conventions, romantic choices or access to public office so threatens the relational standing of adjacent caste groups. There has been an increase in violent hate crimes correlating with the narrowing gap between the standard of living of Dalits and dominant castes; and violence commonly targets for destruction, often by arson, the material signs of Dalit progress. But it also takes forms that maximise trauma and humiliation, including sexual violence, public stripping, forced consumption of excrement and uploading humiliating attacks on social media<sup>16</sup>. Such caste violence has in turn prompted the formation of human rights focused Dalit movements backed by NGO networks attempting to use anti-discrimination for protection.

Even in today's time we cannot see gender equality here in India as patriarchal norms have marked women as inferior to men. In the 21<sup>st</sup> century women have proved to be strong leaders in every field possible. From wrestling to business, the world has been revolutionised by exceptional women leaders

<sup>15</sup> A Gupta, *Red Tape: Bureaucracy, structural violence, and poverty in India* (Duke University Press, Durham & London 2012)

<sup>16</sup> A. shah, *Grounds down by growth: Tribe, caste, class and inequality in 21<sup>st</sup> century India* (Pluto press London 2018)



in fields that were until recently completely dominated by men. But in spite of such progress, even today, the girl child is discriminated against in most Indian households. The practice of female foeticide through sex selective abortion continues to be practices in spite of the Prenatal Diagnostic Technique Act of 1994. Indian society still hasn't awakened to the importance of empowering the women.

Even religious tensions can be witnessed in the recent times. As the CAA provides expedited Indian citizenship to migrants from Afghanistan, Bangladesh and Pakistan which belong to select religious minorities and entered the country without a valid visa or overstayed their visa prior to December 2014. Absent from the list are Muslims and religious minorities from other parts of South Asia, such as Tibet, Sri Lanka and Myanmar. This is the most note worthy instance of religious hostilities being codified into law. We need a more comprehensive understanding of hoe religious freedom can effectively intersect with sustainable peace and development.

Even after all these years, there has been no change in this trend as the rich tends to get richer and the poor, poorer. The COVID-19 crisis has only made matters worse for India's middle and low income groups. While most economic activities suffered due to restrictions imposed during the lockdown some of the world's top billionaires have their wealth rise. At the same time, the world's poor have seen their wealth deplete. The inequalities in our society still exist even though laws and policies are made for the same. The difference principle given by him permits diverging from strict equality as long as the inequalities in question would make

the least advantaged in society materially better off than they would be under strict equality. Though this principle has been adopted to help those who are at a disadvantaged position but those people still suffer the ill effects of being at such position.

### CONCLUSION

The theory of justice as propounded by John Rawls has played a significant role in defining the principles of justice which was almost impossible to define. The two principles of justice given by Rawls can be proved to be very successful in lightening the effect of nature which makes some people more luck and capable than others. Rawls theory has given its great contribution towards bringing in the true meaning and importance of liberty in the limelight. Rawls idea was one of distributive justice. He never supported communism, where all wealth is distributed equally, but he was in favour of a society where inequality was moderated so that those who are disadvantaged were able to live a life with dignity. But even today we can see that though policies, laws and regulations have been made to uplift the disadvantaged people of the society but their implementation is such that those people are still not able to live a life of dignity and are still facing the ill effects of being in such a position.

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