

Justice as Fairness : A Critical Appraisal

Dr. Ghazala Rizvi

*Research Scholar, Centre for Philosophy, School of Social Sciences
Jawaharlal Nehru University, New Delhi-110067*

Abstract

As a matter of fact, justice is a concept which deals with the fact that people should be treated fairly concerning their rights, needs and choices. For John Rawls, justice is to arrange the basic structure of society where social institutions distribute all social primary goods namely liberty and opportunity, income and wealth, and the bases of self-respect with reference to fair or just institutions. It can however be argued that, is justice the realization of fair institutions and rules or principles or is it concerned with the society as well? The main objective is to examine how such institutions are integrated into a social system which affects people's characters, desires, plans and their future prospects as well as the kind of persons they aspire to be? To analyze Rawls' justice as fairness, I will begin with the concept of fairness and how Rawls has revived social contract theory as transcendental mechanism under 'veil of ignorance' to explain principle of justice? Furthermore, I will also examine why Rawls' ignorance model helps us to reach at fair intuitional arrangements? But how it has been inadequate to address society's real problems i.e. health, education, gender inequality, hunger and poverty etc? Finally, I will argue with Amartya Sen that Rawls' idea of justice as fairness ignores individual differences in converting social benefits and opportunities with equal efficiency and therefore it is the need of an hour to acknowledge such differences to admit that people's life may be affected by matters which individuals have no control. Take for instance; someone who is being handicapped or crippled would require extra care and resources to enable them to achieve the same functionings in terms of mobility as an able-bodied person.

Keywords

Justice. Fairness. Social Contract. Veil of Ignorance. Functionings. Capability.

Reference to this paper should be made as follows:

Dr. Ghazala Rizvi

*Justice as Fairness :
A Critical Appraisal ,*

*RJPP 2018, Vol. 16, No. 1,
pp 75-82, Article No. 10
Received on 04/01/2018
Approved on 31/01/2018*

Online available at :
[http://anubooks.com/
?page_id=2004](http://anubooks.com/?page_id=2004)

Introduction

In general, justice is a concept which primarily concerned about proper ordering of things which includes equitable distribution of resources, goods, opportunities, services and deterrence of crime and punishment within a society. Furthermore, there are numbers of important questions surrounding justice have been fiercely debated over the course of human history: What is justice? What does justice demand of individuals and societies? What is a perfectly just society? How social benefits and burdens should be allocated? Is justice has much to do with being treated fairly? How can the form of injustices be removed? Is institutional approach to justice sufficient to deliver justice? So the concept of justice is a debatable in nature and the diversity of its connotation makes it difficult to lay down the precise meaning of justice. For example, the overall system of society has many dimensions like legal, political, economic, and social. Thus, justice can be looked at from all these angles. Historically, Plato was the first philosopher who lays down a systematic account of justice in his famous book *Republic* where he conceived justice in terms of just person and the just city state. For him Justice consists in having and doing one's own duty. In *Republic*, Plato's Socrates argues that justice is the harmony of the soul and the efficient functioning of a community based on contract. [1] On further the discussion of justice, Aristotle discusses the concept of justice in his famous book *The Nichomachean Ethics* where he holds that, justice is summed up the whole of virtue. It is complete virtue in the fullest sense, because it is the active exercise of complete virtue; and it is complete because its possessor can exercise it in relation to other person and not only by himself. [2] Following Aristotle's justice as virtue, in modern times John Rawls describes "justice is the first virtue of social institutions, as truth is of system of thought". [3] Justice is a virtue which implies the norms that enables us in assessing how societies ought to be fair. In the same way the way truth is the criteria to assess the validity of judgments, discourses, arguments, theories etc. For instance, in the system of thought we need some kind of truth is prerequisite, in the same way, in any family, society, country we need some kind of rules and regulation or cooperation is necessary unless the conditions on which society functions are reasonably fair or just.

The Concept of Fairness

The foundational idea is that justice has to be seen in terms of the demand of fairness. For Rawls, justice is to arrange the basic structure of society where all social primary goods-liberty and opportunity, income and wealth, and the bases of self-respect-are to be distributed equally unless an unequal distribution of any or all

of these goods is to the advantage of the least favored. [4] It is clear that the concept of fairness is surrounded with equality-need principle and justifies the departure from human equality to the needs of the *less well off* people. Although the concept of fairness can be given shape in various ways like equity, equality, need, merit, veil of ignorance etc. It may be pointed out that, the concept of fairness is based on the idea of equity rather than equality. For instance, Aristotle proposes two conceptions of justice namely general and particular conceptions of justice. The general conception of justice is based on lawfulness while particular conception of justice refers to what is fair and equal. Furthermore, he divides particular conception of justice into distributive and rectificatory. The distributive justice is concerned with what people deserve or else what one has the right to get and he linked distributive justice in terms of offices and wealth, rewards and dues with the idea of proportionate equality, which in turn, connected to a theory of just rewards or equal shares according to the merit of its recipients. For him, what is just is what is proportional, and what is unjust is what violates the proportion. [5] His idea of justice underlies with good judgment and sense as fairness where fair distribution of goods is based on equity which is a matter of proportionate distribution and does not include any principle of strict equality.

In other way, fair shares are not the same as equal shares. How they differ? Fair shares depend on merit, need and equality, which of course not equally distributed. It is not fair that workers should not receive as much as an engineer. In the same way, those with greater need should give no more than those with less need that opportunities should go to those who cannot benefit from them rather than to those who can. Therefore justice has to be with equity and not equality. It allows discrimination by reference to morally relevant differences and forbids discrimination in the absence of such differences. It is fair to discriminate in favor of the needy, or the meritorious or the able and it is unfair to discriminate between people who are equally needy. The rule is to treat cases alike unlike cases differently within a society. It can be argue that our society consists of inequalities of misfortune that some people are blessed with good fortune and some are with bad fortune. In such cases, equality principle some time leads to inequality because people's requirement varies from one person to other person. For instance, everyone needs food to live but diabetic needs insulin as well. In the same way, every child needs education but disabled child cannot be educated by the means of normal provision meant for other children and has to be given special facilities. The needs of diabetic and disabled one are greater than those of the normal one. So, the provision for their needs is greater than the normal. Rawls used a social contract argument to show that justice and especially distributive justice is a form of fairness which ensures that no one is

advantaged or disadvantaged in the choice of principles by the outcome of natural chance and social circumstances.

Procedure of Veil of Ignorance and Fairness

Rawls's specification on the concept of fairness emerges out of his constructive idea of the 'original position' or 'hypothetical situation' under veil of ignorance'. [6] The procedure of veil of ignorance excludes all knowledge of person's social status, moral characters, wealth, talents, life plans etc. It enables the contracting parties to reach at fair situation where contracting participants are faced with veil of ignorance about particular facts on the one hand and person conceived with regard to moral capacity for the 'conception of good' and the 'sense of justice' [7] on the other. By virtue of moral capacities a "person in original position characterized by the cooperative virtues: those of justice and fairness, fidelity and trust, integrity and impartiality" [8] so that contracting parties choose principles of justice impartially. Rawls two principle of justice behind veil of ignorance determine as to what is fair or just condition: "First: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others. Second: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all". [9] It can however be argued that Rawls' first principle is the 'principle of equal liberty', first part of second principle is the 'principle of fair equality of opportunity' and part two of second principle is the 'difference principle'. Rawls's first principle of justice underlies the notion of liberty. The first part of the second principle states about the idea of fraternity and its second part along with liberty principle guarantees equality can be taken together as the condition for Rawls' justice as fairness. Moreover, Rawls's two principle of justice are chosen under veil of ignorance is sufficient to give us justice because it attains to prevent us from getting the complete information on the subject matter of justice.

Alasdair MacIntyre has rightly criticized Rawls' veil of ignorance in his book *Whose Justice? Which Rationality?*, "We all approach our own circumstances as the bearers of a particular social identity. I am someone's son or daughter, someone else's cousin or uncle. I am a citizen of this or that city, a member of this or that society or profession; I belong to this clan, that tribe, this nation". [10] He believes that ignorance model separates individuals from their background, tradition and community which is an indispensable part of life. According to MacIntyre, "I am what I myself choose to be. I can always if I wish to put in question what are taken to be the merely contingent social features of my existence". [11] MacIntyre believes that

the original positions through veil of ignorance device are not sufficient to distribute the primary goods fairly on the basis of two institutional principles. Moreover question arise here is that, what will happen in distribution of benefits and opportunities when liberty and equality principles would conflict in the social system? Rawls' veil of ignorance is not sufficient to give us justice because it attains to prevent us from getting the complete information of the subject matter of justice.

In spite of all criticism, Rawls' ignorance model helps us to reach at fair principle of justice without favor and revenge. On the other hand it helps us to reach at fair institutional arrangement where justice is to be seen in terms of impartiality. It is a fact that 'ignorance model' helps us to reach at fair principle of justice without favor or revenge but it detach us from perpetuating injustices and suffering from the world as well. Rawls himself criticized in his later work *Political Liberalism* in terms of Justice as Fairness through original position is a "political conception and it is justified by reference to political values and should not be presented as part of a more comprehensive moral, religious, or philosophical doctrine". [12] In searching for fair institutional arrangement, justice concentrates primarily on getting the institution just only and not focused on the actual societies that would ultimately emerge. Moreover criticism of his earlier position still amounts to the fairness of the institutions with liberal values. There is still a lack of the realization of the sense of justice not as a matter of judging institutions but to address society's real problems that manifest injustices in the form of unfreedom, poverty, subjugation of women, lack of education and health facilities etc.

Rawls' Justice as Fairness and its Critique

Rawls notion of justice as fairness is the most influential one because he criticizes utilitarian conception of justice. For him, "parties in the original position would reject the classical principle in favor of that of maximizing average utility. Since they are concerned to advance their own interests, they have no desire to maximize the total (or the net balance) of satisfactions". [13] It may be pointed out that each person is distinct to one another in their personal interest. For example, some person believe in life of happiness, life of integrity and others may hold different interest about the objectives of human life that obviously leads interpersonal conflicts of interest in maximizing aggregate benefit when it comes to individual and social interest. So it does not recognize the plurality of human interest as the central question about justice. Moreover, each person would reject the utilitarian principles because of the risk that one might turn out to be someone whose own good is sacrificed for greater benefits for other person. Rawls's justice as fairness is the most influential

one because social contract addresses the problem of justice directly and not via social welfare as in utilitarianism. However, Rawls's justice as fairness has flaws as there would be no fair agreement on the nature of a 'just society' on the one and how would we actually recognize a just society if we depended on only institutional arrangement on the other. For instance, utilitarian, egalitarian and libertarian approach to justice argues for their own institutional principle and their logical ground for their claim to be just.

In the Idea of Justice, Amartya Sen has rightly pointed out with practical example of 'Three Children and a Flute'. He says that these three children named as Anne, Bob and Carla trying to get a flute about which they are quarrelling. As Anne says that the flute should be given to her because she is the only one who knows how to play it. Bob, on the other hand claims that, the flute should be handed to him as he is so poor that he has no toys to play with. Carla then intervenes and says that it was she who made the flute. [14] Then the question is that how do we decide between these three legitimate claims? and who gets the flute on the basis of such institutional arrangement? As utilitarian institutional arrangement would argue for Anne because she could actually play and she would get maximum pleasure. Bob on the other hand who is the poorest, would have the support of the egalitarian arrangement while libertarian institutional arrangement justify for Carla. In such situation, their position and claims would not arrive at mutual agreement and therefore does not solve the problem of arriving on a perfectly transcendental solution. It can however be argued that such institutional arrangement to justice as fairness would not be sufficient conditions to deliver justice because society consists of human beings who are outside of the institutions and they get affected by the institutional arrangements.

Instead of fair institutional approach to justice, the realization focused approach to justice is very necessary because the latter does not concentrate on fair distribution of primary goods where fair justice and individual's welfare is achieved in terms of his/her command over things i.e. how rich is she? What goods and services can she buy? and what offices are open to her? It can be pointed out that person's life plan is not only determined by the 'primary goods' that he/she has at his/ her disposal, but there are various factors that determine to what extent he/ she can utilize these primary goods into valuable states of being and doing. Moreover, fair distribution of primary goods does not acknowledge genuine information concerning individual differences in converting social benefits and opportunities with equal efficiency. "The primary goods approach seems to take little note of the diversity of

human beings. If people were basically very similar, then an index or primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, locations, work conditions, temperament, and even body size. So what is being involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences". [15] For instance someone who is being handicapped or crippled would require extra care and concern to enable them to achieve the same functioning and capability in terms of mobility as an able-bodied person. Sen has brought a new conception of justice through people's freedom and their capabilities i.e. the ability to do this or that such as being able to nourish yourself or doing a job. For example, one should start from a conception of what makes a good life for a human being, and build up from this to an index of primary goods. That it is the opportunity to live a good life rather than the accumulation of resources that matters most for well-being, and that opportunities result from the capabilities that people have.

Conclusion

To bring this discussion as an end, the paper argued that Rawls's justice as fairness comprises of just or fair institutional arrangement where liberty and equality principles can be taken together as the condition of social justice. Rawls' justice as fairness is needed a unique set of principles but it cannot be fully attained. Rawls' idea of justice is both philosophical and practical in bringing out the clarification of what we mean by justice and helps us in assessing our social institutions. He wanted to achieve impartial or fair justice on the basis of veil of ignorance which excludes all knowledge of personalities, moral characters, wealth, talents as well as life world. But fair distribution of social benefits and opportunities is not sufficient to do justice because it tries to seek justice through material pursuit without taking into account individual differences or the real opportunities he/she have. It merely concentrates on people's income and wealth as the basis to assessment the quality of life. Rawls justice primarily concentrates on social opportunity of the people in terms of means (primary goods) they possess and ignoring wide variation in the functionings of converting social opportunities or means into good life. In this way, Rawls' justice as fairness concern for fair institutional arrangements which governs collective choices and it does not facilitates each and every individual would act on his/her own choices or value. So people's functionings and capabilities is an imperative and the need of an hour to address social issues through people's agency to promotes an enabling society where each individual becomes capable to make decision about issues that affect their lives related to their nourishment, safety, security, health, longevity, literacy,

recreation, comfort, housing, transportation and social relationship etc. Moreover, people's capabilities bring about agency mould their life according their own choice rather than leading lives controlled by others and reflects how person can become efficient to convert bare resources into its valuable characteristics according to their purposes. For instance, a person has raw materials for food such as rice, millet and vegetable etc. and he knows (functioning) to convert these resources into its characteristics i.e. nutritional meal. So with the help of functioning, for instance, a carpenter with his skill can convert bare wood into valuable item such as chair, table and other wooden items.

References

- Plato. (1987). *The Republic*. Translated by Desmond Lee. England: Penguin Groups. **P.207**
- Aristotle. (2004). *Nichomachean Ethics*. Translated by J.A.K. Thompson. London: Penguin Books. **P.115.**
- John. (1972). *A Theory of Justice*. Oxford: Clarendon Press. **P. 3**
- Ibid. **P.303.**
- Aristotle. (2004). *Nichomachean Ethics*. Translated by J.A.K. Thompson. London: Penguin Books. **P.115.**
- Rawls, John. (1972). *A Theory of Justice*. Oxford: Clarendon Press. **P.119**
- Rawls, John. (2001). *Justice as Fairness A Restatement*. Edited by Erin Kelly. USA: Harvard University Press. **pp.18-19.**
- Ibid. **P.472.**
- Ibid. **P.160**
- Macintyre, Alasdair. (1988). *Whose Justice? Which Rationality?*. London: Duckworth. **P.207**
- Ibid. **P.208.**
- Rawls, John. (1996). *Political Liberalism*. New York: Columbia University Press. **P.20.**
- Rawls, John. (1972). *A Theory of Justice*. Oxford: Clarendon Press. **P.184.**
- Sen, Amartya. (2009). *The Idea of Justice*. London: Penguin Books. **P. 5.**
- Sen, Amartya. (1980). "Equality of What?" in. Tanner Lecture on Human Values, Volume 1. Edited by McMurrin. Cambridge: Cambridge Univer necessity sity Press. **pp.215-216.**