

THE ROLE OF DISTRIBUTIVE JUSTICE AND CHOICE IN INDIVIDUAL SELF-DETERMINATION

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ABSTRACT

The paper will address the role of choice and positive liberty in light of the utilitarian ideal of 'greatest happiness for the greatest number'. It would also explore how utilitarianism leads towards restriction of choices that leads to paternalism. Sceptics have often criticized egalitarian liberalism as propounded by John Rawls. Rationality demands that person is subjected to the fewer restraints possible and more choice in their decisions, and that institutions be developed that benefit both the individual and the society as a whole. The dilemma of uncontrolled individualism, how a society suffers when one of its members is stripped off the virtue of making choices that concern her, and how to make the person a part of community will be discussed, with special references to American philosopher Martha Nussbaum's 'Capabilities Approach' and choice. The significance of each community member to the community's progress and well-being, as well as the community's and institutions' roles in improving the lives of its people. The paper adopts a qualitative approach which focuses on both theoretical and doctrinal methods. The paper seeks a normative approach with the Grundnorm being individual liberty and individual choice in the determination of an individual's course of life.

Keywords: Individualism, Utilitarianism, Liberty, Choice, Capabilities Approach.

INTRODUCTION

Choice, liberty and freedom are the terms used frequently but seldom understood and are often used synonymously with unbridled individualism. Liberty and freedom are closely associated with the choices one make and the absence of external control in what one does or wishes to do. The external control, thus, becomes a threat to our lives. To exercise liberty, one has to act responsibly. As the saying goes, 'eternal vigilance is the price of liberty'. One has to be vigilant and circumspect before one can exercise the liberty. Liberty is the prerequisite for which freedom is the consequence. Appropriating with ones choices for others benefit amounts to coercion which can be rational as well as physical. It amounts to depriving a person of the prospects of success in life. Humans learn through experience which they acquire by exercising their choices. Social institutions are evolved and policies made keeping in view the needs of people and such policies are effective which do not remain fixated on timeless moral principles but serve the well-being of people. "Those who learn nothing from history", said George Santayana, "are doomed to repeat it."

Each society has a unique political, economic and social setup in which it drafts different laws and make policies for the well-being of its individuals. In a modern State the most important concern is the distribution of wealth, benefits and resources among its citizens. To deal with this distribution of resources different theories have been developed to explain that what would be a just distribution in a particular society. The concept of just distribution varies in different societies as each society has individuals with different caliber, abilities and needs. What would be a just distribution depends on the specific economic, social and institutional framework of that society. The allocation of resources and burdens is as important as the form of these frameworks play an important role in the lives of

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individuals. An unbalanced distribution of resources creates inequity, disparity and dissatisfaction among the individuals which ultimately affect the economic progress and evolution of a society. The debate about which framework is more preferable or results in well-being of individuals constitutes the topic of distributive justice. In this paper different theories of distributive justice would be discussed with the focus on how these theories affect the lives of individuals and their liberties in a society

The Importance of Choice and Freewill in the Lives of Individuals

Much has been said and written by various authors about the importance of choice(s) in shaping the freewill and thus determining the course of a person's life. The choices that a person makes, either, depend upon the external factors or the internal factors. The external factors, which the traditionalists refer to as circumstance, are the common sense is contributing to or hampering the growth and development of an individual as a free agent. These external factors are harmful to the development and growth of individuals.

The Role of Liberty in a Society

In the words of Isaiah Berlin, there should be a certain minimum area of personal freedom that must never be violated; for if it is, the individual will find himself in an area too narrow for even that minimal development of his natural faculties that alone allows him to pursue, and even conceive, the various ends that men hold good, right, or sacred. Thus, there must be drawn a clear line of distinction between private life and public authority. As stated by R. H. Tawney, "Freedom for the pike is death for the minnows". The ultimate end of a state is the furtherance of equality and justice among the individuals which lead towards optimum benefit for the society. This entails harmonizing the conflicting interests of the individuals in a society. Progress and harmony require that liberty of some should not be curtailed at the expense of securing the interests of others. Humans should be allowed a certain freedom of action in their private lives which, neither the society nor the state can restrict. This, in essence, means that individuals should be allowed to pursue their legitimate and rational interests provided these do not infringe upon the rights, interests, liberties and freedoms of others. Hence, invasion of individual liberties and freedoms would tantamount to paternalism and despotism.

If individual liberty and freedom are not allowed then there would be, as Mill called, a 'collective mediocrity' (Mill, 1859) and it obstructs human happiness and social progress. According to Mill, "all the errors which a man is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem is good". To make a person submit to the will of another, howsoever irrational, against his will is coercion and it is the denial of his status as a human. Each person has a right to interpret and find out his experiences according to his circumstances, character and conditions. A person who follows others, in essence, does not exercise his choice. Free thought and expression are essential in the diversity of opinions. For truth is only reached when there are a variety of opinions. This, in essence, is the denial of the principle of self-realization and self-direction which positive liberty entails.

The limits of a person's freedom or liberty to choose as he or she desires must be drawn against the wider principles of equality, justice and harmony in the society, for individual liberties must not be unrestrained. Individual liberty must be compatible and not in contradiction with the principles of social justice and equality. As Berlin remarked, we have *a priori* knowledge of harmony in all good and bad things otherwise we would fall back on the brute facts of empiricism. The realization of some individual goals, in a society, is sacrificed for larger collective goals. The harm principle, as enunciated by Mill, requires that individual liberty must not cause nuisance to other people and interference with individual liberty is only justified if it creates nuisance for other people. It states, "The only reason that power can be exerted against the will of any member of a civilized community is to avoid harm to others".

Individuality is productive in the development of a society and is instrumental in self-development and self-realization. Individuality has its limits and that is where it is harmful to other people in the society. As Mill writes, "to individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interest's society". When a person's conduct affects others in a prejudicial manner, society is justified in maintaining and enforcing its jurisdiction over him unless his conduct does not affect anyone except himself.

Utilitarianism and Paternalism

Utilitarianism is based on the maximization of benefit in a community. It looks towards the whole without regarding the constituent part of which a community is composed. As discussed earlier, there are limits to individual liberty which cannot be trumped on the pretext of attaining collective goals of the community. Utilitarianism is based on consequentialism because it seeks the outcome of actions,

laws and policies et al. In other words, utilitarianism aims at the maximization and aggregate of utility in a society.

The problem with utilitarianism, as it is based on possible or probable consequences, is that it disregards the process through which these goals are reached. It is selective in the sense that it rests on the premise that laws, policies and administrative actions are made and implemented by some for the benefit of the whole. Society is a complex of individuals with their own preferences and likes and dislikes. Leaving the majority out of the decision-making process that affects them is akin to Plato's Philosopher King where the ruler is assumed to be a sage. It also goes against the principles of transparency and accountability and reinforces opaqueness in institutional workings.

Thus, this generates paternalism on account of its vesting the actual decision-making in a few hands without involving the stake-holders. Utilitarianism is not based on participation and involvement of stake-holders in the actual decision-making process. The choice between rule-utilitarianism and act-utilitarianism is a difficult one to make especially in organized communities where one cannot go against the established norms and rules. In that rule-utilitarianism often had an upper hand over act-utilitarianism because of the pedigree of the rule-maker. Utilitarianism is not empirical but based on *a priori* knowledge about the nature of human beings. Its hedonistic calculus of maximizing happiness and minimizing pain goes against the natural law and has underpinnings of positivism in it.

Utilitarianism presents difficulty in moral decision-making. The *Trolley Problem* as put forth by Philippa Foot showed the limits of utilitarianism where a person is in a moral dilemma of deciding whether to save the lives of five people and letting one die or to save one person and letting five die. Utilitarian narrative considers the act of saving five people and letting one die as justified because it saves the lives of more people. This approach leads to majoritarianism and disregards the role of minorities.

Principles of Distributive Justice and Individual Liberties

Concentration of benefits and centralization of powers in the hands of few deprives the rest of the society of the benefits of participation. Individual liberties and freedoms cannot be guaranteed without just distribution of benefits and burdens among them. It is not easy to define justice but when we talk about justice that includes some basic ideas e.g. it should be based on fairness and equality and fulfill basic rights and needs of the individuals. Distributive justice is the criterion of a society on the basis of which benefits and burdens should be distributed among members of the society. It ensures the participation of individuals in the development of a community by preventing concentration of wealth in the hands of a few. The framework of distributive justice has various dimensions e.g. what is the nature of distributive commodity (wealth, income, jobs, opportunities etc.), who is the recipient of this distribution (individuals, group of persons, reference classes) and finally what should be the basis of such distribution e.g. egalitarianism, maximization, free transactions or according to individual characteristics. In this section I'll discuss various distributive justice ideas in relation to the allocation of economic gains among persons in a society.

Principles of Strict Equality

The principles are the forms of distributive justice and were proposed by Ronald Dworkin. These rest on strict or radical equality and are justified on the grounds of moral equality and equality in the distribution of resources. The principles have an offshoot which starts with the premise that initially everyone has equal resources and it is afterwards in the distribution of these resources, according to people's choices, that inequality occurs. This is called the starting-gate principle. It also encapsulates "equality of opportunity" within its fold in that the emphasis is on equal and fair treatment to every individual to pursue the goals in life. People are born with different socio-economic backgrounds and are different in respect of their ability to function and perform. Thus, Discrimination based on the aforementioned disparities is prohibited by formal equality of opportunity. This Dworkin calls as Resource Egalitarianism and is also a challenge to Rawls' Difference Principle. Rawls was silent on the choices of people and the opportunities that are presented to them not by their efforts but by the circumstances viz., luck, whether good or bad. Dworkin draws a distinction between "ambitions" and "endowments". What he calls ambitions are people's choices and the consequences of those choices. By endowments, he means those material benefits that are beyond a person's choice or control. "Dworkin also claimed that reasonable economic distributions should be more responsive to the implications of people's choices than the Difference Principle." The criticism of Dworkin's Resource Egalitarianism denounces the idea of economic equality and emphasizes that the principles of justice include giving people equal respect, giving such conditions to people that equal social standing and political engagement will be possible.

Rawlsian Principle of Fairness

John Rawls' principle 'justice as fairness' is a contract principle. Rawls proposed that the primary subject of justice is essential social structure and important social institutions, such as the political constitution and economic and social arrangements of the society (Rawls, 1971). These institutional structures are important since they define the rights and obligations of the members of a society and create profound impact in their lives. Justice as fairness suggests that parties in the original position are equal and the individuals of a society are behind the veil of ignorance and they know nothing of their status in the society viz., race, color or language and they consider themselves equal then they will propose two principles of justice. These two principles on which his theory of justice is based are Principle of Equality of Basic Liberties and the Difference Principle. The first principle emphasizes that state is responsible to provide equal basic liberties and rights to all the classes of citizens in a society. Basic liberties include political rights and other basic rights e.g. freedom of expression, religious rights etc. This first principle of justice has priority over the second i.e., the difference principle.

The Difference Principle states that there may be social and economic inequalities within a community, but these inequalities are justified if they are expected to be to everyone's advantage and attached to the positions and offices open to all. This principle suggests that there must be equality of opportunities. Equality does not mean the equality of outcomes or equality of resources but there must be the equality of opportunities. The first part of difference principle is about distribution of other benefits e.g. income, wealth and economic benefits. Income, wealth or other economic benefits need not to be equal if this inequality is for the advantage of all the representatives of society. The second part of this principle requires that the offices of authority must be open to all. Inequalities are only acceptable if these are to the advantage of all especially towards the least advantaged group of society. This principle focuses on the least advantaged section of society. It suggests the flow of benefits and goods from haves to have-nots. Rawls principle of fairness identifies and adjusts the capacity, personal characteristics and preferences of the individuals. It ensures the well-being of individuals by fair distribution and allocation of opportunities among them. It requires that the State should distribute the benefits for the well-being of least advantaged group and it can be achieved by strengthening the institutions and by imposing taxes. These principles set standards to assess the arrangements of social and economic institutions of the society.

Well-Being of Individuals and Social Justice

Capabilities approach is a theoretical normative framework that seeks to give the individuals choice keeping in view their own well-being and capacities. It conceptualizes the concepts of freedom, well-being, justice and development. Its approach is more holistic than utilitarianism in that it moves from individual to social. It aims at enhancing the capacities of individuals so as to make them participants in the society by devolving on them the agency of decision-making. Its approach is based on the "(1) the measurement and evaluation of individual well-being; (2) the assessment and evaluation of social arrangements; and (3) the formulation of policies and recommendations for societal change. An important aspect of the approach is giving people freedom to choose in their individual and social lives their own welfare which Sen called "well-being freedom" (Sen, 2009). This envisages a plurality of values and giving weight to personal choices and freedoms.

The role of social institutions is to evaluate and assess individuals on the bases of their abilities and functioning and to enhance their capabilities so that they lead more effective individual and social lives. In this process, they become participants in the social arrangement. "A person's genuine freedom or opportunity to reach functioning's is defined by their capabilities. (Plato, Stanford 2016)". As discussed earlier, individual well-being should be the sole concern of individual provided it does not infringe upon the well-being and liberties of others, in which case the societal institutions are justified in reforming the individual. In that, it seeks an individual an end in itself and not a means to an end. The role of justice is not merely to penalize the individuals but to reform the individual so that he becomes an effective member of the society. Capabilities approach seeks to conceptualize social arrangements, well-being, justice, freedom and development, in terms of people's capabilities.

Social arrangements depend to a large extent on the impact these make in the interpersonal difference in the lives of individuals. "According to the capability approach, 'functioning' and 'capabilities' are the best metric for most kinds of interpersonal evaluations. In other words, those interpersonal evaluations should be conceptualized in terms of people's functioning (their actual beings and doings) and their capabilities (the real opportunities they have to realize those functioning. Moreover, "the capability approach evaluates policies and other changes according to their impact on people's capabilities as well as their actual functioning". Thus, it also focuses on a framework for

providing equal opportunity so that humans could choose and participate in the exercise of their freedoms and choices.

Social justice becomes relevant only when it evaluates the abilities of individuals in a society and aims at enhancing those abilities for the collective benefit of the society. Unlike utilitarianism, where maximizing pleasure and reducing pain are the end for which social institutions function, the capability approach focuses on the actual functions and abilities of people and theorize about enhancing the abilities of people. Thus, the approach is individual-centric rather than the other way around. It, firstly, leaves to the individual to choose and assess for himself what he deems good for himself and secondly, it aims at establishing such social institutions and policies that aid individual in the realization of what he considers good for him.

CONCLUSION

All the theories and principles of distributive justice suggest a different framework for just distribution of benefits among the society but the main idea of these theories is that the individuals should enjoy the outcome of their efforts independently without intervention of a central authority. Distribution of benefits and burdens is just if it prevents the concentration of benefits in the hands of a few and the persons who fare ill (because they have less capacity or talent) be compensated by those who fare well to create a balance in the society. It may be expedient but not just that some should have less in order to make others prosper. Principles of distributive justice viz., 'justice as fairness' and 'justice as equality' give importance to the individual characteristics, choices and preferences. These principles in contrast to utilitarianism work for the well-being of each individual. In a modern society it is essential to utilize the resources of a State in a way to create a balance among the individuals' in order to make them a part of the society.

There should be overhaul of governance structure to make it democratic by restructuring of institutions as to make the individuals participants in the progress and development of the society.

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