

JUSTICE AS FAIRNESS: DECODING THE IDEA OF JUSTICE IN ANCIENT INDIA

Jhumpa Mukherjee

The idea of justice is one of the most contested and complicated discourse in the history of political thought and theory. Any scholarly discussion on justice is evidently western and therefore most often believed to be an imported one in the Indian sub-continent, given the general belief that the ancient Indian society and community was essentially unequal and justice in an unequal society based on varna inequalities is a misnomer. The paper seeks to contest this basic presumption with the argument that the idea of justice has been the core philosophy of ancient Indian Political thought reflected in the writings of Hindu, and Buddhist thinkers. The idea of justice is inextricably related to dharma, rajdharma and dandaniti in ancient Indian thought. The paper seeks to unravel the various connotations of justice as espoused in the ancient Hindu and Buddhist literature and then attempts to provide an analysis of the Indian and western conception of justice to find the linkages between them.

Introduction

The idea of justice, from ancient to contemporary times has remained one of the most discussed and debated principles of social, political and jurisprudential thought. It has attracted the attention of political theorists, sociologists, scholars of Jurisprudence, philosophy since the beginning of western political thought. Any systematic study of justice begins with Plato's conceptualization of justice as *giving each man his due*. It has been analysed from the perspective of injustice, liberty, equality-inequality debate, ethics, philosophy. Justice is pervasive and all-encompassing and is to be found in questions of political ideology, social welfare, gender discrimination and even constitutionalism.

Idea of Justice in Western political thought

The starting point of the idea of justice is most commonly taken to be Plato's *Republic*. It has transcended time. Platonic idea of justice combines both virtues—individual as well as institutional. From the individual perspective, justice implied that every individual was assigned a place in society according to one's natural aptitudes and skills. Justice in the state meant that the three social classes (warriors, guardians and artisans) performed their respective functions without interfering in the functions of another. Justice was "one class, one duty; one man,

one work". To Plato, interference in someone else's function was injustice. A just state would be one in which the warriors, guardians and artisans performed their respective tasks. Aristotle, like Plato believed that the primary function of the state was to ensure justice. However, Aristotle distinguished between distributive and corrective justice. Distributive justice meant proportionate equality and was linked to a theory of just rewards or equal shares according to the merits of its recipients. Each person would be awarded responsibilities and financial benefits in proportion to one's just deserts. Corrective or remedial justice was provided by a judge in matters of contracts and laws, where the merit of the person was not the consideration. The significant fact was that all persons would be treated in a manner of equal merit. To Aristotle, equality was crucial to social justice and justice as central to equality. Inequality arose when equals were treated unequally, and unequals equally. Like Aristotle, Thomas Aquinas also regards justice as rendering to each his due. Jeremy Bentham considered justice as an indispensable part of the legal system. Bentham's idea of justice is conceived within the idea of utility and law and that justice might be defective if the law itself is substandard to the principle of utility.

In contemporary times, Rawls's theory of justice is considered to be one of the most authoritative works on justice. His popular terminology "Justice as

Fairness" is not only a popular phrase widely used in almost all social science disciplines but also represents a deep explication of the concept of justice. In his work *A theory of Justice*, Rawls offers two principles of justice. First: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all. Second, Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. Rawls' justice is concerned not only with human welfare but also with individual's welfare.¹ Building on Rawls, Amartya Sen in his classic formulation *The idea of Justice*, 2009,² one of the most thought provoking contributions, focuses on creating an enabling environment that could enhance capability of people to fight oppression, protest systemic neglect, repudiate the permissibility of torture, reject the quiet tolerance of chronic hunger and other circumstances that deprive them of justice. Reasoning, he considers as a central instrument to understand justice and particularly important in a world of unreason. With reason, Sen argues, justice can be promoted, and injustice can be contained.

It thus appears that western ideas on justice revolved around creating a just society based on fairness, reasoning and removal of conditions that may impair delivery of justice. But none of the theorists have proposed creation of an equal society or trying to alter the basic framework of society. The question at this juncture is, whether these notions are universal and how far these notions contradict or complement idea of justice in ancient India. The question is important because ancient Indian society was unequal with both varna inequalities and gender inequalities. But then was the western society egalitarian? The ensuing discussion is an attempt to understand the compatibility, if any, between Hindu and Buddhist conceptualization of justice and the western idea of justice as fairness. Was the ancient Indian idea of justice built on fairness or justice was absent in a varnashrama society?

Justice in ancient Indian thought

Although justice has been variously conceptualized in western tradition, ancient Indian thinkers too, have also dwelled at length on the

various aspects of law and justice. In fact, dharma is the basis of ancient Indian thought and among its various connotations, justice is one of them. Indian political ideas and thinking does not merely concern itself with hard core political affairs and statecraft per se but also has been conscious of creation of an ideal society which would be the base for the superstructure called state. A solid societal system would create a strong polity devoid of conflicts. In Indian political thinking dharma and danda are considered to be the twin foundation of politics, society and life. All texts whether Vedas, dharmashastras, epics, literature, Arthashastra, Nitishastra emphasise on the significance of dharma as the supreme principle. Buddhist texts like the Aganasutta and Dighanikaya also focuses on the principle of dhamma based on righteousness and justice.

Justice, Laws and Dharma

The concept of justice is inextricably related to the concept of dharma in ancient Hindu political thinking. All ancient texts from the vedas, Smritis, literature, Nitishastra and the dharmashastras have stressed on dharma as the core of Hindu civilization and thought. Dharma is rooted in the Sanskrit word *dh* which means to uphold. The ideas of 'truth', 'justice', 'morality', 'righteousness', 'code of conduct', 'obligation' as also 'duty'. *Dharma* denotes all these. *Dharma* is defined by a person's position in society and the role one plays. King's law (*dharm*) which defines what the King ought to do and his acts are based on an ethical awareness of his duties. He is meant to follow the principle of justice above all. Dharma encapsulates "that which all existing beings must accept and respect to sustain harmony and order in the world. It is neither the act nor the result, but the natural laws that guide the act and create the result to prevent chaos in the world".³ In a similar vein, Frederic B. Underwood in his article *Aspects of Justice in ancient India* elucidates that "From the Vedic period onward, the perennial attitude of Indian culture has been that justice and righteousness among men are microcosmic reflections of the natural order and harmony of the macrocosmic universe. The cosmos is instinct with an inherent structure and functional pattern in which men at their best willingly participate. Justice, then, in the Indian context, is a human expression of a wider universal principle of nature and if man were entirely true to nature his actions would be spontaneously just".⁴ Thus

justice, dharma and the cosmic process, that is, *rita* is intertwined to produce one just system. Justice is inseparable from the natural law.

The idea of dharma is comprehensively elaborated in the *dharmasutras* and *dharmashastras*. The most important *dharmasutras* are those attributed to Gautama, Apastamba, Vasistha, and Baudhhyana. These *dharmasutras* include instructions on customs, rites and rituals, laws and administration of justice, crimes, punishments, rules, evidence, duties of king etc. Of the *dharmashastras*, *Manusmriti*, *Naradasmriti* and *Yajnyavalkasmriti* are the most popular. *Manusmriti* dwells at length on the nature of the justice and the legal system. He also describes the various branches of law or *Vyvaharapadas*.

Though dharma formed the main basis of law in ancient India, state-made laws, and their division into civil and criminal were also recognised. Dharma has been variously interpreted to mean divine or eternal law, ethnical norm, law of nature. Even state made laws had to conform to dharma. Dharma is also regarded as the law of the social order imposing duties and obligations on individuals and communities. Traditionally the *smriti* literature refers to *shruti*, *smriti*, customs and *sadachara* or good behaviour as the four pillars of dharma. According to Kautilya, scriptures, customs, reason and the dictates of the king are the four sources of law. The *Mahabharata* has yet another set of four sources—scriptures, customs, *sadachara* and *uddesa*. In ancient Indian political tradition, the concept of justice was encapsulated in terms like *Rajdharma*, *dandaniti*. Justice was not just a social principle but also a political and legal principle.

Idea of Justice in Hindu and Buddhist Political thought

Arthashastra

Kautilya in his *Arthashastra* has encapsulated the idea of justice within the contours of *rajdharma* and *dandaniti*. Danda or punishment should be 'as deserved', neither too lenient nor too harsh. He says that "if there is a conflict between institutional law and practice and the authoritative texts on Dharma, or if there be conflict between the texts and evidence, then the matter has to be settled in accordance with dharma."³ Dharma to him comprehends civil and criminal law and social conduct. Law to Kautilya encompasses, different forms of agreements,

marriage, division of inheritance, recovery of debts, non-performance of agreements, resumption of gifts, robbery, defamation, assault, gambling, betting and other related topics. He attaches great importance to *dandaniti* which includes, protecting property, acquiring property, augmenting them and distributing them. He thinks that justice is an important constituent of sovereignty and it needs to be preserved by the State and the ultimate responsibility lies with the King. Kautilya's view on crime and justice is very elaborate and goes on to differentiate between various crimes. He advocates different punishments depending on the crimes committed while in public office, civil crimes, sexual crimes, religious crimes etc. This shows that he had great grasp to customize the rule of law depending both on the offence and the structure of the society. He believed that the structure and peace is preserved in a society by effective jurisprudence. In today's context some of his ideas might be irrelevant but it shows that the ancient Hindu jurisprudence was codified and actually more resembled the common law. Kautilya's understanding of justice, war, diplomacy and human rights makes him unique in his times. In ancient India there is no one comparable who could have stood the test for justice being a tool for statecraft. Kautilya believed that while it is as much important for the state to wage a war and conquer, it is also important to maintain law and order within the state in order to make it more powerful.

In the happiness of the subject lies the King's happiness, in their welfare his welfare. What pleases himself, the king shall not consider good but whatever pleases his subjects the king shall consider good.⁶ This is conveyed in unequivocal terms by Bentham too: "The public good ought to be the object of the legislator, General utility ought to be the foundation of his reasonings. In Book III Chapter I, Kautilya sets the duties of a ruler. Among many other duties, imparting justice was one of the main duties of a king. King was required to deliver justice in accordance with law. "In the *Arthashastra*, as in other ancient texts, the idea of justice is rooted in the idea of natural inequality. The text recognizes several bases of inequality, but *varna* is the foremost. The *varna* of the defendant, complainant and other individuals involved are usually key elements in deciding on the appropriate punishment. Punishments in the *Arthashastra* include fines, confiscation of property, exile, corporeal punishment, mutilation, branding, torture, forced labour and death".⁷

Mahabharata and Manusmriti

Like the Arthashastra, the *Shantiparva* and the *Anushasanaparva* of the Mahabharata has explicit reference to justice. The *Shantiparva* focuses on the importance of dharma as the highest political ideal, rajdharma –the duties of the king which forms the core content of *Shantiparva*. At the end of the war, Yudhistira, who succeeds to throne, goes to Bhishma, his grand sire, who is awaiting his death in the battlefield, for instruction in statecraft. The result is one of the most comprehensive and profound discourses on kingship, the duties of subjects, justice, and indeed the whole historical process which alternates between order and anarchy, good and evil. *Shantiparva* defines dharma not just in terms of observance of some rituals but in terms of truth and restraint. It is the supreme dharma or duty of the king to work for the upliftment of all living beings.

Among the Dharmashastras, Manusmriti also called the Manavdharmashastra contains an elaborate analysis of the origin of state, society and varna system and the need for laws and a code of conduct to regulate people. The text dwells at length on dharma, sources of dharma, various types of dharma. The concept of justice is encapsulated in the concepts of Rajdharma, vyavaharapadas, dandaniti. Manu emphasizes that justice should be based on dharma or righteousness, as adherence to Dharma principles would enable the ruler to disburse justice in a right manner. Manu emphasized on the principle of dharma to implement the principle of justice. He puts greater emphasis on the concept of justice and equity and held that he who violates justice is always despicable. He, however did not believe in equal treatment for members of all the classes. In fact, he suggested special treatment for the Brahmins. Manu did not believe in equality of all human beings. To Manu, the Brahmins are superior category of human beings who deserves special treatment. To quote Manu- "The Brahmin is declared to be the creator of the world, the punisher, the teacher, a benefactor; to him let no man say anything unpropitious; nor use any harsh words." Manu even does not permit the king to show disrespect to the Brahmin and says- "Let him (the king) not though faller into the deepest distress provoke Brahmins to anger: for they when angered, could instantly destroy him togetherwith his army and his vehicles."⁸

But then there is another dimension to the varna

system. As Frederic Underwood notes, "Higher the varna, more the responsibility of being just and morally superior. The same underlying idea is reflected more positively in the legal administration of Indian justice through the notion that the more elevated a man is in terms of varna, the more responsibility he should bear for his misdeeds. If varna is determined karmically, then those at the top of the hierarchy should be expected to be morally superior. They were, in fact, considered ritually purer, more knowledgeable and closer to the final enlightenment and beatitude. Their behaviour should reflect the long process of spiritual and moral development implied by their higher varna status. This is reflected in law as the requirement of a greater penalty for those of higher station and a milder punishment for the more lowly". This is evident when Manu says, "When another common man would be fined one kaarshaapana, the king shall be fined one thousand; that is the settled rule. In (a case of) theft the guilt of a Sudra shall be eight-fold, that of a Vaisya sixteen fold, that of a Kshatriya two-and-thirtyfold, that of a Braahma.na sixty-fourfold, or quite a hundredfold, or (even) twice four-and-sixtyfold; (each of them) knowing the nature of the offence".⁹ It is only just in this scheme of things that more in the way of a penalty should be expected of those with greater moral capabilities, and who should be expected to know better, while less should be required of those less advanced on the path.

Manu felt that the king's mode of application of danda was the key to the prosperity and destruction of the individual and the community. He believed that Danda keeps the people in a society within their sphere of activity. It ensures that the people perform those functions that are ascribed to them as per their caste in the society. It also protects weak people from arbitrary activities of the strong. In the end, Danda helps the king in the preservation and promotion of dharma or righteousness.

The duty of the king to examine daily the suits or litigants falling under the 18 titles of law, in accordance with the principles derived from regional usage (desadrishta) and from the sacred canon (astradrishta). It is the duty of the king to inflict danda or punishment. The function of the danda is to ensure individual security of persona and property as well as stability of the social order. However, the power or force should be used judiciously and punishment should be given after careful consideration. The king

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who is truthful, wise, virtuous, efficient and impartial is justified to use danda. Manu maintains the moral aspect of dharma and asks the righteous king to consider carefully the rules of castes, local customs, bye-laws of guilds, and family traditions.¹⁰ If they are not opposed to the Vedas and other sacred laws, they should be upheld by the king as binding. (VIII.41) (John W. Spellman)

Manu's ideas on social organization aimed at establishment of order in terms of a certain notion of proportionate justice. The king having fully considered the time and the place of the offence, the strength and the knowledge of the offender should justly inflict punishment on the offenders. The concept of the consideration of the offence and offender for the purpose of punishment falls in line with the modern principles of justice. It was perceived that only punishment can control all the human beings in the earth and utmost importance was given to punishment. The king if he does not punish the offenders who were worthy of punishment, then, the stronger would roast the weaker, like fish on a spit and a situation will arise, where, might may overrule the right. In a country where punishment is not properly inflicted, the ownership would not remain with any one; the lower ones would (usurp the place of) the higher ones. (Buhler 1984). The whole world is kept in order only by punishment, because there is no one in the world who will always act in a just manner. Only the fear of punishment runs the world. Manu also feared that if there was no punishment then all castes (varna) would be corrupted (by intermixture), all barriers would be broken through, and all men would rage (against each other) in consequence of mistakes with respect to punishment.

Manu cautions King by saying, "Justice, being violated, destroys; justice, being preserved, preserves: therefore justice must not be violated, least violated justice destroys us". (Buhler 1984). Further he opines 'the only friend of men even after death is justice; for everything else is lost at the same time when the body (perishes)'. If judicial system fails to dispense justice Manu says that, one quarter of (the guilt of) an unjust (decision) falls on him who committed (the crime), one quarter on the (false) witness, and one quarter on all the judges, one quarter on the king. But where he who is worthy of condemnation is condemned, the king is free from guilt, and the judges are saved (from sin); the guilt falls on the perpetrator (of the crime

alone).

As the duty of a king consists in protecting his subjects by dispensing justice its observance leads him to heaven. He who does not protect his people or upsets the social order wields his royal sceptre (danda) in vain. It is power and power (danda) alone which, only when exercised by the king with impartiality and in proportion to guilt either over his son or his enemy, maintains both this world and the next. The king who administers justice in accordance with sacred law (Dharma), evidence (vyavahāra), history (samsthā) and edicts of kings (Nyāya) which is the fourth will be able to conquer the whole world bounded by the four quarters (Chaturantām mahim).

Dighanikaya

The concept of justice is not only comprehensively discussed in the Hindu texts but also finds elaboration in the Buddhist Tripitakas which means three baskets; the Vinaya, the Sutta and the Abhidhamma pitakas. Suttapitaka is divided into five Nikayas: Digha, Majjhina, Samyutta, Anguttara and Khuddaka. The Digha Nikaya is the first work of the Sutta pitaka

and contains thirty-four suttas, each of which deals fully with one or several points of Buddhist doctrine. Although Buddhist thought seldom addresses the issue of social justice in the modern sense, that is, in terms of such things as human rights, the fair distribution of resources, the impartial rule of law, and political freedom, still it takes up social issues sincerely and upholds that communal good can be realized through the promotion of individual morality.¹¹

Although at the time of Buddha there was no full fledged system of law as today, still the spirit of legal justice was, undoubtedly, inherent in the idea of equality, as Buddha was in favour of providing equal opportunities to each and every individual irrespective of caste and other barriers. Buddhists viewed all human beings as equal; therefore Buddhism was committed to the principle of human equality. Buddha attacked the caste system which divided the society in upper and lower castes, thereby depriving the lower castes of certain rights such as the study of Vedas. Repudiating the superiority by birth, he declared that: No Brahman is such by birth No outcaste is such by birth An outcaste is such by his deeds A Brahman is such by his deeds. (Sutta Nipata, p.110) The

Madhuriya Sutta of the Majjhima Nikaya propounds absolute equality of all the four orders so far as the punishment for evil deeds and reward for meritorious actions, both in this secular world and beyond, are concerned.

Buddha's law is the law of justice, enunciated in the principles of dhamma of fair reward and proper punishment. For Buddha, every good thought, word, and deed deserve fair reward and every evil one its proper punishment. His Eighth fold path also elaborates on the principle of righteousness in words and deeds. Buddha considers law as the instrument, through which people may be regulated through a system of reward and punishment ultimately leading to the path of righteousness.

Conclusion

The different Indian texts espoused the concept of dharma as the laws or principles that govern human nature. It is intricately relate to danda, that is, the sceptre that rules the world, keeps society in proper harmony and prevents *matsyanyaya* or anarchy. The edifice of justice was, thus built on the twin foundation of dharma and danda. Dharma was not just a code of conduct but a way of life. The ideas of justice as elaborated in concepts like Rajdharma and dandaniti encapsulates the modern concept of rule of law. In this sense, there is no conflict between the ancient Indian idea of dharma and the western notion of justice. Both the traditions aimed at ensuring individual's right to get his fair due. Ancient Indian texts have put this responsibility on the king through the observance of rajdharma and on the individual through the observance of swadharma and varnashramadharma. If every individual knew his duties and fulfilled them there would be no question of injustice. But then both the traditions have accepted the natural inequality of society as given *a priori* and principles of justice, whether, Hindu, Buddhist or western have tried to ensure the greatest good of the greatest number within

the structure of the state.

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POLITICAL PARTICIPATION AND THE GENDER DEBATE

Moamenla Amer

In any democratic society, equal political participation between male and female is vital for the sustainability of the system. However, women in every part of the world continue to be largely marginalised from the political sphere. Gender remains a meaningful source of inequality in political participation. Understanding this participatory gap becomes important given that gender differences in political participation could reproduce gender inequalities in other domains as well. The analysis in this article centres around two issues. First, to examine the extent and nature of gender gap in political participation that may be observed. Second, to analyse the factors that underlie the gender engagement across dimensions of electoral activities between male and female. Individual-level differences between men and women in terms of socio-economic resources and the socio-cultural context explains differences in political participation between them.

Introduction

In any democratic society, equal political participation between male and female is vital to the sustainability of the system. Since both sexes have their needs and interest which must be taken into account, it will be unfair for one group to decide for the other.¹ However, it is internationally acknowledged that women are still far from matching men's level of involvement in political actions, influence, and representation.² Although this gender disparity has diminished or even reversed in institutionalised forms of political participation such as voting over the years, it persists in less formal forms of political participation.³ Women in every part of the world continue to be largely marginalised from the political sphere, often as a result of discriminatory laws, practices, attitudes and gender stereotypes, low levels of education, lack of access to health care and the disproportionate effect of poverty on women.⁴

In different democracies people's participation in politics has taken a variety of forms, and this has gradually extended the scope of electoral politics beyond voting. Earlier survey studies of political participation confined their enquiry to a relatively limited set of political acts with the act of voting, attending political meetings or rallies, working for a party, making a monetary contribution or running

for public office being the dominant ones.⁵ In the present times, the term political participation has been broadened to include all those political acts through which people directly affect the political decision-making process. For the present study the following modes of political participation have been included as indices to measure respondent's level of participation in electoral activities:

1. Voting
2. Taking part in campaign activities
3. Membership in political party
4. Attending election meetings/rallies
5. Taking part in political discussion

Demographic factors are important for understanding political participation of the voters because individuals' social backgrounds are central to the development of their political attitudes and behaviours. Differences between men and women on these traits also are commonly held to account for any gender gap in political participation. Taking insights from earlier studies, a number of demographic variables that the literature survey has established as important correlates of citizen's participation in electoral activities have been employed to examine