

“A CRITIQUE OF JOHN RAWLS’ THEORY OF AFFIRMATIVE ACTION”

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Abstract

John Rawls in his book “A Theory of Justice” has discussed his theory of justice. According to his theory of justice there are well defined methods to allocate the *primary goods* in the society. According to John Rawls primary goods are those essential things which a rational person would desire to have such as opportunities, liberties, rights, and wealth. Rawls has adopted the method of *original position* which assures to distribute these goods in fair way. Along with this, a just society would also have the need to determine in what manners the victims of injustice ought to be compensated. A sort of the compensation is *affirmative action*. The main objectives of the paper are; to discuss Rawls’ theory of affirmative action backed up by his argument in the favour of the same. The paper will conclude by advancing my own position regarding this issue.

Keywords: Affirmative Action, Primary Goods, Original Position, Veil of Ignorance, Procedural Justice, Substantive Justice.

Introduction

To attain these objectives, the paper is divided into the following elaborations;

1. Affirmative Action
2. John Rawls’ Theory of Affirmative Action.
3. A Critique of John Rawls’ Theory of Justice.

1. Affirmative Action.

According to *the Economic Times* “Affirmative action is directed at increasing the number of people, from certain parts of the society, within business or educational institutions or in areas where they are underrepresented. It can also be looked at as eliminating or bringing down discrimination against a particular set or group of people”. Thus, Affirmative Action policies are aimed at increasing opportunities for those groups of people which have been neglected by the society. They are mainly focused on providing employment and educational opportunities.

According to Encyclopaedia of Philosophy (by Shanti Nath Gupta) Affirmative action are Positive steps to enhance the diversity of some groups, often to remedy the cumulative effect of subtle as well as gross expressions of prejudice. When numerical goals are set, they are set according to the group’s representations

in the applicant pool rather than the group's representation in the general population. For example a medical school with an affirmative action program would seek to admit the members of an underrepresented group in proportion to their representation in the population of those who had completed pre medical requirements and wished to attend medical school.

John Kekes in his article "The Strong Affirmative Action" has discussed his contrary views of Affirmative Action. In the very beginning of the article he has discussed that there are two kinds of Affirmative Action. The First kind of Affirmative Action is Weak Affirmative action, and the second kind of Affirmative Action is strong affirmative action.

1. Weak Affirmative Action

This kind of Affirmative action is based on the principle of liberty principle of liberalism, which says that there should be fair and just procedures to ensure the universal access to all the individuals regardless to their race, gender, religion, culture and ethnicity. Thus this form of Affirmative Action is based on the idea of possessive individualism. This concept of Affirmative Action is based on Procedural Forms of Justice. Procedural Justice demands that if the procedures are fairs, the outcomes are bind to be fair. The presence of fair rules and laws are enough to begin a race of life. A person is entitled to attain anything in accordance to his ability through fair means. Treating everyone is the same is the key notion of Weak Form of Affirmative Action. The ideology of Liberalism is based on this kind of justice. It's because the ideology of Liberalism is based on the possessive individualism.

2. Strong affirmative action

This kind of affirmative action is based on the difference principle of John Rawls. The difference principle asserts that the inequalities are fair when they are related to the benefitting the least advantaged people of the society. Thus the aim of this kind of affirmative action is to go beyond the rule of procedural justice to the rule of substantive justice, in order to fill the all the social scarcities, which they might have owned , if the discrimination might have not occurred. Substantive Justice means, distributing social goods according to the need of the people. Merely existence of equal rule and regulations can't make the just society. It is not sufficient only to treat like cases alike and unlike cases unlike. The Procedural Justice needs to be supplemented with a substantive principle of justice. A substantive principle tells us which cases to count as like and which as unlike. For instance, a race competition is organized in a school. There is difference between a professional racer and a village boy participating in a race, a able racer and a disabled person. Hence, if according to the fair procedures, they are being kept in the same category, they are already loosing. It's because they don't have the same physical competency. (2011)

To sum up, it can be said that Affirmative action is public policy of preferential hiring designed to compensate the victims of injustice; in which some positive steps are to be taken that can be in the form of policies, laws, or change in perspectives that is geared towards the upliftment of, development of an increase of representation of deprived class.

2. John Rawls' Theory of Affirmative Action

John Rawls has discussed that if the men are unknown to their identity or if the power to decide sex of the persons would have been in the hands of some higher reality. And He would have asked to the persons which Gender they would prefer to be? And asked to all the persons, to whom 'He' should distribute the greater rights. There answer must have been to both the genders. This state of human being is called original position where your consciousness is placed back in time before you are born. In this state you are behind the *veil of ignorance* where the identity of the subject is curtailed. Thus, John Rawls' means that at that time you have no idea whether you'll be born in wealth or poverty, if you're going to be Chinese or American, black or white, intelligent or not, talented or not, etc. John Rawls' asserts that the problem is people would choose principles out of their own self-interest. A rich person wouldn't agree to a redistribution of wealth, because he doesn't want to lose his wealth. In this original position you would support the fundamentals on which one can build a just system. According to Rawls, if you don't know if you're going to be born with an illness or not, you would surely be in favour of free healthcare. If you don't know if you'll be born into poverty or wealth, you would be in favor of free education for all.

John Rawls asserts that in *original position* having *veil of ignorance*, any rational person would support the following ideas of justice.

There are two kinds of Justice. The first one is Procedural Justice, and the second one is Substantive Justice. John Rawls' has discussed both types of Justice. According to him If A, and B are in similar circumstances, they should be treated the same. It is said that "we should treat like cases alike". This concept of justice is quite similar to the conception of common civil code which is derived from liberty principle of liberalism. It's because the ideology of liberalism accepts liberty as its prime value, in any circumstances, the ideology can't compromise with the liberty of an individual. That's why the ideology honours the possessive individualism.

The possessive individualism is a concept according to which all the things, which an individual attains by using his own talent and capability, belong to him. None can snatch these things from him; he keeps all the rights to have these assets. Whatever assets are, if gained by using the talent and capability, belong to the individual; otherwise, the individual doesn't keep any assets. Affirmative action is a kind of means to insure the social justice in the society. That leads to act on such a policy of preference that advocates some kind of sacrifice for the wellbeing of others which is quite contrary to the basics postulates of 'treating as the same'.

Hence, it can be said this kind of view to assure the justice doesn't support the policy of Affirmative action. Here, the procedures are fair ; that's why it's called as Procedural Justice. So justice is defined through a procedure that claims to be fair. That is how Rawls' definition "justice as fairness" is to be understood.[2008]

Rawls has given two guiding principles; according to which the allocation should be assured.

First Principle: Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

Second Principle: Social and economic inequalities are to satisfy two conditions:

- a. They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*.[1991]
- b. They are to be to the greatest benefit of the least-advantaged members of society (the *difference principle*). [1991]

According to John Rawls' the first principle is based on the notion that treat everyone as the regardless to his sex, race, religion. Thus, the first principle is based on the Justice of Libertarians. But, John Rawls' asserts that Procedural Justice demands that if the procedures are fair, the outcomes are bound to be fair. Yet, the presence of fair rules and laws are not enough to begin a race of life. For instance, a race competition is organized in a school. There is difference between a professional racer and a village boy participating in a race, an able racer and a disabled person. Hence, if according to the fair procedures, they are being kept in the same category, they are already losing. It's because they don't have the same physical competency.

Now, John Rawls moves to the Second Principle of Justice which is based on the notion of Substantive Justice which means, distributing social goods according to the need of the people. Merely existence of equal rule and regulations can't make the just society. The Procedural Justice needs to be supplemented with a substantive principle of justice. A substantive principle tells us which cases to count as like and which as unlike. Thus, if there some group in disadvantage, they must be treated differently, and the advantaged class should be treated differently. It's because they are not in the same level playing field. That is why John Rawls thinks that if the society is in balanced state, there should be no affirmative action, but if the society is imbalanced; there is inequality, in justice, slavery, deprivation etc. in the society. There is need of taking positive steps to elevate the disadvantaged class. Thus, Procedural and Substantive Justice is relevant and desirable in their respective state of the society. [2011]

Thus, in Rawls' conception of justice, the affirmative actions are to be understood as being designed to secure for those who were harmed by a violation of either one of the above principles the measure of primary goods to which those principles entitle them as well as a remedy for the effects of their deprivation. They, then, require us not only to change current distributional practices so as to make them fair, but also to help those disadvantaged by past injustices become capable of utilizing the assets such a change would bring their way It's interesting to discuss here the assertion of Rawls:

“In justice as fairness,” Rawls says, “**men agree to share one another's fate**’. [1991]

Rawls objects that utilitarianism ignores the separateness and distinctness of persons and does not recognize that justice is what free persons would choose as the principles to regulate their social cooperation under conditions that are fair. Rawls' theory of Affirmative action is not thoroughly derived from the soul factor of intuitionism. It can fairly be understood by Rawls' own statement:

‘A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification the matter of the mutual support of many considerations of everything fitting together into one coherent views’.[1991]

Thus, Rawls doesn't deduce his theory of justice from any self-evident truth but rather his theory is deduced from the all one's beliefs that are coherent to one another. But he takes intuition as a means to construct fair judgements. Its need a special reference of *Freeman* who stated as:

‘It is not simply a matter of intuitive balancing or feeling comfortable with one's judgment, but rather is explicated in part by Rawls' constructivism and the original position.’[1991]

To sum up, it can easily be said that John Rawls has taken the help of intuitionism to formulate his ideas of compensatory justice but he didn't try to copy the same. He did the same with utilitarianism. So, Rawls argument in the favour of affirmative action is a mixed argument which is far from the traditional forward looking and backward looking argument. It is because it has some qualities of teleological theory i.e. utilitarianism and intuitionism. So, Rawls' argument deserves the safe place in mixed category of argument.

3. A Critique of John Rawls' Theory of Justice.

A question that remains is the reach and coverage of the reasonable evaluations that come from many different sides and many different lands. Is the exercise of impartiality – or fairness – to be confined within the borders of a country with a shared sovereignty, or within a culture with shared attitudes and priorities? That issue, can be usefully recapitulated, given its importance to the approach to justice presented in John Rawls' theory of affirmative action that can it be a universal theory of justice?[2009] The question is absurd if the theory were a universal theory, the world would have been just; but the world is full of injustice.

Perhaps, it might be argued, justice can be made the core feature of a universal conception of justice. The answer would be negative. It's because, justice is not universal, but is dependent on social and historical condition of a particular space and time. So, Justice is should be claimed, is a cultural universal, recognized in every culture as a desirable end. That's why Cultural Relativists object, and argue that human problems are culturally dependent, and that no moral principles can be made to apply to all cultures. Hence what is right or good for one individual or society is not right or good for another. As Richard Shweder has pointed out, though, this claim, "Treat like cases alike and different cases differently" can be taken as the rule for procedural justice.

Thus, we should not formulate theories (normative) and theories, to solve a practical problem with the help of normative theories, it would cause a logical fallacy that is called 'Naturalistic fallacy' but we should understand the factuality and practicality of justice in a particular condition and then we should go for a relative solution; which is nothing but a methodological relativism. So, John Rawls' theory of affirmative action was good in its social and historical situation. It is because the theory was very much practical in respect to the social and historical condition of the society.

So, theory should be changed according the nature of the society otherwise, we are not doing justice with the theory itself. For instance, $(a+b)^2$ is a formula of Algebra and it will do justice when we would apply it in Algebra; but when a person would apply this in Arithmetic, it won't work. It's because the nature is different. In the same way, determinants of justice are relative. So, my stand is that a theory of justice should be formed by the method of corroboration in the society by looking on its own social, cultural and historical situation, where justice is needed.

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